

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 0824526

RECEIVED

MAR 22 2016

SC Court of Appeals

Robert L. Harrison, Employee,.....Appellant,

v.

Owen Steel Company, Inc., Employer, and
Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc., Carrier,.....Respondents.

RECORD ON APPEAL

Frank A. Barton, Esquire
ATTORNEY AT LAW, P.A.
Post Office Box 3972
West Columbia, South Carolina 29170
803-739-1824 / fax 803-739-1888
ATTORNEY FOR APPELLANT

Helen F. Hiser, Esquire
Jason Lockhart, Esquire
MCANGUS GOUDELOCK & COURIE, LLC
Post Office Box 650007
Mount Pleasant, South Carolina 29465
843-576-2930
ATTORNEYS FOR RESPONDENT

INDEX TO RECORD ON APPEAL

Appellate Panel Decision and Order, dated September 8, 2015.....	1
Decision and Order of the Hearing Commissioner, dated February 12, 2015.....	24
Claimant's Form 30, dated February 20, 2015.....	41
Claimant's Brief of Appellant, dated April 15, 2015.....	44
Defendant's-Respondent's Brief to the Appellate Panel, dated April 27, 2015.....	51
Claimant's Form 58 and Notice of Witnesses and Medical Records to be Introduced, dated July 17, 2014, with attachments 1 through 9.....	65
Defendants' Form 58 and Notice of Witnesses and Written Reports, dated July 22, 2014, with attachments 10 through 17.....	118
Transcript of Hearing of August 1, 2014.....	170
Appellate Panel Decision and Order, dated May 12, 2014.....	236
Decision and Order of the Hearing Commissioner, dated November 7, 2013.....	244
Form 58 of Claimant, dated June 24, 2013,.....	254
Form 58 of Claimant, dated June 24, 2013, and APA excerpts	259
Form 58 of Defendants, dated June 27, 2013, and APA excerpts.....	288
Claimant's Form 50, dated May 8, 2013.....	298
Defendants' Form 51, dated May 24, 2013.....	300
Claimant's Form 30, dated November 21, 2013.....	302
Form 19, dated August 17, 2011.....	307
Transcript of Hearing, August 8, 2013.....	308
Transcript of Hearing, February 18, 2014.....	327
Claimant's Form 50, dated April 24, 2013.....	333
Claimant's Form 50, dated April 29, 2013.....	335

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0824526

Robert L. Harrison

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

Owen Steel Company, Inc.

EMPLOYER,

AND

Old Republic Insurance Company c/o
Gallagher Bassett Services, Inc.

CARRIER,
DEFENDANTS/ RESPONDENTS,

Appellate Panel Review held in
Columbia, South Carolina, on May 18, 2015

Appellate Panel Decision and Order Filed:

September 8, 2015

APPEARANCES: Claimant/Appellant represented by Frank A. Barton, Esquire
Defendants/Respondents represented by Jason W. Lockhart, Esquire

000001

STATEMENT OF THE CASE

A hearing was scheduled pursuant to the Decision and Order of the Full Commission Panel, who remanded the above-referenced case to the jurisdictional commissioner for a hearing. More specifically, the Full Commission remanded the case to the jurisdictional commissioner with instructions that the jurisdictional commissioner address the possible assertion of the equitable defense of Laches as well as the Claimant's intervening accidents and/or the Claimant's entitlement to permanent partial disability (PPD) benefits. The Claimant maintained that the Claimant sustained a compensable injury to the back while in the course and scope of the Claimant's employment with the Defendants on September 17, 2008. The Claimant took the position the Claimant was entitled to an award of PPD benefits to the back, pursuant to Section 42-9-30 of the Act on the basis that the Claimant's authorized treating physician, Dr. Holbrook, determined that the Claimant reached maximum medical improvement (MMI) on July 21, 2010, and assigned a 25% impairment rating to the whole person.

In response, while the Defendants admitted that the Claimant sustained a compensable injury to the back on September 17, 2008, the Defendants maintained that the Claimant was not entitled to an award of PPD benefits pursuant to Section 42-9-30. More specifically, the Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of PPD benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 2008, work-related accident and, therefore, any award of PPD benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.

000002

A Hearing in this matter was scheduled before Commissioner McCaskill on August 1, 2014. At the conclusion of the Hearing, Commissioner McCaskill issued a Decision and Order making the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Pursuant to Section 42-17-20, this hearing was set on remand of the Full Commission.
3. Claimant average weekly wage is Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars with a corresponding compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.
4. The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. The Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom.
5. The Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of permanent partial disability benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.
6. The Defendants argue that this claim is barred by the Doctrine of Laches and, subsequently, a determination as to the Claimant's entitlement to permanent partial disability is barred in that to make such a determination would require speculation on the part of the undersigned Commissioner, which the Act says the undersigned Commissioner cannot do. The Claimant argues that the Doctrine of Laches does not apply.
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant settled a

002-A

workers compensation claim on September 8, 2011 arising out of an October 4, 2010 date of accident, which occurred while the Claimant was employed with the Defendants. (See Defendants' APA, p. 46).

8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. (See Defendants' APA, p. 63-65).
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant had suffered an injury at home in late February 2012, while lifting his daughter, and complained of neck and back pain. (See Defendants' APA, p. 47, 73-79).
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was involved in a motor vehicle accident on March 8, 2014, and complained of pain from the top of his neck to the top of his right buttock. (See Defendants' APA, p. 50-54).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, the Claimant's testimony, and the Commission file, I find that, while the Claimant alleges that he suffered a work-related injury on September 17, 2008 and it is an active file, the first request for a hearing was filed by the Claimant on May 15, 2013.
12. The threshold matter is whether or not this claim is barred by the Doctrine of Laches. The Defendants argue that this claim is barred by the Doctrine of Laches and a determination as to the Claimant's entitlement to permanent partial disability benefits is barred in that to make such a determination would require speculation on my part, which the Act says I cannot do. The Claimant argues that the Doctrine of Laches does not apply.
13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, in the present case, the Claimant alleges an accident occurred on September 17, 2008. Since the date of this accident, the Claimant has settled another case via a Form 16A and been awarded benefits pursuant to the

Act. (See Defendants' APA, p. 46).

14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has also been in at least three other accidents, subsequent to the September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to some the body parts pled in this case. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79).
15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that the Claimant has indeed slept on his rights and to now go back for a possible determination compensability and disability after at least three intervening accidents over the past six years would be both speculative and prejudicial to the Defendants.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then. (Hr'g Tr. 14:22-16:9).
17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.
19. Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008. Claimant reinjured his neck in either September 2010 or October 2010. In addition, Claimant re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (See Defendants' APA, p. 46, 47, 50-54, 63-65,

73-79). To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would have required speculation on the part of the undersigned Commissioner.

20. Based on the entirety of the evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for permanent partial disability benefits is denied.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Pursuant to South Carolina Code Ann. §42-1-40 and §42-1-100, Claimant's average weekly wage is Two Hundred Eighty Four Dollars (\$284.85) and 85/100 with a corresponding compensation rate of One Hundred Eighty Nine Dollars (\$189.91) and 91/100.
4. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter. 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
5. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out

of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of the employment and simultaneously co-exist 'in the course of the employment.'" Kinsey v. Champion Am. Serv. Center. 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).

6. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law." Doe v. South Carolina State Hospital. 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).
7. The question of Laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust. II v. Wright. 323 S.C. 303, 307, 474 S.E.2d 421, 423-24 (1996).
8. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard, Inc.. 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the Doctrine of Laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. The party asserting Laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599.
9. Our appellate courts have recognized the applicability of the Doctrine of Laches in a workers' compensation claim. See Muir. 336 S.C. at 296-97, 519 S.E.2d at 598-99 (affirming the commissioner's finding that the claim was not barred by the Doctrine of Laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res.. 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the commissioner's finding that "[a] claimant must prosecute his claim in a timely fashion or it may be barred by the Doctrine of Laches," although the commissioner's authority to dismiss the case for failure to prosecute was not disputed on appeal).
10. In the present case, despite the shared responsibility in requesting a hearing set forth in Halks, the Defendants nonetheless demonstrated that the Claimant was negligent in pursuing his claim and had the opportunity to act sooner. Based on the entirety of the evidence including the medical records submitted, the testimony of

the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then.

11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.
12. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. See Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
13. To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioner prohibited by the South Carolina Workers Compensation Act. See Tiller, 334 S.C. 333, 513 S.E.2d 843 (1999).
14. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
15. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for

permanent partial disability benefits is denied.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order. According to the Claimant's Appellate Brief, these exceptions were consolidated as follows:

1. The Commissioner erred in concluding Laches, an affirmative defense, was applicable when it was not pled by the Defendants.
2. The Commissioner erred in finding and concluding Claimant was barred from relief based on the Doctrine of Laches.
3. The Commissioner erred in finding and concluding Laches was applicable because the Defendants were prejudice.
4. The Commissioner erred in finding and concluding Laches was applicable when the Defendants could have requested a Hearing at any time.
5. The Commissioner erred in finding and concluding Laches was applicable when the Defendants failed to provide any evidence whatsoever of any prejudice suffered.
6. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson which concluded Claimant had at least a twenty-five percent whole person impairment as a result of the surgery performed on Claimant as a result of the surgery performed on Claimant as a result of his accident on September 17, 2008.
7. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson when the Defendants failed to provide any medical evidence to contradict those reports.
8. The Commissioner erred in finding and concluding any finding of impairment or disability benefits would be speculative when the Defendants failed to produce any medical evidence to contradict the reports of Dr. Thomas Holbrook and Dr. Don Johnson.
9. The Commissioner erred in failing to find and conclude that the Claimant was entitled to an award for disability benefits based upon the interior cervical discectomy and fusion performed on Claimant.

EVIDENCE OF THE CASE

TESTIMONY

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 42-years of age and resides in Hopkins, South Carolina, with his wife and two children. The Claimant stated that he was involved in a work-related accident on September 17, 2008, and sustained an injury to the neck while rising from a bent over position, which the Claimant was in while welding a girder. (Hr'g Tr. 22:3-22) Claimant stated that he sought and received initial medical treatment at Doctors Care and was taken to Doctors Care by a representative of the Insured on September 17, 2008. Based on a review of the medical records, Claimant was initially examined at Doctors Care on September 17, 2008, and diagnosed with an acute cervical strain. (See Defendants' APA, p. 83). Claimant testified that he sought and received medical treatment at Doctors Care in the form of injections, prescription medication and physical therapy, which he underwent for approximately 6 to 12 weeks. On the other hand, Claimant stated that his neck pain and problems did not improve, following the receipt of the above-referenced medical treatment, and that he was referred to Dr. Holbrook for additional medical treatment.

Claimant testified that he sought and received additional medical treatment with Dr. Holbrook, who initially examined Claimant in August 2009. (See Claimant's APA, p. 2-3). Claimant stated that he initially received treatment from Dr. Holbrook in the form of an injection but that he did not experience any improvement of his neck pain or problems following the injection. (See Claimant's APA, p. 4). Claimant indicated that he subsequently underwent surgery, which was performed by Dr. Holbrook in November 2009. (Hr'g Tr. 23:3-5) Based on a review of the medical records, Dr. Holbrook performed an anterior cervical discectomy and

fusion at C5-6 on November 10, 2009. (See Claimant's APA, p. 5-6). Claimant testified that he experienced limited improvement of his neck pain and problems following surgery, and that he also underwent physical therapy, following surgery, for a period of approximately five to six weeks. (See Claimant's APA, p. 7, 9). Claimant testified that he was released from the care of Dr. Holbrook in July 2010, but that he did provide Dr. Holbrook with complaints of neck pain and problems prior to being released from the care of Dr. Holbrook in July 2010. (Hr'g Tr. 31:16-22) Based on a review of the medical records, Dr. Holbrook determined that Claimant reached maximum medical improvement on July 21, 2010, and assigned a 25% impairment rating to the whole person. (See Claimant's APA, p. 15). Claimant stated that he did return to Dr. Holbrook in 2012 for medical treatment following an incident wherein Claimant lifted his daughter off of the ground after she had fallen from a porch. Claimant testified that he provided Dr. Holbrook with complaints of right shoulder pain but that his neck was not injured in the above-referenced incident. (Hr'g Tr. 32:18-33:3; 34:6-15) Claimant indicated that Dr. Holbrook did not provide him with medical treatment, but referred Claimant to an orthopaedic physician for additional medical treatment. (Hr'g Tr. 36:1-14)

The Claimant testified he is currently employed with the Defendants as lead man or shop foreman, and is physically capable of performing his job duties and responsibilities for the Defendants. (Hr'g Tr. 44:3-8) Most notably, the Claimant stated that he is currently earning greater wages with the Defendants at the present time than he was earning on the date of his September, 2008 work-related accident. (Hr'g Tr. 24:10-12) The Claimant indicated he continues to experience throbbing pain in the neck, which occurs approximately one-to-two times per week and that he alleviates pain and problems associated with his neck through the use of over-the-counter medication, an ice pack, and a heating pad. (Hr'g Tr. 23:18-25; 46:12-47:7) The

Claimant, who is right-hand dominant, testified that he also experiences numbness and tingling in the left upper extremity that occurs approximately one-to-two times per week.

On cross-examination, the Claimant testified that he was involved in a motor vehicle accident in April 2010 (Hr'g Tr. 28:5-25), a work-related accident in October 2010 (Hr'g Tr. 54:15-17), an accident that occurred at his home in February 2012 (Hr'g Tr. 54:21-23), a motor vehicle accident in July 2013 (Hr'g Tr. 27:12-14), and a motor vehicle accident in March 2014 (Hr'g Tr. 24:24-25:14). (See Defendants' APA, p. 50-54). The Claimant was quite adamant that, despite the occurrence of each of the above-referenced incidents, he was of the opinion that his current neck pain and problems were entirely related to his September 2008 work-related accident. (Hr'g Tr. 55:5-25). Most interestingly, the Claimant indicated that he did not provide Dr. Holbrook with complaints of increased neck and upper extremity problems after attempting to pick up his daughter, who had fallen from a porch in February 2012, despite medical records that were inconsistent with the testimony of the Claimant. (Hr'g Tr. 33:1-3, 34:6-15; see Defendants' APA, p. 47). The Claimant indicated that he did sustain injuries to the neck and back as a result of his motor vehicle accident, which occurred in February 2014, or March 2014, and was of the opinion that his neck pain and problems, due to the above-referenced motor vehicle accident, had resolved. (See Defendants' APA, p. 50-62). The Claimant indicated that, despite his ongoing neck pain and problems, he regularly performs yard work, goes fishing, and rides motorcycles. (Hr'g Tr. 47:16-51:8). In addition, the Claimant testified that he was most recently involved in a physical altercation with a co-employee, and that the above-referenced physical altercation, which occurred in either June 2014 or July 2014, resulted in the Claimant both throwing the above-referenced individual to the ground and throwing multiple punches. (Hr'g Tr. 52:7-54:5).

Terry Hartwell testified on behalf of the Defendants. Mr. Hartwell, who has been employed with the Defendants for approximately 10 years, stated that he is currently employed as a shift supervisor, and has been the Claimant's supervisor for approximately one year. (Hr'g Tr. 62:1-21). Mr. Hartwell indicated that he observed the Claimant performing his job on a daily basis and that the Claimant appears to be physically capable of performing his job duties and responsibilities as a lead man. (Hr'g Tr. 63:25-64:4). Most notably, Mr. Hartwell testified that the Claimant has not requested that the Defendants modify the Claimant's job duties or responsibilities in light of the Claimant's ongoing neck pain and problems. (Hr'g Tr. 64:5-8). Most interestingly, Mr. Hartwell stated he observed the physical altercation between the Claimant and a former co-employee that occurred in June 2014 or July 2014, and witnessed the Claimant throwing the above-referenced employee to the ground and throwing punches. (Hr'g Tr. 65:17-66:5).

FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Pursuant to Section 42-17-20, this hearing was set before the Single Commissioner on remand of the Full Commission.
3. Claimant average weekly wage is Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars with a corresponding compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.
4. The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. The

Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom.

5. The Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of permanent partial disability benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.
6. The Defendants argue that this claim is barred by the Doctrine of Laches and, subsequently, a determination as to the Claimant's entitlement to permanent partial disability is barred in that to make such a determination would require speculation on the part of the undersigned Commissioners, which the Act says the Commission cannot do. The Claimant argues that the Doctrine of Laches does not apply.
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant settled a workers compensation claim on September 8, 2011 arising out of an October 4, 2010 date of accident, which occurred while the Claimant was employed with the Defendants. (See Defendants' APA, p. 46).
8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony,

we find that the Claimant was in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. (See Defendants' APA, p. 63-65).

9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant had suffered an injury at home in late February 2012, while lifting his daughter, and complained of neck and back pain. (See Defendants' APA, p. 47, 73-79).
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant was involved in a motor vehicle accident on March 8, 2014, and complained of pain from the top of his neck to the top of his right buttock. (See Defendants' APA, p. 50-54).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, the Claimant's testimony, and the Commission file, we find that, while the Claimant alleges that he suffered a work-related injury on September 17, 2008 and it is an active file, the first request for a hearing was filed by the Claimant on May 15, 2013.
12. The threshold matter is whether or not this claim is barred by the Doctrine of Laches. The Defendants argue that this claim is barred by the Doctrine of Laches and a determination as to the Claimant's entitlement to permanent partial disability benefits is barred in that to make such a determination would require speculation on our part, which the Act says we cannot do. The Claimant argues that the Doctrine of Laches does not apply.

13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, in the present case, the Claimant alleges an accident occurred on September 17, 2008. Since the date of this accident, the Claimant has settled another case via a Form 16A and been awarded benefits pursuant to the Act. (See Defendants' APA, p. 46).
14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has also been in at least three other accidents, subsequent to the September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to some the body parts pled in this case. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79).
15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that the Claimant has indeed slept on his rights, and to now go back for a possible determination compensability and disability after at least three intervening accidents over the past six and one-half years would be both speculative and prejudicial to the Defendants.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then. (Hr'g Tr. 14:22-16:9).

17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, we find that the claim is barred by the Doctrine of Laches.
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.
19. Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008. Claimant reinjured his neck in either September 2010 or October 2010. In addition, Claimant re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79). To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioners.
20. Based on the entirety of the evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally related condition was as a

result of the September 17, 2008 accident.

21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant's request for permanent partial disability benefits is denied.
22. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Pursuant to South Carolina Code Ann. §42-1-40 and §42-1-100, Claimant's average weekly wage is Two Hundred Eighty Four Dollars (\$284.85) and 85/100 with a corresponding compensation rate of One Hundred Eighty Nine Dollars (\$189.91) and 91/100.
4. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own

findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).

5. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
6. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter. 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
7. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "injury" and "personal injury" shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must arise out of the employment and simultaneously co-exist in the course of the employment." Kinsey v. Champion Am. Serv. Center. 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).
8. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is

primarily one of law." Doe v. South Carolina State Hospital. 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).

9. Prior to the Single Commissioner Hearing, the Full Commission's ruling was not appealed and became the law of the case, allowing Defendants to raise the Doctrine of Laches on remand. See Charleston Lumber Co., Inc. v. Miller Housing Corp. 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (because respondent did not appeal the ruling of the reviewing court, the courts on remand were bound by the ruling as the law of the case and they erred in ignoring the reviewing court's directive to determine the amount of actual damages).
10. On remand from the Full Commission, Defendants properly pled the equitable defense of Laches in its Form 58 Prehearing Brief. As a result, on remand, the Single Commissioner properly ruled on the Laches issue, and we find that the Laches issue is properly presented before us since Defendants properly preserved the issue for appeal.
11. The question of Laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust, II v. Wright. 323 S.C. 303, 307, 474 S.E.2d 421, 423-24 (1996).
12. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard, Inc. 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the Doctrine of Laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity

steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. "Whether the claim is barred by Laches is to be determined in light of the facts of the case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute Laches." SCDSS v. Holden, 319 S.C. 72, 75, 459 S.E.2d 846, 848 (1995). The party asserting Laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599.

13. Our appellate courts have recognized the applicability of the Doctrine of Laches in a workers' compensation claim. See Muir, 336 S.C. at 296-97, 519 S.E.2d at 598-99 (affirming the commission's finding that the claim was not barred by the Doctrine of Laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the commission's finding that "[a] claimant must prosecute his claim in a timely fashion or it may be barred by the Doctrine of Laches," although the commission's authority to dismiss the case for failure to prosecute was not disputed on appeal).
14. In the present case, despite the shared responsibility in requesting a hearing set forth in Halks, the Defendants nonetheless demonstrated that the Claimant was negligent in pursuing his claim, he had the opportunity to act sooner, and they were prejudiced as a result of Claimant's unreasonable delay. Specifically, Claimant has sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident, Claimant has settled another case via a Form 16A and was awarded benefits pursuant to the Act, and

Claimant has been in at least three other accidents (subsequent to his September 17, 2008 accident) and those accidents gave rise to complaints of pain/injury to the same body parts pled in this case; therefore, any award of permanent partial disability benefits would be speculative, and thus prohibited, pursuant to Section 42-9-30 of the Act, resulting in prejudice to the Defendants if permanency was awarded. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has been represented since 2009 and no just cause has been shown as to why he could not file a Form 50 prior to May 15, 2013.

15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we conclude that the claim is barred by the Doctrine of Laches.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. See Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794

(Ct. App. 1997) rev'd on other grounds.

17. To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioners prohibited by the South Carolina Workers Compensation Act. See Tiller, 334 S.C. 333, 513 S.E.2d 843 (1999)
18. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
19. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants; and the Claimant's testimony, we find that the Claimant's request for permanent partial disability benefits is denied.
20. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is affirmed in its entirety.

IT IS HEREBY ORDERED that the claim for compensation is barred by the Doctrine of Laches.

IT IS FURTHER ORDERED that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.

IT IS FURTHER ORDERED that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally-related condition was as a result of the September 17, 2008 accident.

IT IS FURTHER ORDERED that Claimant's claim for benefits available under the act is **DENIED**.

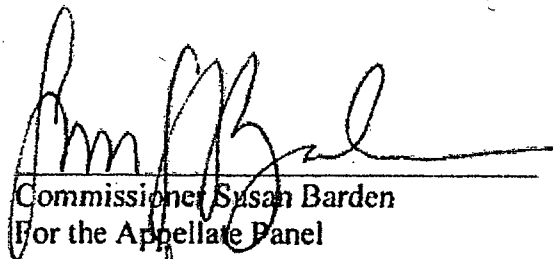
AND IT IS SO ORDERED.

WE CONCUR:

CERTIFICATE OF SERVICE

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

By *Eugenia Hollmon* on September 8, 2015



Commissioner Susan Barden
For the Appellate Panel



Commissioner Aisha Taylor



Commissioner T. Scott Beck

000023

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0824526

ROBERT L. HARRISON,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

OLD REPUBLIC INSURANCE COMPANY
c/o GALLAGHER BASSETT SERVICES,
INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on August 1, 2014.

APPEARANCES:

Claimant appeared and represented by Frank A. Barton, Esquire of Mullis Law Firm of Columbia, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues pursuant to Decision and Order of the Full Commission Panel.

COMMISSIONER:

Commissioner Gene McCaskill

FILED:

February 12, 2015

000024

STIPULATIONS

The parties have stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
2. Venue is proper in Columbia, South Carolina.
3. Notice of the Hearing was timely and properly served upon the parties.
4. The Hearing was set pursuant to the Decision and Order of the Full Commission Panel.
5. Claimant has an average weekly wage of Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars and an applicable compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.

APA SUBMISSIONS

Claimant's APA Submissions:

1. Palmetto Imaging, dated 7/9/09, consisting of 1 page;
2. Dr. Thomas Holbrook, dated 8/31/09-7/21/10, consisting of 14 pages;
3. Palmetto Imaging, dated 6/14/10, consisting of 2 pages;
4. Dr. Thomas Holbrook, dated 7/21/10, consisting of 1 page
5. Dr. Don Johnson, Southeastern Spine, dated 9/28/10, consisting of 2 pages;
6. Doctors Express, dated 3/2/12-3/14/12, consisting of 5 pages;
7. Palmetto Imaging, dated 3/9/12, consisting of 3 pages;
8. Dr. Thomas Holbrook, dated 3/26/12, consisting of 4 pages;
9. Palmetto Imaging, dated 3/9/12, consisting of 3 pages;
- Ex. A: Letter from WCC with CC of letter to WCC, consisting of 2 pages;
- Ex. B: Form 20 for date of accident 9/17/08, consisting of 1 page;
- Ex. C: Appellant Panel Decision and Order, consisting of 8 pages.

Defendants' APA Submissions:

10. Claimant's written statement, dated 3/15/12, consisting of 1 page;
11. Form 16A (for WCC File No. 1013900), dated 9/8/11, consisting of 1 page;
12. South Hampton Family Practice, dated 10/21/13-4/16/14, consisting of 15 pages;
13. Palmetto Health, dated 4/4/10, consisting of 4 pages;
14. Dr. Raymond C. Sweet, M.D., dated 11/2/10-11/23/10, consisting of 6 pages;

15. Doctor's Express, dated 2/29/12-7/20/12, consisting of 10 pages;
16. Doctor's Care, dated 9/17/08-1/6/09, consisting of 8 pages;
17. Dr. Andrew H. Rhea, M.D., dated 11/12/10, consisting of 5 pages.

STATEMENT OF THE CASE

The hearing was scheduled pursuant to the Decision and Order of the Full Commission Panel, who remanded the above-referenced case to the jurisdictional commissioner for a hearing. More specifically, the Full Commission remanded the case to the jurisdictional commissioner with instructions that the jurisdictional commissioner address the possible assertion of the equitable defense of laches as well as the Claimant's intervening accidents and/or the Claimant's entitlement to permanent partial disability (PPD) benefits. The Claimant maintained that the Claimant sustained a compensable injury to the back while in the course and scope of the Claimant's employment with the Defendants on September 17, 2008. The Claimant took the position the Claimant was entitled to an award of PPD benefits to the back, pursuant to Section 42-9-30 of the Act on the basis that the Claimant's authorized treating physician, Dr. Holbrook, determined that the Claimant reached maximum medical improvement (MMI) on July 21, 2010, and assigned a 25% impairment rating to the whole person. In response, while the Defendants admitted that the Claimant sustained a compensable injury to the back on September 17, 2008, the Defendants maintained that the Claimant was not entitled to an award of PPD benefits pursuant to Section 42-9-30. More specifically, the Defendants maintained that the equitable defense of laches barred the Claimant's receipt of PPD benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 2008, work-related accident and, therefore, any award of PPD benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 42-years of age and resides in Hopkins, South Carolina, with his wife and two children. The Claimant stated that he was involved in a work-related accident on September 17, 2008, and sustained an injury to the neck while rising from a bent over position, which the Claimant was in while welding a girder. (Hr'g Tr. 22:3-22) Claimant stated that he sought and received initial medical treatment at Doctors Care and was taken to Doctors Care by a representative of the Insured on September 17, 2008. Based on a review of the medical records, Claimant was initially examined at Doctors Care on September 17, 2008, and diagnosed with an acute cervical strain. (See Defendants' APA, p. 83). Claimant testified that he sought and received medical treatment at Doctors Care in the form of injections, prescription medication and physical therapy, which he underwent for approximately 6 to 12 weeks. On the other hand, Claimant stated that his neck pain and problems did not improve, following the receipt of the above-referenced medical treatment, and that he was referred to Dr. Holbrook for additional medical treatment.

Claimant testified that he sought and received additional medical treatment with Dr. Holbrook, who initially examined Claimant in August 2009. (See Claimant's APA, p. 2-3). Claimant stated that he initially received treatment from Dr. Holbrook in the form of an injection but that he did not experience any improvement of his neck pain or problems following the injection. (See Claimant's APA, p. 4). Claimant indicated that he subsequently underwent surgery, which was performed by Dr. Holbrook in November 2009. (Hr'g Tr. 23:3-5) Based on a review of the medical records, Dr. Holbrook performed an anterior cervical discectomy and fusion at C5-6 on November 10, 2009. (See Claimant's APA, p. 5-6). Claimant testified that he

experienced limited improvement of his neck pain and problems following surgery, and that he also underwent physical therapy, following surgery, for a period of approximately five to six weeks. (See Claimant's APA, p. 7, 9). Claimant testified that he was released from the care of Dr. Holbrook in July 2010, but that he did provide Dr. Holbrook with complaints of neck pain and problems prior to being released from the care of Dr. Holbrook in July 2010. (Hr'g Tr. 31:16-22) Based on a review of the medical records, Dr. Holbrook determined that Claimant reached maximum medical improvement on July 21, 2010, and assigned a 25% impairment rating to the whole person. (See Claimant's APA, p. 15). Claimant stated that he did return to Dr. Holbrook in 2012 for medical treatment following an incident wherein Claimant lifted his daughter off of the ground after she had fallen from a porch. Claimant testified that he provided Dr. Holbrook with complaints of right shoulder pain but that his neck was not injured in the above-referenced incident. (Hr'g Tr. 32:18-33:3; 34:6-15) Claimant indicated that Dr. Holbrook did not provide him with medical treatment, but referred Claimant to an orthopaedic physician for additional medical treatment. (Hr'g Tr. 36:1-14)

The Claimant testified he is currently employed with the Defendants as lead man or shop foreman, and is physically capable of performing his job duties and responsibilities for the Defendants. (Hr'g Tr. 44:3-8) Most notably, the Claimant stated that he is currently earning greater wages with the Defendants at the present time than he was earning on the date of his September, 2008 work-related accident. (Hr'g Tr. 24:10-12) The Claimant indicated he continues to experience throbbing pain in the neck, which occurs approximately one-to-two times per week and that he alleviates pain and problems associated with his neck through the use of over-the-counter medication, an ice pack, and a heating pad. (Hr'g Tr. 23:18-25; 46:12-47:7)

The Claimant, who is right-hand dominant, testified that he also experiences numbness and tingling in the left upper extremity that occurs approximately one-to-two times per week.

On cross-examination, the Claimant testified that he was involved in a motor vehicle accident in April 2010 (Hr'g Tr. 28:5-25), a work-related accident in October 2010 (Hr'g Tr. 54:15-17), an accident that occurred at his home in February 2012 (Hr'g Tr. 54:21-23), a motor vehicle accident in July 2013 (Hr'g Tr. 27:12-14), and a motor vehicle accident in March 2014 (Hr'g Tr. 24:24-25:14). (See Defendants' APA, p. 50-54). The Claimant was quite adamant that, despite the occurrence of each of the above-referenced incidents, he was of the opinion that his current neck pain and problems were entirely related to his September 2008 work-related accident. (Hr'g Tr. 55:5-25). Most interestingly, the Claimant indicated that he did not provide Dr. Holbrook with complaints of increased neck and upper extremity problems after attempting to pick up his daughter, who had fallen from a porch in February 2012, despite medical records that were inconsistent with the testimony of the Claimant. (Hr'g Tr. 33:1-3, 34:6-15; see Defendants' APA, p. 47). The Claimant indicated that he did sustain injuries to the neck and back as a result of his motor vehicle accident, which occurred in February 2014, or March 2014, and was of the opinion that his neck pain and problems, due to the above-referenced motor vehicle accident, had resolved. (See Defendants' APA, p. 50-62). The Claimant indicated that, despite his ongoing neck pain and problems, he regularly performs yard work, goes fishing, and rides motorcycles. (Hr'g Tr. 47:16-51:8). In addition, the Claimant testified that he was most recently involved in a physical altercation with a co-employee, and that the above-referenced physical altercation, which occurred in either June 2014 or July 2014, resulted in the Claimant both throwing the above-referenced individual to the ground and throwing multiple punches. (Hr'g Tr. 52:7-54:5).

Terry Hartwell testified on behalf of the Defendants. Mr. Hartwell, who has been employed with the Defendants for approximately 10 years, stated that he is currently employed as a shift supervisor, and has been the Claimant's supervisor for approximately one year. (Hr'g Tr. 62:1-21). Mr. Hartwell indicated that he observed the Claimant performing his job on a daily basis and that the Claimant appears to be physically capable of performing his job duties and responsibilities as a lead man. (Hr'g Tr. 63:25-64:4). Most notably, Mr. Hartwell testified that the Claimant has not requested that the Defendants modify the Claimant's job duties or responsibilities in light of the Claimant's ongoing neck pain and problems. (Hr'g Tr. 64:5-8). Most interestingly, Mr. Hartwell stated he observed the physical altercation between the Claimant and a former co-employee that occurred in June 2014 or July 2014, and witnessed the Claimant throwing the above-referenced employee to the ground and throwing punches. (Hr'g Tr. 65:17-66:5).

FINDINGS OF FACT

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

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Pursuant to Section 42-17-20, this hearing was set on remand of the Full Commission.
3. Claimant average weekly wage is Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars with a corresponding compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.

4. The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. The Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom.
5. The Defendants maintained that the equitable defense of laches barred the Claimant's receipt of permanent partial disability benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.
6. The Defendants argue that this claim is barred by the Doctrine of Laches and, subsequently, a determination as to the Claimant's entitlement to permanent partial disability is barred in that to make such a determination would require speculation on the part of the undersigned Commissioner, which the Act says the undersigned Commissioner cannot do. The Claimant argues that the Doctrine of Laches does not apply.
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant settled a workers compensation claim on September 8, 2011 arising out of an October 4, 2010 date of accident, which occurred while the Claimant was employed with the Defendants. (See Defendants' APA, p. 46).

8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. (See Defendants' APA, p. 63-65).
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant had suffered an injury at home in late February 2012, while lifting his daughter, and complained of neck and back pain. (See Defendants' APA, p. 47, 73-79).
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was involved in a motor vehicle accident on March 8, 2014, and complained of pain from the top of his neck to the top of his right buttock. (See Defendants' APA, p. 50-54).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, the Claimant's testimony, and the Commission file, I find that, while the Claimant alleges that he suffered a work-related injury on September 17, 2008 and it is an active file, the first request for a hearing was filed by the Claimant on May 15, 2013.
12. The threshold matter is whether or not this claim is barred by the Doctrine of Laches. The Defendants argue that this claim is barred by the Doctrine of Laches and a determination as to the Claimant's entitlement to permanent partial disability benefits is barred in that to make such a determination would require

speculation on my part, which the Act says I cannot do. The Claimant argues that the Doctrine of Laches does not apply.

13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, in the present case, the Claimant alleges an accident occurred on September 17, 2008. Since the date of this accident, the Claimant has settled another case via a Form 16A and been awarded benefits pursuant to the Act. (See Defendants' APA, p. 46).
14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has also been in at least three other accidents, subsequent to the September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to some the body parts plead in this case. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79).
15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that the Claimant has indeed slept on his rights and to now go back for a possible determination compensability and disability after at least three intervening accidents over the past six years would be both speculative and prejudicial to the Defendants.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony,

I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then. (Hr'g Tr. 14:22-16:9).

17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.
19. Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008. Claimant reinjured his neck in either September 2010 or October 2010. In addition, Claimant re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79). To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would have required speculation on the part of the undersigned Commissioner.
20. Based on the entirety of the evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's

testimony, I find that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.

21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for permanent partial disability benefits is denied.

CONCLUSIONS OF LAW

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

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Pursuant to South Carolina Code Ann. §42-1-40 and §42-1-100, Claimant's average weekly wage is Two Hundred Eighty Four Dollars (\$284.85) and 85/100 with a corresponding compensation rate of One Hundred Eighty Nine Dollars (\$189.91) and 91/100.
4. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333,

339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.

5. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that “‘injury’ and ‘personal injury’ shall mean only injury by accident arising out of and in the course of employment.” This section “contains a two-pronged test for compensable injuries: the injury must ‘arise out of’ the employment and simultaneously co-exist ‘in the course of’ the employment.” Kinsey v. Champion Am. Serv. Center, 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).
6. The burden of proof is upon the claimant to establish that the accident arose out of employment. “Whether the employee’s injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law.” Doe v. South Carolina State Hospital, 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).
7. The question of laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust, II v. Wright, 323 S.C. 303, 307, 474 S.E.2d 421, 423-24 (1996).
8. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the doctrine of laches, if a party who knows his rights does not timely assert them, and by his delay, causes another

party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599.

9. Our appellate courts have recognized the applicability of the doctrine of laches in a workers' compensation claim. See Muir, 336 S.C. at 296-97, 519 S.E.2d at 598-99 (affirming the commissioner's finding that the claim was not barred by the doctrine of laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the commissioner's finding that "[a] claimant must prosecute his claim in a timely fashion or it may be barred by the doctrine of laches," although the commissioner's authority to dismiss the case for failure to prosecute was not disputed on appeal).
10. In the present case, despite the shared responsibility in requesting a hearing set forth in Halks, the Defendants nonetheless demonstrated that the Claimant was negligent in pursuing his claim and had the opportunity to act sooner. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then.
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony,

it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.

12. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. See Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
13. To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioner prohibited by the South Carolina Workers Compensation Act. See Tiller, 334 S.C. 333, 513 S.E.2d 843 (1999)
14. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has not met his burden of proving by preponderance of the evidence as

to what his causally related condition was as a result of the September 17, 2008 accident.

15. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for permanent partial disability benefits is denied.

ORDER

IT IS HEREBY ORDERED that the claim for compensation is barred by the Doctrine of Laches.

IT IS FURTHER ORDERED that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.

IT IS FURTHER ORDERED that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.

IT IS FURTHER ORDERED that Claimant's claim for benefits available under the Act is **DENIED**.

AND IT IS SO ORDERED.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

February 12, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill



WCC File #: **0824526**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Robert Harrison SSN: _____ Employer's Name: Owen Steel Company
Address: 290 Cabin Creek Road Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Old Republic Ins. Company
Preparer's Name: Frank A. Barton Law Firm: Mullis Law Firm Preparer's Phone #: 803-799-9577

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: (m/d/yyyy)
September 17, 2008

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

See Attachment

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason Lockhart, Esquire,
address P.O. Box 12519 Columbia, SC 29211 on the 24th day of February, 2015 by X first class postage.

Frank A. Barton
Preparer's Signature

Attorney
Title

csoles@mullislawfirm.com
Email

February 20, 2015
Date

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

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

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

ISSUES ON APPEAL

1. The Commissioner erred in concluding laches, an affirmative defense, was applicable when it was not pled by the Defendants.
2. The Commissioner erred in finding and concluding Claimant was barred from relief based on the doctrine of laches.
3. The Commissioner erred in finding and concluding laches was applicable because the Defendants were prejudiced.
4. The Commissioner erred in finding and concluding laches was applicable when the Defendants could have requested a hearing at any time.
5. The Commissioner erred in finding and concluding laches was applicable when the Defendants failed to provide any evidence whatsoever of any prejudice suffered.
6. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson which concluded Claimant had at least a twenty-five percent whole person impairment as a result of the surgery performed on Claimant as a result of his accident of September 17, 2008.
7. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson when the Defendants failed to provide any medical evidence to contradict those reports.
8. The Commissioner erred in finding and concluding any finding of impairment or disability benefits would be speculative when the Defendants failed to produce any medical evidence to contradict the reports of Dr. Thomas Holbrook and Dr. Don Johnson.

9. The Commissioner erred in failing to find and conclude the Claimant was entitled to an award for disability benefits based upon the anterior cervical discectomy and fusion performed on Claimant.

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 0824526**

Robert Harrison,
Employee/Claimant,

v.

Owen Steel Company,
Employer,

and

Old Republic General Insurance Co.,
Insurer,
Defendants.

BRIEF OF CLAIMANT APPELLANT

STATEMENT OF THE CASE

Claimant Robert Harrison was working as a gantry welder on September 17, 2008, when he sustained an admitted injury to his back. Defendants accepted the claim and provided treatment through Dr. Thomas Holbrook, a neurosurgeon. A MRI of Claimant's cervical spine showed a disc bulge and uncovertebral arthropathy at C3-4 and C5-6 along with a disc bulge with left foraminal protrusion at C5-6. Claimant was diagnosed with a cervical disk herniation at C5-6. On November 10, 2009, Dr. Holbrook performed an anterior cervical discectomy with fusion and instrumentation with autograft harvested from the C5 vertebral body. On July 21, 2010, Dr. Holbrook released Claimant with permanent restrictions and a 25% permanent disability. Dr. Holbrook noted that, having undergone anterior cervical discectomy and fusion at C5-6 for disc herniation on the left, Claimant had reached MMI with a permanent disability rating of 25% to the whole person.

On September 29, 2010, Dr. Donald R. Johnson provided his report of independent medical evaluation. Dr. Johnson noted that Claimant had returned to work full time as a welder but that he had continued to have problems. Dr. Johnson noted that Claimant's work as a welder

required him to use a welding shield and to wear a hard hat with his head flexed forward in an awkward/poor body mechanic posture on a continuous basis. Dr. Johnson further indicated that he did not believe that Claimant could return to welding in his condition. Dr. Johnson noted his concern regarding the significant pathology of the disc above the fused level, specifically 3-4 and 4-5 indicating, "I think it is likely if he continues this type of work that he will have further neck surgery to extend his fusion." Dr. Johnson placed Claimant at MMI with permanent work restrictions and a 25% impairment rating. Upon reaching MMI Claimant returned to work with Employer in a supervisory position, requiring lighter work, and at a higher wage than he was earning at the time of the accident of September 17, 2008.

An initial hearing was held on August 8, 2013, with an Order being issued on November 7, 2013. In that Order the Hearing Commissioner agreed with Defendants' arguments the claim was barred by the statute of limitations, even though a claims letter was filed with the Commission approximately one year after the accident. The Commissioner further ruled the Claimant failed to establish he was entitled to any award of permanent disability as he had returned to work for the Employer earning more money than at the time of the accident. After the hearing of February 18, 2014, the Appellate Panel issued its decision reversing the decision of the Hearing Commissioner and remanding the case for findings with regard to issues of intervening accidents, laches, and permanency.

A second hearing before a Hearing Commissioner was held on August 1, 2014, to determine the issues on remand as ordered by the Appellate Panel. The Commissioner issued his decision on February 12, 2015. In the hearing on remand the Commissioner determined the Claimant's claim was barred by the doctrine of laches. The Commissioner also determined the Claimant was unable to establish entitlement to permanent disability benefits as a result of the

injury to his back because of intervening accidents. From the decision issued on remand, the Claimant appeals.

ARGUMENT

I. The Hearing Commissioner erred in considering the defense of laches as it is an affirmative defense and was not pled by the Defendants.

Although Defendants argued this claim was barred by the doctrine of laches, and the Hearing Commissioner agreed, Claimant respectfully submits the Commissioner erred in considering this affirmative defense. In Jervey v. Martint Environmental Inc., 396 SC 442, 721 SE2d 469 (Ct. App. 2012), the Court of Appeals allowed a claimant to use the equitable doctrine of laches which was specifically referred to as an affirmative defense. (On certiorari Jervey v. Martint Environmental Inc., 406 SC 210, 750 SE2d 90 (2013), the Supreme Court modified a portion of the decision of the Court of Appeals, but left intact the ruling in regard to laches.) In Transportation Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 SC 442, 699 SE2d 687 (2010) the doctrine of laches in a Workers Compensation setting was held by the Hearing Commissioner to be an affirmative defense. Although this particular issue was not ruled upon on appeal, this case again shows the general understanding laches is an affirmative defense. Our appellate courts have made it clear the failure to plead laches as an affirmative defense is a waiver of the right to assert it. Whitehead v. State, 352 SC 215, 574 SE2d 200 (2002); Dearybury v. State, 367 SC 34, 625 SE2d 212 (2006); Wright v. Craft, 372 SC 1, 640 SE2d 486 (Ct. App. 2006).

Defendants never raised the doctrine of laches in any pleading. Laches was not raised by a Form 51, and no attempt was made by Defendants to amend the Form 51 at any time. Although the Form 58 provides a specific space for an amendment of pleadings, Defendants never availed themselves of that method to raise the doctrine of laches.

The doctrine of laches must be raised as an affirmative defense by way of pleadings. The Defendants never pled laches as an affirmative defense. For that reason it is respectfully submitted the Hearing Commissioner erred in considering the doctrine of laches and in concluding laches was applicable to bar this claim.

II. The Hearing Commissioner erred in ruling the claim was barred by the doctrine of laches.

Even if the issue of laches was properly before the Hearing Commissioner, Claimant respectfully submits the Commissioner erred in determining laches was applicable.

Laches is an affirmative defense and the party asserting laches has the burden of proving it is applicable. In order to prove laches, the asserting party must show negligence, opportunity to act sooner, and material prejudice. Delay alone in the assertion of a claim or right does not constitute laches. Mazloom v. Mazloom, 382 SC 307, 675 SE2d 746 (Ct. App. 2009), Affd. on Cert. 392 SC 403, 709 SE2d 661 (2011); Timms v. Timms, 290 SC 133, 348 SE2d 386 (Ct. App. 1986); Bailey v. Lyman Printing and Finishing Co., 245 SC 13, 138 SE2d 410 (1964).

Although Defendants claimed the doctrine of laches was applicable, Defendants made no attempt to prove they were materially prejudiced in any way. Dr. Holbrook, the authorized treating physician, issued a report on July 21, 2010, indicating Claimant had suffered a 25% impairment to the whole person because of the cervical injuries suffered as a result of Claimant's on the job accident of September 17, 2008. Dr. Johnson's report of September 29, 2010, also concluded Claimant suffered a 25% whole person impairment because of his cervical injuries resulting from his accident of September 17, 2008. Defendants made no attempt to present evidence the opinions of Dr. Holbrook and Dr. Johnson should be disregarded. Although Defendants argued Claimant suffered a number of other accidents, there was no attempt made by Defendants to show the other accidents in any way impacted the impairment ratings reported by

Dr. Holbrook and Dr. Johnson. Defendants failed to depose their own authorized treating physician, Dr. Holbrook, to determine if any of the other accidents effected his impairment rating. Furthermore, all of the accidents, but one, occurred after the impairment rating was provided by Dr. Holbrook.

The evidence before the Commissioner showed Claimant had a motorcycle accident in April of 2010. Claimant testified he suffered a broken clavicle in that accident, but there was no evidence submitted he suffered any injury to the cervical spine which was injured in his workers compensation accident of September 17, 2008. Again, Defendants made no attempt to provide any medical evidence showing the April 2010, accident had an impact on the injuries Claimant received in his workers compensation accident.

All other accidents raised by Defendants occurred after the time the impairment rating was given by Dr. Holbrook in July of 2010. Claimant was involved in a motorcycle accident in April of 2010, which was between the time of this workers compensation accident and the time his impairment rating was given by Dr. Holbrook in July of 2010. It is simply evident an accident which occurred after the time Claimant was released by the authorized treating physician would not have any impact on a defense claim of laches. It is also apparent any accidents which occurred after the authorized treating physician rendered an impairment rating could not have impacted the authorized treating physician's report of impairment rating.

For these reasons, Defendants' claim of laches fails as they did not produce any evidence of material prejudice. The Commissioner's ruling the doctrine of laches applied should be reversed.

III. The Hearing Commissioner erred in failing to conclude Claimant was entitled to an award of benefits for permanent partial disability.

As stated above, Dr. Holbrook and Dr. Johnson provided reports Claimant suffered a 25% impairment to his spine as a result of his accepted workers compensation accident of September 17, 2008. Although Claimant was involved in a motorcycle accident between the time of his workers compensation accident and the rendering of the impairment ratings by Dr. Holbrook and Dr. Johnson, Defendants failed to provide any evidence or rational reason why the opinions of Dr. Holbrook or Dr. Johnson should be ignored because Claimant suffered an injury to his clavicle. Defendants were fully able to take the deposition of their authorized treating physician, Dr. Holbrook, to determine whether or not the clavicle injury would affect the impairment rating issued by Dr. Holbrook of 25% whole person impairment. Defendants elected not to make any attempt to clarify Dr. Holbrook's opinion on his impairment rating and provided absolutely no probative medical evidence to call into question his impairment rating. All of the other accidents raised by Defendants occurred after the impairment rating was given by Dr. Holbrook. Again, Defendants offered no explanation as to how accidents which occurred after the date of the impairment rating could have any impact upon the impairment rating.

For all of the above reasons Claimant respectfully submits the Commissioner was in error in determining Claimant was not entitled to an award of permanent partial disability pursuant to S.C. Code Section 42-9-30, based on the impairment ratings assigned by Dr. Holbrook and Dr. Johnson. The Commissioner further erred in failing to order continued medical care and maintenance pursuant to S.C. Code Section 42-15-60 and Dodge v. Bruccoli, given the fact Claimant's injuries required surgical fusion with instrumentation and insertion of a titanium plate.

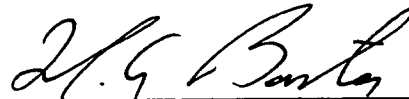
CONCLUSION

The Defendants claimed they were entitled to rely on the doctrine of laches as a defense, but laches is clearly an affirmative defense and was never properly pled by Defendants. Furthermore, proof of delay alone is not sufficient to carry Defendants' burden of proof in regard to the doctrine of laches. Defendants produced no evidence as to how any delay caused them material prejudice. This is especially true in view of the fact Defendants were fully aware of the claim and provided treatment, including surgery, through Dr. Thomas Holbrook. An impairment rating was issued by Dr. Holbrook in July of 2010, and Defendants offered no proof as to how any delayed hearing in regard to that impairment rating could have caused them material prejudice. Although Defendants raised arguments in regard to other accidents in which Claimant was involved, all but one occurred after the impairment rating was given by Dr. Holbrook. Furthermore, Defendants offered no medical evidence as to how an injury to Claimant's clavicle caused any impact in regard to his cervical injury.

The decision of the Hearing Commissioner should be reversed, with provision the Claimant is entitled to an award for the permanent loss of use of his spine and medical treatment related to his spinal injury suffered from his workers compensation accident of September 17, 2008.

April 15, 2015

Respectfully submitted,



Frank A. Barton
Mullis Law Firm
Post Office Box 7757
Columbia, S.C. 29202
(803) 799-9577
COUNSEL FOR CLAIMANT

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0824526

ROBERT L. HARRISON,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

OLD REPUBLIC INSURANCE COMPANY
C/O GALLAGHER BASSETT SERVICES,
INC.

Carrier,

Defendants.

**RESPONDENTS' BRIEF TO THE
FULL COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND FRANK
A. BARTON, ESQUIRE:

STATEMENT OF THE CASE

A hearing was scheduled pursuant to the Decision and Order of the Full Commission Panel, who remanded the above-referenced case to the Jurisdictional Commissioner for a hearing. More specifically, the Full Commission remanded the case to the Jurisdictional Commissioner with instructions that the Jurisdictional Commissioner address the possible assertion of the equitable defense of laches, as well as the Claimant's intervening accidents and/or the Claimant's entitlement to permanent partial disability (PPD) benefits. The Claimant did not appeal the Full Commission Order. The Claimant maintained that the Claimant sustained a compensable injury to the back while in the course and scope of his employment with the

000051

Defendants on September 17, 2008. The Claimant took the position that he was entitled to an award of PPD benefits to the back, pursuant to §42-9-30 of the Act, on the basis that the Claimant's authorized treating physician, Dr. Holbrook, determined that the Claimant reached maximum medical improvement (MMI) on July 21, 2010, and assigned a 25% impairment rating to the whole person. In response, while the Defendants admitted that the Claimant sustained a compensable injury to the back on September 17, 2008, the Defendants maintained that the Claimant was not entitled to an award of PPD benefits pursuant to §42-9-30. More specifically, the Defendants maintained that the equitable defense of laches barred the Claimant's receipt of PPD benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back and neck, since the date of his September 2008 work-related accident, and, therefore, any award of PPD benefits would be speculative and, therefore, prohibited pursuant to §42-9-30 of the Act.

The Hearing Commissioner issued a Decision and Order on February 12, 2015. In his Decision and Order, the Hearing Commissioner determined that Claimant's claim was barred by the Doctrine of Laches. Furthermore, the Hearing Commissioner determined that, even if the claim was not barred by the Doctrine of Laches, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. Furthermore, the Hearing Commissioner determined that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally-related condition was as a result of the September 17, 2008 accident. Thereafter, Claimant timely filed a Form 30 and this appeal followed.

000052

ISSUES RAISED ON APPEAL

- I. **DID THE HEARING COMMISSIONER ERR IN CONCLUDING THAT CLAIMANT WAS NOT ENTITLED TO AN AWARD OF BENEFITS FOR PERMANENT PARTIAL DISABILITY WHEN CLAIMANT HAS NOT MET HIS BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE AS TO WHAT HIS CAUSALLY-RELATED CONDITION WAS AS A RESULT OF THE SEPTEMBER 17, 2008 ACCIDENT?**
- II. **DID THE HEARING COMMISSIONER ERR IN CONSIDERING THE EQUITABLE DEFENSE OF LACHES, WHERE THE UNAPPEALED RULING OF THE FULL COMMISSION INSTRUCTED THE HEARING COMMISSIONER TO CONSIDER THE ISSUE ON REMAND, AND WHERE THE DEFENDANTS PROPERLY PLED THE DEFENSE ON ITS FORM 58?**
- III. **DID THE HEARING COMMISSIONER ERR IN RULING THE CLAIM WAS BARRED BY THE DOCTRINE OF LACHES WHEN ANY AWARD WOULD BE BOTH SPECULATIVE AND PREJUDICIAL TO THE DEFENDANTS?**

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 42-years of age and resides in Hopkins, South Carolina, with his wife and two children. The Claimant stated that he was involved in a work-related accident on September 17, 2008, and sustained an injury to the neck while rising from a bent over position, which the Claimant was in while welding a girder. (Hr'g Tr. 22:3-22) Claimant stated that he sought and received initial medical treatment at Doctors Care and was taken to Doctors Care by a representative of the Insured on September 17, 2008. Based on a review of the medical records, Claimant was initially examined at Doctors Care on September 17, 2008, and diagnosed with an acute cervical strain. (See Defendants' APA, p. 83). Claimant testified that he sought and received medical treatment at Doctors Care in the form of injections, prescription medication and physical therapy, which he underwent for approximately 6 to 12 weeks. On the other hand, Claimant stated that his neck pain and problems did not improve, following the receipt of the above-referenced medical treatment, and that he was referred to Dr. Holbrook for additional

000053

medical treatment.

Claimant testified that he sought and received additional medical treatment with Dr. Holbrook, who initially examined Claimant in August 2009. (See Claimant's APA, p. 2-3). Claimant stated that he initially received treatment from Dr. Holbrook in the form of an injection, but that he did not experience any improvement of his neck pain or problems following the injection. (See Claimant's APA, p. 4). Claimant indicated that he subsequently underwent surgery, which was performed by Dr. Holbrook in November 2009. (Hr'g Tr. 23:3-5) Based on a review of the medical records, Dr. Holbrook performed an anterior cervical discectomy and fusion at C5-6 on November 10, 2009. (See Claimant's APA, p. 5-6). Claimant testified that he experienced limited improvement of his neck pain and problems following surgery, and that he also underwent physical therapy, following surgery, for a period of approximately five to six weeks. (See Claimant's APA, p. 7, 9). Claimant testified that he was released from the care of Dr. Holbrook in July 2010, but that he did provide Dr. Holbrook with complaints of neck pain and problems prior to being released from the care of Dr. Holbrook in July 2010. (Hr'g Tr. 31:16-22) Based on a review of the medical records, Dr. Holbrook determined that Claimant reached maximum medical improvement on July 21, 2010, and assigned a 25% impairment rating to the whole person. (See Claimant's APA, p. 15). Claimant stated that he did return to Dr. Holbrook in 2012 for medical treatment following an incident wherein Claimant lifted his daughter off of the ground after she had fallen from a porch. Claimant testified that he provided Dr. Holbrook with complaints of right shoulder pain but that his neck was not injured in the above-referenced incident. (Hr'g Tr. 32:18-33:3; 34:6-15) Claimant indicated that Dr. Holbrook did not provide him with medical treatment, but referred Claimant to an orthopedic physician for additional medical treatment. (Hr'g Tr. 36:1-14)

The Claimant testified he is currently employed with the Defendants as lead man or shop foreman, and is physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 44:3-8) Most notably, the Claimant stated that he is currently earning greater wages with the Defendants at the present time than he was earning on the date of his September 2008 work-related accident. (Hr'g Tr. 24:10-12) The Claimant indicated he continues to experience throbbing pain in the neck, which occurs approximately one-to-two times per week, and that he alleviates pain and problems associated with his neck through the use of over-the-counter medication, an ice pack, and a heating pad. (Hr'g Tr. 23:18-25; 46:12-47:7) The Claimant, who is right-hand dominant, testified that he also experiences numbness and tingling in the left upper extremity that occurs approximately one-to-two times per week.

On cross-examination, the Claimant testified that he was involved in a motor vehicle accident in April 2010 (Hr'g Tr. 28:5-25), a work-related accident in October 2010 (Hr'g Tr. 54:15-17), an accident that occurred at his home in February 2012 (Hr'g Tr. 54:21-23), a motor vehicle accident in July 2013 (Hr'g Tr. 27:12-14), and a motor vehicle accident in March 2014 (Hr'g Tr. 24:24-25:14). (See Defendants' APA, p. 50-54). The Claimant was quite adamant that, despite the occurrence of each of the above-referenced incidents, he was of the opinion that his current neck pain and problems were entirely related to his September 2008 work-related accident. (Hr'g Tr. 55:5-25). Most interestingly, the Claimant indicated that he did not provide Dr. Holbrook with complaints of increased neck and upper extremity problems after attempting to pick up his daughter, who had fallen from a porch in February 2012, despite medical records that were inconsistent with the testimony of the Claimant. (Hr'g Tr. 33:1-3, 34:6-15; see Defendants' APA, p. 47). The Claimant indicated that he did sustain injuries to the neck and back as a result of his motor vehicle accident, which occurred in February 2014 or March 2014,

000055

and was of the opinion that his neck pain and problems, due to the above-referenced motor vehicle accident, had resolved. (See Defendants' APA, p. 50-62). The Claimant indicated that, despite his ongoing neck pain and problems, he regularly performs yard work, goes fishing, and rides motorcycles. (Hr'g Tr. 47:16-51:8). In addition, the Claimant testified that he was most recently involved in a physical altercation with a co-employee, and that the above-referenced physical altercation, which occurred in either June 2014 or July 2014, resulted in the Claimant both throwing the above-referenced individual to the ground and throwing multiple punches. (Hr'g Tr. 52:7-54:5).

Terry Hartwell testified on behalf of the Defendants. Mr. Hartwell, who has been employed with the Defendants for approximately 10 years, stated that he is currently employed as a shift supervisor, and has been the Claimant's supervisor for approximately one year. (Hr'g Tr. 62:1-21). Mr. Hartwell indicated that he observed the Claimant performing his job on a daily basis and that the Claimant appears to be physically capable of performing his job duties and responsibilities as a lead man. (Hr'g Tr. 63:25-64:4). Most notably, Mr. Hartwell testified that the Claimant has not requested that the Defendants modify the Claimant's job duties or responsibilities in light of the Claimant's ongoing neck pain and problems. (Hr'g Tr. 64:5-8). Most interestingly, Mr. Hartwell stated he observed the physical altercation between the Claimant and a former co-employee that occurred in June 2014 or July 2014, and witnessed the Claimant throwing the above-referenced employee to the ground and throwing punches. (Hr'g Tr. 65:17-66:5).

LEGAL ANALYSIS

- I. The Hearing Commissioner did not err in denying Claimant's claim for permanent partial disability to the back because Claimant has not met his burden of proof as to what his causally-related condition was as a result of the September 17, 2008 accident.**

Hearing Commissioner did not err in determining Claimant was not entitled to disability benefits for the 2008 accident because Claimant failed to satisfy his burden of proof pursuant to S.C. Code Ann. §42-9-30. The Commissioner's determination on this issue was based in part on the fact that (1) there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating, (2) Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008, (3) Claimant reinjured his neck in either September 2010 or October 2010, (4) Claimant reinjured the same part of his body in September 2012 when he lifted his child off of the ground after the child had fallen off a porch, and (5) to award permanent partial disability benefits to the Claimant, over three years after the Claimant reached maximum medical improvement, considering that the Claimant reinjured the same part of his body within the last two years, would have required speculation on the part of the Hearing Commissioner.

The burden of proof is upon the Claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law." Doe v. S.C. State Hospital, 285 S.C. 183, 188 n. 4, 328 S.E.2d 652, 655 n. 4 (Ct. App. 1985). Workers' compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. National

Healthcare Center of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Sharp v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.

Dr. Holbrook determined that Claimant reached maximum medical improvement on July 21, 2010 and assigned a 25% impairment rating to the whole person. (See, Claimant's APA, p. 15). Claimant stated that he did return to Dr. Holbrook in 2012 for medical treatment following an incident where Claimant lifted his daughter off of the ground after she had fallen from a porch. Claimant testified that he provided Dr. Holbrook with complaints of right shoulder pain, but that his neck was not injured in the above-referenced incident. (Hr'g Tr. 32:18-33:3; 34:6-15). Claimant indicated that Dr. Holbrook did not provide him with medical treatment, but referred Claimant to an orthopedic physician for additional medical treatment. (Hr'g Tr. 36:1-14).

The Claimant testified that he was involved in a motor vehicle accident in April 2010 (Hr'g Tr. 28:5-25), a work-related accident in October 2010 (Hr'g Tr. 54:15-17), an accident that occurred at his home in February 2012 (Hr'g Tr. 54:21-23), a motor vehicle accident in July 2013 (Hr'g Tr. 27:12-14), and a motor vehicle accident in March 2014 (Hr'g Tr. 24:24-25:14). (See Defendants' APA, p. 50-54). The Claimant was quite adamant that, despite the occurrence of each of the above-referenced incidents, he was of the opinion that his current neck pain and problems were entirely related to his September 2008 work-related accident. (Hr'g Tr. 55:5-25). Most interestingly, the Claimant indicated that he did not provide Dr. Holbrook with complaints of increased neck and upper extremity problems after attempting to pick up his daughter, who had fallen from a porch in February 2012, despite medical records that were inconsistent with the testimony of the Claimant. (Hr'g Tr. 33:1-3, 34:6-15; see Defendants' APA, p. 47). The Claimant indicated that he did sustain injuries to the neck and back as a result of his motor

vehicle accident, which occurred in February 2014 or March 2014, and was of the opinion that his neck pain and problems, due to the above-referenced motor vehicle accident, had resolved. (See Defendants' APA, p. 50-62). The Claimant indicated that, despite his ongoing neck pain and problems, he regularly performs yard work, goes fishing, and rides motorcycles. (Hr'g Tr. 47:16-51:8).

The Claimant testified he is currently employed with the Defendants as a lead man or shop foreman, and is physically capable of performing his job duties and responsibilities for the Defendants. (Hr'g Tr. 44:3-8). Most notably, the Claimant stated that he is currently earning greater wages with the Defendants at the present time than he was earning on the date of the September 17, 2008 work-related accident. (Hr'g Tr. 24:10-12).

Mr. Hartwell stated that Claimant is currently employed as a shift supervisor, and has been the Claimant's supervisor for approximately one year. (Hr'g Tr. 62:1-21). Mr. Hartwell indicated that he observed the Claimant performing his job on a daily basis and that the Claimant appears to be physically capable of performing his job duties and responsibilities as a lead man. (Hr'g Tr. 63:25-64:4). Most notably, Mr. Hartwell testified that the Claimant has not requested that the Defendants modify the Claimant's job duties or responsibilities in light of the Claimant's ongoing neck pain and problems. (Hr'g Tr. 64:5-8). Most interestingly, Mr. Hartwell stated he observed the physical altercation between the Claimant and a former co-employee that occurred in June 2014 or July 2014, and witnessed the Claimant throwing the above-referenced employee to the ground and throwing punches. (Hr'g Tr. 65:17-66:5). To award permanent partial disability benefits to the Claimant over four years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last three years, would have required speculation on the part of the Hearing Commissioner prohibited

by the South Carolina Workers Compensation Act. See Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds; Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (S.C. 1965).

Claimant's request for payment of permanent partial disability benefits is complicated by the fact that he has sustained multiple injuries to the neck after the September 17, 2008 accident, as well as multiple intervening accidents over the past 6½ years. Furthermore, Claimant continues to work full-duty earning higher wages than he did at the time of his September 17, 2008 work accident. The Hearing Commissioner clearly undertook a review of the record, including the hearing testimony, and made the determination that Claimant had not proven entitlement to permanent partial disability benefits based on Claimant's current condition. This was evidenced, as mentioned above, by the fact that Claimant has returned to work, is physically capable of performing his job duties and responsibilities on a daily basis, and that he is making a higher wage than he was before the alleged accident. The substantial evidence led the Hearing Commissioner to conclude that the Claimant did not satisfy his burden of proving entitlement to permanent partial disability resulting from his September 17, 2008 work-related accident. It would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. Therefore, the Hearing Commissioner did not err in finding that the Claimant was not entitled to permanent disability benefits.

000060

II. The Hearing Commissioner did not err in considering the equitable defense of laches since it was properly pled on Defendants' Form 58 prior to the hearing after the unappealed ruling of the Full Commission instructed the hearing commissioner to consider the defense on remand.

“Laches is neglect or unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the doctrine of laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599. The question of laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust, II v. Wright, 323 S.C. 303, 307, 474 S.E.2d 421, 423-424 (1996). Our appellate courts have recognized the applicability of the doctrine of laches in a workers' compensation claim. See, Muir, 336 S.C. at 296-297, 519 S.E.2d at 598-599 (affirming the Commissioner's finding that the claim was not barred by the doctrine of laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the Commissioner's finding that “[a] claimant must prosecute his claim in a timely fashion or it may be barred by the doctrine of laches,” although the Commissioner's authority to dismiss the case for failure to prosecute was not disputed on appeal).

In Transportation Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010), the Supreme Court of South Carolina ruled that the Second Injury Fund's laches claims against multiple parties were not preserved because it failed to plead laches on the

000061

Form 58 and did not raise laches in the courts below.

The Full Commission's ruling was not appealed and became the law of the case. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (because respondent did not appeal the ruling of the reviewing court the courts on remand were bound by the ruling as the law of the case and they erred in ignoring the reviewing court's directive to determine the amount of actual damages). On remand from the Full Commission, Defendants properly pled the equitable defense of laches in its Form 58 Prehearing Brief. As a result, the Hearing Commissioner properly ruled on the laches issue and the issue is properly presented to the Full Commission after Defendants properly preserved the issue for appeal.

Therefore, Claimant's claim for benefits should be barred on the basis that he has not filed a timely claim, which is barred by the equitable doctrine of laches.

III. The Hearing Commissioner did not err in determining that Claimant's claim was barred by the doctrine of laches because Claimant was negligent in pursuing his claim and had the opportunity to act sooner, which materially prejudiced the Defendants.

Under the doctrine of laches, if a party who knows his rights does not timely assert them, and by his delay causes another party to incur expenses or otherwise detrimentally changes position, then equity steps in and refuses to enforce those rights. Muir, at 296, 519 S.E.2d at 599. "Whether the claim is barred by laches is to be determined in light of the facts of the case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches." SCDSS v. Holden, 319 S.C. 72, 75, 459 S.E.2d 846, 848 (1995). The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Muir at 297, 519 S.E.2d at 599.

The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder, and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom. However, Claimant has sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative, and thus prohibited, pursuant to Section 42-9-30 of the Act.

Claimant was involved in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. Claimant suffered an injury at home in late February 2012 while lifting his daughter and complained of neck and back pain. Claimant was involved in another motor vehicle accident on March 8, 2014 and complained of pain from the top of his neck to the top of his right buttock. Also, since the date of this accident, Claimant has settled another case via a Form 16A and was awarded benefits pursuant to the Act. Claimant has also been in at least three other accidents, subsequent to his September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to the same body parts pled in this case.

Therefore, since Claimant did not request a hearing for an award relating to his work-related injury on September 17, 2008 until May 15, 2013, nearly five years after his accident, Defendants would be materially prejudiced if the Commission were to determine compensability and disability after the aforementioned intervening accidents over the past 6½ years. Claimant has slept on his rights and was not vigilant in asserting his claim. See Hucks v. Green's Fuel of South Carolina, 247 S.C. 457, 148 S.E.2d 149 (1966) ("Any lack of diligence on the part of the attorney for the [claimant] is attributable to and binding upon him"). Claimant has been

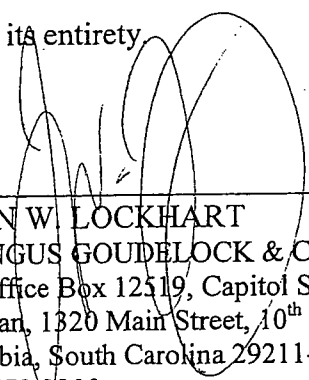
000063

represented since 2009 and no just cause has been shown as to why he could not file a Form 50 prior to May 15, 2013. The Claimant suggests that Defendants have not demonstrated material prejudice and failed to engage in some proactive step to pay permanency. However, the responsibility to request a hearing is a shared responsibility. See Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946); Richey v. Dickinson, 359 S.C. 609, S.E.2d 307 (2004) (holding the single commissioner did not err in barring the claimant's claim under the doctrine of laches). As a result, Defendants were materially prejudiced since any award is purely speculative due to his multiple intervening accidents following the original September 17, 2008 work accident. Additionally, Defendants have settled an additional claim by the Claimant and any additional award would unjustly compensate Claimant, particularly in light of the fact that he has continued working regular duty while being compensated at a higher rate than before.

Thus, Claimant's claim for benefits should be barred by the equitable notion of the doctrine of laches since Defendants are materially prejudiced due to Claimant's failure to timely assert his rights.

CONCLUSION

For all the foregoing reasons, the Respondents respectfully request that the Single Commissioner's Decision and Order be affirmed in its entirety.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
April 27, 2015

000064



Claimant's Name: Robert L. Harrison

Employer's Name: Owens Steel

Address: 7290 Cabin Creek Rd.

Address: 727 Mauney Drive

City: Hopkins State: SC Zip: 29061

City: Columbia State: SC Zip: 29201

Home Phone: () - Work Phone: () -

Carrier: Old Republic Ins. Co.

Preparer's Name: Frank Barton, Mullis Law Firm

Preparer's Phone #: (803) 799-9577

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

x Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 526.49 2. AWW: \$789.70 Date of Injury: 9/17/2008

3. Type of injury and body part(s): See 1 in addendum.

4. Facts in controversy: See 2 in addendum.

5. Legal issues involved: See 4 above.

6. Unusual aspects: None other than noted above and in #11 below.

7. Witnesses (designate if expert):* See 3 in addendum.

8. Exhibits: See 4 in addendum.

We reserve the right to rely on all APA's/documents previously submitted for prior hearings.

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

See 5 in addendum.

10. Name, address, and specialty, if any, of the treating physician: Dr. Wade Reynolds at Doctors Express Urgent Care, Dr. Thomas Holbrook, Palmetto Imaging, Dr. Don Johnson.

11. Impairment rating(s); body part(s); physician and date of opinion: See 6 in addendum.

12. I am amending my Form 50/51 in the following manner: correcting WCC# to 0824526 with date of accident: 9/17/08.

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

Signature: Frank A. Barton

Email: csoles@mullislawfirm.com

Date of hearing: August 1, 2014 @ 12:30 p.m. Comm. McCaskill

Time needed for hearing: 1 hour

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

Addendum
Robert L. Harrison v. Owens Steel
WCC#: 0824526

1. Back/neck/cervical spine, right shoulder, left shoulder and/any all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom. Claimant was injured while welding and then stood up to cut off the machine and his back and neck locked up.
2. Claimant is entitled to permanent partial disability and lifetime medical care. Claimant has titanium plate with 2 screws in his neck as a result of his accident/surgery. Also treating physician has to remove a nerve from his left shoulder for the procedure to his neck and has to remove bone for the bone graft in his cervical spine.

Claimant is also requesting additional medical care and treatment as outlined in Dr. Thomas Holbrook's medical notes.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.

3. Claimant, Thomas Harrison, Lisa Harrison, Mary Harrison, Hamp Sumter, Gerome Wilson, Kiley Marco Williams and other lay witnesses may be named as well as any witnesses listed by the Defendant/Carrier.

Reports and/or updated reports of Dr. Thomas Holbrook to be submitted and/or Dr. Holbrook to testify at the hearing and/or his deposition to be taken and submitted immediately upon receipt.

Reports and/or updated reports of Dr. Don Johnson to be submitted and/or Dr. Johnson to testify at the hearing and/or his deposition to be taken and submitted immediately upon receipt.

4. Medical Reports. Guides to the Evaluation of Permanent Impairment. We also reserve the right to submit evidence in response to evidence submitted by the Defendant/Carrier. Also see #7 above.
5. See attached "Notice of Witnesses and Written Report(s)/Physicians Or Other Evidence To Be Introduced On Behalf of Claimant". Also, any and all medicals previously submitted pursuant to R.67-612. Also see #7 above.
6. See Below:

a)..."MRI of cervical spine: impression: disc bulge and uncovertebral arthropathy at C3-4 and C4-5. Disc bulge with left foraminal protrusion at C5-6..."by Dr. Robin Daum-Kowalski, MD with Palmetto Imaging on 7/9/09 (page 1).

000066

2

Jah

b)... "pain in neck, mid back, and left arm and shoulder area. Was injured while working at work. States he is a welder and he has to bend at the waist to finish his welds. He said he was bent over for approximately 30 minutes and when he stood, his neck immediately was pulled to the left and locked with extreme pain down the back of his neck, shoulder, and into his arm to about midway between the shoulder and the elbow. He does complain of numbness and tingling across his mid back. The patient complains of tremors on occasion when holding his neck straight. Sitting seems to increase his discomfort and he says overall the pain has been worsening since the injury back in September of 2009. Up to this point the patient has been thru 2 sessions of physical therapy. He felt the last time he went thru physical therapy the pain was worse. he has not had any epidural steroid injections up to this point. Robert Harrison has a chief complaint of neck pain which radiates behind the left shoulder blade down the left arm to the elbow. This began on 9/17/08 when he injured his neck and left shoulder. There does seem to be some tightness in his muscles. ROM is decreased in all directions. No improvement with Naprosyn or physical therapy. MRI scanning of the cervical spine from 7/9/09 shows evidence for disc herniation on the left at C5-6 with nerve root compression..."by Dr. Holbrook on 8/31/09 page 2 - 3.

date of operation: 11/10/09. pre-operative diagnosis: CERVICAL DISK HERNIATION C5-C6. Post-operative diagnosis: cervical disk herniation C5-C6. Surgical procedure: anterior cervical discectomy with fusion and instrumentation, C5-C6. Harvesting of autograft. Autograft was harvested from the C5 vertebral body..."by Dr. Thomas Holbrook on 11/10/09 (pages 2 - 6).

c)... "He has completed a FCE and has permanent restrictions of no lifting greater than 50 pounds and has a 25% impairment to the whole person...by Dr. Thomas Holbrook on 7/21/10 (page 15).

d)... "MRI of cervical spine: Impression: S/P ACDF with hardware at C5-6 with the abnormality which was present improved with no cord compression at this level at this time and anatomical alignment at the operative site. Left foraminal narrowing has been relieved. Moderate right foraminal narrowing remains unchanged.

At C3-4 there is a mild/moderate broad based disc osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord as well as a mild/moderate bilateral foraminal narrowing.

At C4-5 there is also mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord and mild/moderate bilateral foraminal narrowing.

000067

3

Sub

At C6-7 there is a mild broad-based disc-osteophyte complex with moderate left and mild right foraminal narrowing..."by Dr. Robert L. Waldron II, MD on 6/14/10 (page 16 - 17).

e)..."Has reached MMI with permanent disability rating of 25% to the whole person..."by Dr. Thomas Holbrook on 7/21/10 (page 18).

d)..."After surgery on 11/10/09 he went through physical therapy, worked as hard as he could. He was sent back to the work place on a full time basis where he has been continuing to work as a welder. He has continued problems since back to work place. His welding involves and requires that he bend over with his head in a flexed position for 30 to 40 minutes at a time on a continuous basis. His specific job requires "horizontal welds". He has had recurrence of his neck and radiating left arm pain. Currently his pain is 75% neck, 25% arm. His pain is made worse by almost all activity, improved by lying on his side or sitting. Reviewed cervical MRI of 6/14/10. Significantly has degenerative changes at the two levels above his fusion, specifically 3 -4 and 4-5. He has a disc osteophyte with some flattening of the left side of the spinal cord at both levels. Impression: recurring neck, radiating left arm pain. S/P anterior cervical fusion C5-C6. Severe degenerative disc disease with disc osteophytes and stenosis left sided spinal cord C3-4, 4-5.

The patient may be able to do the heavy lifting but his job does not allow the second restriction of the FCE which specifically is avoidance of poor body mechanics. My definition as a welder using a welding shield and hard hat, he has to have his head flexed forward in an awkward poor body mechanic posture on a continuous basis to do his job. I am also specifically concerned about the significant pathology of the disc above the fused level specifically 3-4 and 4-5. I think it is likely if he continues this type of work that he will have further neck surgery to extend his fusion.

I would place him at MMI with a 25% whole person impairment rating with permanent restrictions. I do not believe he can return to welding for the reasons above. I would ask that he not do prolonged flexion or extension of his head and neck. No work from shoulder level to above and he should avoid repetitive bending. I think he needs to have a change of vocation or HE WILL BE

LOOKING AT FUTURE NECK SURGERY...By Dr. Don Johnson on 9/29/10 (page 19 - 20).

e)..."neck pain going down back and right arm. Numbing and tingling in thumb, index and middle finger. Current meds are prednisone and oxycodone. 11/10 had cervical fusion. Has sharp, tingling, numbness, throbbing and shooting pain that interferes with work, sleep, daily routine, sitting, bending etc..."by Columbia Neurosurgical Associates on 3/26/12 (pages 32 - 32).

f)...returns to the office for follow-up of cervical radiculopathy. He had previously undergone anterior cervical discectomy and fusion at C5-6 for radiculopathy on the left. He now complains of neck and right arm pain radiating down the right arm into the hand and some intermittent numbness and tingling in the right arm in the first 3 fingers on the right. He says this began about a month ago after he picked up his daughter who had fallen off the porch 2/26/12. He was seen at Doctors Care and was thought to possibly have right shoulder injury and was seen by orthopaedics who cleared this.

MRI scanning of his cervical spine from 3/9/12 shows satisfactory postoperative changes at C5-6. There is some posterior disc protrusion at C3-4 eccentric to the left and some neural foraminal narrowing bilaterally at C4-5 more so on the right.

On exam, there is some tenderness to palpation over the cervical paraspinal muscles with a moderate decrease in ROM of the cervical spine due to exacerbation of his neck pain. Sensation is intact to pinprick in the upper extremities. There is no focal motor deficit in the upper extremities. DTRs are trace at the biceps and triceps.

This gentleman is now experiencing radicular type pain on the right whereas before he had undergone surgery for radicular symptoms on the left. At this time I have written him a prescription for the anti-inflammatory, Mobic, and the muscle relaxer, Flexeril. I would also recommend some outpatient physical therapy and a cervical epidural steroid injection. I believe that he would respond satisfactorily to some further conservative measure..."by Dr. Thomas Holbrook on 3/26/12 (pages 32 - 32).

g)...MRI of the cervical spine This MRI was compared to recent prior MRI from 6/14/10. Findings: C3-4 there is marked loss of disc height and signal with anterior and posterior bulging of the disc and uncovertebral arthropathy with compression of the thecal sac, impression upon the cord and severe bilateral neural foraminal stenosis. At C4-5 there is similar appearing marked loss of disc height and signal with anterior and posterior bulging of the disc with compression of the thecal sac and severe neural foraminal stenosis bilaterally.

Evidence of discectomy and fusion at C5-6 with no residual disc and no stenosis.

At C6-7 there is bulging of the disc, either eccentric towards the right or associated with right foraminal protrusion. There is neural foraminal stenosis is right greater than left. This is increased from the patient's prior MRI.

Impression: discectomy and fusion C5-6.

Eccentric disc bulge versus disc bulge and protrusion C6-7.

Marked degenerative disc disease with stenosis at C3-4 and C4-5..."by Palmetto Imaging on 3/9/12 (pages 34 - 35).

000069

5

Feb

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 0824526

Robert L. Harrison,
Employee/Claimant,

v.

Owens Steel Co., Inc.,

and

Old Republic Insurance Co.,

Employer/Insurer(s),
Defendants.

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/ PHYSICIANS
AND/OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and JASON W. LOCKHART,
ESQUIRE, FOR EMPLOYER/INSURER

YOU ARE HEREBY NOTIFIED THAT THE Claimant, pursuant to the provisions of the South
Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended)
herewith submit(s) the following report(s)/physician or other evidence on behalf of the Claimant, to wit:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1	Palmetto Imaging		7/9/09 – 7/9/09	1 - 1
2	Dr. Thomas Holbrook		8/31/09 – 7/21/10	2 - 15
3	Palmetto Imaging		6/14/10 – 6/14/10	16 - 17
4	Dr. Thomas Holbrook		7/21/10 – 7/21/10	18 - 18
5	Dr. Don Johnson	Southeastern Spine	9/29/10 – 9/29/10	19 - 20
6	Doctors Express		3/2/12 – 3/14/12	21 - 25
7	Palmetto Imaging		3/9/12 – 3/9/12	26 – 28
8	Dr. Thomas Holbrook	Columbia Neurosurgical Assoc.	3/26/12 – 3/26/12	29 - 32
9	Palmetto Imaging		3/9/12 – 3/9/12	33 - 35
Exhibits:				

000070

A: letter from WCC with CC of letter to WCC	36 - 37
B: form 20 for date of accident 9/17/08	38 - 38
C: Appellant panel decision and Order	39 - 46
D: Form 21's filed by the Defendant in this case	None

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physician/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.



Frank A. Barton
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577

July 17, 2014

Columbia, South Carolina

000071



1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Harrison, Robert
MRN: 642112
DATE OF BIRTH:
REF PHYSICIAN: Steven Macaruso, MD
DATE OF EXAM: 7/9/2009
PATIENT PH#: 803-776-2327

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Neck and left shoulder pain.

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echospeed magnet: Sagittal T1, sagittal T2, axial gradient and T2.

FINDINGS: The C7-T1 disc is well maintained.

At C6-7, there is mild posterior bulging of the disc without stenosis.

At C5-6, there is marked loss of disc height with anterior and posterior bulging of the disc with a focal left foraminal disc protrusion. There is compression of the thecal sac, impression upon the cord and bilateral neural foraminal stenosis, left greater than right.

At C4-5, there is diffuse bulging of the disc and uncovertebral arthropathy with neural foraminal stenosis. At C3-4, there is disc bulge and uncovertebral arthropathy with neural foraminal stenosis. The C7-T1 disc is well maintained. The cervicomedullary junction appears normal with no evidence of tonsillar ectopia.

IMPRESSION:

1. Disc bulge and uncovertebral arthropathy at C3-4 and C4-5.
2. Disc bulge with left foraminal protrusion at C5-6.

Robin Daum-Kowalski, MD
RD/lcp

DD: 7/10/2009
DT: 7/10/2009
Job: 8512830

This document has been electronically reviewed and signed.

7/31/09



000072

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine

Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE CONSULTATION

Patient: Robert L. Harrison
Chart: 88908
Date: 8/31/09

CHIEF COMPLAINT: Pain in neck, mid back, and left arm and shoulder area.

HISTORY OF PRESENT ILLNESS: The patient is a 38-year-old male who was injured while at work. The patient states that he is a welder and he has to bend at the waist to finish his welds. He said he was bent over for approximately 30 minutes and when he stood, his neck immediately was pulled to the left and locked with extreme pain down the back of his neck, shoulder, and into his arm to about midway between the shoulder and the elbow. The patient states that this pain does not extend past the elbow. He does complain of some numbness and tingling across his mid back.

The patient also complains of tremors on occasion when holding his neck straight. Sitting seems to increase the discomfort and he says overall the pain has been worsening since the injury back in September of 2008. Up to this point the patient has been through two sessions of physical therapy. He states that the last time that he went through physical therapy he felt that his pain was worse. He has not had any epidural steroid injections up to this point.

CURRENT MEDICATIONS: None.

ALLERGIES: NKDA.

HISTORIES: Please see patient history form for Past Medical History, Social History, Family History, and Review of Systems. All are well documented in the chart on the history form of 8/31/09. That information has been reviewed and signed and is noncontributory except for the information included in the HPI.

PHYSICAL EXAMINATION: HT 5'10", WT 183 pounds.

Alert and oriented x3. Speech and content are appropriate. Head: Normocephalic and atraumatic. Eyes: PERRLA. EOMI. Neck: Supple and without goiter or adenopathy. Respiratory effort is unlabored. Lungs: Bilaterally clear to auscultation. Heart: Regular rate and rhythm. Abdomen: Soft, nontender, and positive bowel sounds are heard. Neurological: Strength: The patient has approximately 4+/5 in his left triceps, biceps. The remainder is 5/5 in all extremities. Sensation is intact to sharp. DTRs are equal bilaterally. No clonus. No Babinski. Negative Hoffmann's. The patient does have some tenderness along the neck and left shoulder. There does seem to be some tightness in his muscles. ROM is decreased in all directions.

IMPRESSION/PLAN: Robert Harrison has a chief complaint of neck pain which radiates behind the left shoulder blade down the left arm to the elbow. This began on 9/17/08 when he injured his neck at work. He denies any previous such problems with his neck. He is still working his

000073

2

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Page 2

Re: Robert L. Harrison

8/31/09

regular job. Overall the symptoms have slowly gotten worse. No improvement with Naprosyn or physical therapy.

MRI scanning of the cervical spine from 7/9/09 shows evidence for disc herniation on the left at C5-6 with nerve root compression.

At this time we plan to try some additional conservative management in the way of a cervical epidural steroid injection. I have also given him a prescription for the analgesic, Ultram, and the muscle relaxer, Soma. If he fails to respond satisfactorily to further conservative measures he would be a good candidate for surgery. He will continue to work his regular job as he is doing in the meantime.

The patient was seen and examined by me as well as Melissa Stevens, MMS, PA-C.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/MS/KB

CNAWT: 4051

000074

3

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine

Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 11/2/09

Robert Harrison returns to the office for follow-up of cervical radiculopathy. He has undergone a cervical epidural steroid injection and states overall his pain is no better. He continues to complain of neck pain which radiates down behind the left shoulder blade down the left arm which is no better. He still has some slight weakness in the left biceps and triceps with some decreased effort complaining of exacerbation of his pain. Sensation is intact to pinprick. DTRs are hypoactive at the triceps, trace at the biceps.

This gentleman has undergone a satisfactory trial of conservative management without improvement in his left-sided radicular symptoms. His MRI scan has demonstrated evidence for a disc herniation on the left at C5-6 with nerve root compression. Therefore, I have recommended surgery. I discussed with him the surgical procedure for an anterior cervical discectomy with fusion and instrumentation at C5-6 as well as the indications and risks for surgery. I believe that the patient understands and would like to go ahead and schedule this to be done. I have renewed his prescription for Soma and Ultram in the meantime.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/MH

CNAWT: 4050

000075

4

**PROVIDENCE HOSPITALS**

A Ministry of the Sisters of Charity Health System
2435 Forest Drive • Columbia, SC 29204

OPERATIVE REPORT

PATIENT: HARRISON, ROBERT
DOCTOR: Thomas Holbrook, MD
REFERRING:
PRIMARY CARE: DOCTOR NO
ADMISSION DATE: 11/10/2009
DISCHARGE DATE:

ACCOUNT: E00113447916
MR: Z000108838
SOCIAL SECURITY: XXX-XX-
AGE: 38 PATIENT TYPE: SDC
ROOM: BED:
NURSING STATION:

DATE OF OPERATION: 11/10/2009

PREOPERATIVE DIAGNOSIS: Cervical disk herniation C5-C6.

POSTOP DIAGNOSIS: Cervical disk herniation C5-C6.

SURGICAL PROCEDURE:

1. Anterior cervical disectomy with fusion and instrumentation, C5-C6.
2. Harvesting of autograft.

SURGEON: Thomas Holbrook, MD.

ASSISTANT: Russell McMurray.

DESCRIPTION OF PROCEDURE: The patient was brought to the operating room after induction of satisfactory general anesthesia. The anterior neck was sterilely prepped and draped in the usual sterile manner. Transverse incision was made in the right neck and carried down the platysma, which was divided along the length of its fibers. Using blunt dissection, a plane was fashioned between the anterior strap muscles down to expose the anterior cervical spine. The level was confirmed with fluoroscopy. The longus colli muscle was freed up bilaterally. Self-retaining retractors were used for exposure and vertebral spreading. The system was put into place. The microscope was brought in for microdissection of the anterior annulus and C5-C6 was incised with a 15 knife blade. Degenerative disk material was removed with pituitary rongeur down to the posterior annulus. A rent was demonstrated to the left of the midline. Fragments of degenerative disk material were retrieved from the epidural space with a nerve hook and removed. The posterior annulus and ligament were further divided along the length of the disk space, exposing the dura. Additional fragments of herniated disk material and hypertrophied posterior annulus were removed. The epidural space was then inspected with a nerve hook and demonstrated to be free. The nerve roots were freed bilaterally from the end plates. A 6 millimeter implant was

OPERATIVE REPORT

**PROVIDENCE HOSPITALS***A Ministry of the Sisters of Charity Health System*

2435 Forest Drive • Columbia, SC 29204

OPERATIVE REPORT

PATIENT: HARRISON, ROBERT
DOCTOR: Thomas Holbrook, MD
REFERRING:
PRIMARY CARE: DOCTOR NO
ADMISSION DATE: 11/10/2009
DISCHARGE DATE:

ACCOUNT: E00113447916
MR: Z000108838
SOCIAL SECURITY: XXX-XX-
AGE: 38 PATIENT TYPE: SDC
ROOM: BED:
NURSING STATION:

templated. Autograft was harvested from the C5 vertebral body and placed into the implant, which was then tamped into place for a secure fit. A 25 millimeter venture plate was then selected and affixed to the body of C5 and C6 with two 15 millimeters screws and each placed under fluoroscopic guidance and locked into the plate. Fluoroscopy confirmed satisfactory appearance of the construct. The wound was irrigated. The platysma was closed with a running 4-0 Vicryl, subcutaneous tissue with interrupted 4-0 Vicryl and the skin with 4-0 Vicryl subcuticular stitch. The wound was dressed.

DD: Tue Nov 10 10:32:59 2009
DT: Tue Nov 10 12:14:06 2009
18063503 /21291

Signed: _____
Thomas Holbrook, MD

CC:

000077**OPERATIVE REPORT**

60

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine -
Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 12/7/09

Robert Harrison returns to the office for follow-up after having undergone anterior cervical discectomy and fusion at C5-6 for herniated disc on the left. He has had significant improvement in his preoperative pain, but still has some soreness in the neck occasionally with some radiation into the left upper arm.

Plain x-rays show a satisfactory appearance of the construct at C5-6.

On examination, his anterior neck wound is well healed. Sensation is intact to pinprick. He still tends to give some decreased effort on testing proximal muscles in the left arm due to exacerbation of his neck pain.

Mr. Harrison is doing satisfactorily at this time making progress. He will continue with his Soma and Ultram, he says he still has a good supply of these. We will start some outpatient physical therapy. We will plan to see him back for follow-up after he has completed his therapy.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/KB

CNAWT: 4050

000078

7

ImageCare, LLC
710 Rabon Road Suite 100
Columbia 29203
Phone: (803)462-3680

Name:	Robert Harrison	Exam Date:	12/7/2009
Patient ID:	1000128218	Exam:	C-spine 2 views
DOB:		Reason:	V67.0 - Fusion-Post OP, unspecified
Phone:	(803)776-2327	Referrer:	THOMAS HOLBROOK
Acc#:	285781	Referrer 2:	

Results

CERVICAL SPINE-AP AND LATERAL

CLINICAL HISTORY: Initial exam. Post-op.

FINDINGS:

Postoperative changes from previous anterior disectomy and fusion are noted at the C5-6 level. The intervertebral bone graft and compression plate and screws are in satisfactory placement. Normal alignment of the cervical spine segments and craniocervical junction is noted. the soft tissues of the neck appears normal.

IMPRESSION:

SATISFACTORY POSTOPERATIVE RADIOGRAPHIC APPEARANCE OF THE CERVICAL SPINE FOLLOWING ANTERIOR DISKECTOMY AND FUSION AT THE C5-6 LEVEL.

Martin P Dommers Jr, MD

Transcribed By:	Annette Rennison	Pt Name:	Robert Harrison
Transcribed Date:	12/8/2009 9:28:31 AM	Patient ID:	1000128218
Interpreting Rad:	Martin P Dommers Jr, MD	Exam:	C-spine 2 views
Finalized Date:	12/8/2009 9:38:52 AM	Acc:	285781

000079

8

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine
Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 1/27/10

Robert Harrison returns to the office for follow-up after having undergone anterior cervical discectomy and fusion at C5-6 for disc herniation on the left this past November. At this time he states that he has improved. He has finished physical therapy. He still has some intermittent discomfort in the neck; he says about every 2-3 days and has intermittently been taking Ultram and Soma for this.

On examination, there is some mild tenderness to palpation over the lower cervical paraspinous muscles with a mild decrease in ROM of the cervical spine. There is no focal motor deficit. Sensation is intact to pinprick.

Mr. Harrison is doing reasonably well at this time. He does not feel that he can handle the physical demands of his previous job as a welder. I therefore will have him undergo a Functional Capacity Evaluation prior to rating him. I have refilled his prescription for Ultram and Soma in the meantime.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/KB

CNAWT: 4050

Faxed To: CNA Work Comp Dept.

000080

9

Carolina Therapy SOLUTIONS, LLC
132B Sunset Ct
West Columbia, SC 29169

#68908
82

Date: 7/19/2010

Dear Dr. Holbrook,

ROBERT HARRISON was referred by you for evaluation of his overall functional capacity in a 4 hour FCE. You asked that his work ability be evaluated. We also assessed his effort level and reliability while performing the test. Attached are the FCE results.

Effort Level: In regards to his effort level, which underlines the ability for him to voluntarily perform work, he had good results:

Full effort on 13 of 13 tests, self-restricted on 0 tests, and refused on 0 tests.

Work Abilities: In brief summary, if he stays within his FCE limits and avoids poor body mechanics, Mr. Harrison demonstrated his heaviest work abilities at each body level as follows with the corresponding DOT Physical Demand Category listed next to each:

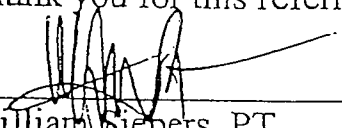
<u>Mid-body up to 60 lbs</u>	(DOT Heavy Work)
<u>Low levels (below mid-body level) up to 60 lbs</u>	(DOT Heavy Work)
<u>Shoulder levels up to 50 lbs</u>	(DOT Heavy Work)

A more detailed breakdown of his limits is in the FCE Report. Further job-specific testing can be performed upon request.

His job as a Welder has many variables, and if additional job-specific information is identified or a Job Function Description is requested, a test could be developed that would match his specific job. This would provide you with information on his abilities tested against the physical tasks of the job.

If further specific testing, return to work management, or functional rehabilitation to increase his abilities would assist, please let us know.

Thank you for this referral!



William Siebers, PT
SC Lic: 1787

7/19/10

Date

000081

10

Carolina Therapy SOLUTIONS, LLC
 132-B sunset Court
 West Columbia, SC 29169
 Ph 803-796-5116 Fx 803-796-5131
 A DSI Work Solutions Provider

Client:	HARRISON, ROBERT		
Report Date:	7/19/10	Evaluation Date:	07/19/10
Address:	7290 Cabin Creek Rd., Hopkins, SC 29061		
Phone:	803-776-2327	E-Mail:	

ABILITIES	OCCASIONALLY 1-33%	FREQUENTLY 34-66%	CONSTANTLY 67-100%	Functional Considerations/ Issues
1. Lift-Carry	60 lbs	40 lbs	20 lbs	
2. From floor	60 lbs	40 lbs	20 lbs	
3. To shoulder	50 lbs	30 lbs	20 lbs	
4. Push/Pull	103 lbs / 124 lbs	52 lbs / 62 lbs	26 lbs / 31 lbs	
5. Hand Grip	R 70 lbs L 78 lbs	R 35 lbs L 39 lbs	R 18 lbs L 20 lbs	
6. Pinch Grip (3 pt)	R 14 lbs L 14 lbs	R 7 L 7 lbs	R 4 lbs L 4 lbs	
7. Hand Coordination			X	
8. Sit			X	
9. Stand-Walk			X	
10. Bend-Reach			X	
11. Low Level Activity			X	
12. Elevated Activity			X	
13. Climb Stairs			X	

Note: *: Amount client was willing to do but self restricted before maximum could be determined
 R: Refusal to perform activity
 O: Tested but unable

(Estimate for an 8 hour work shift) Ergonomic conditions including breaks must apply.

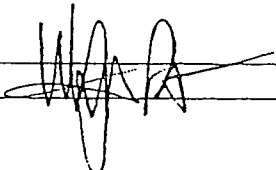
Effort rating: Gave Full Effort on 13 tests of 13 tests
 Self Restricted On 0 tests
 Refused to perform 0 tests

Consistency: Consistent Performance demonstrated on 9 / 9 tests.

Referral Question: What are Mr. Harrison's functional abilities? Is he able to return to his job?

Recommendations: 1) A job description is available, but there is little description of physical demands of the job such as body postures or positions, weights, forces, or duration of job tasks, so job matching with above data for his position is not possible. However, he has the potential for full time work at the above indicated functional levels. Proper ergonomics would be necessary at these levels.

2) Answering the referral question more specifically could be done by doing specific Job Analysis for his current job or for future jobs and Job Function Matching could be performed. This clinic can provide Job Analysis and Job Function Matching. If further work conditioning is necessary, it can be provided as well.

Evaluator Signature		Date:	7/19/10

© Copyright DSI Work Solutions, inc, 2004

000082

11

Carolina Therapy SOLUTIONS, LLC

132-B sunset Court

West Columbia, SC 29169

Ph 803-796-5116 Fx 803-796-5131

A DSI Work Solutions Provider

FCE HISTORY & PHYSICAL EXAMINATION

Name:	HARRISON, ROBERT				
Address:	7290 Cabin Creek Rd.				
City:	Hopkins	State:	SC	Zip:	29061
Home Phone:	803-776-2327	Work Phone:	803-251-7582		
Referred By:	Dr. Thomas J. Holbrook				

Physician: Dr. Thomas J. Holbrook

Specialty: Neurosurgery

Diagnosis: (1) HNP C5-6

ICD-9 Code: 722.0

Medications: Takes Excedrin PRN for localized neck discomfort.

Recent or pertinent surgeries: S/P C5-6 ACDF for HNP on ~November 7, 2009.

Functional abilities and restrictions current: Reports head turning quickly to the left is limited by discomfort. Looking downward for prolonged periods becomes painful so he limits this. He is limited to 10 lbs of lifting at work, but if he does this repeatedly, he develops neck discomfort. Watching TV in bed with head propped up on pillows leaves neck tight & uncomfortable afterward.

Symptoms and discomfort: Reports bilateral lower neck discomfort & tightness during above activities and sometimes at rest.

Job at Time of Injury: Welder

Work Status: Working sedentary duty at work.

Type of Job at Injury:

☐ Lift Under 10#

☐ Lift 10-20#

☒ Lift 20-50#

☒ Lift Above 50#

☒ Lifted at Waist Level

☒ Lifted at Shoulder Level

☒ Lifted from Floor

☒ Mostly Standing/Walking Job

☐ Mostly Sitting Job

☐ Mixed Sit/Stand/Walk

Reason for Referral:

☐ As Part of a Work Rehabilitation Program

☒ Return to Work / Work Available

☐ To Determine Work Status

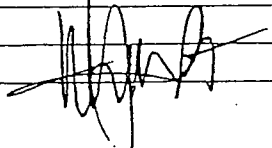
☐ To Determine Status of Disability

☒ Medical-Legal Request

☐ Other

000083

12

Physical Date:	07/19/10		
Worker / Client:	HARRISON, ROBERT		
Blood Pressure:	142/92		
Resting Heart Rate:	70	Age adjusted maximum HR for test:	155 (Age 38)
Body Part	Specifics		Strength and Motion Rating
Neck ROM:	<u>Limited:</u> Maj Mod Min Nil <u>Symptoms</u> Flex X Stiff lower neck, Not Worsened Ext X / X Inc lower neck, NW* SBR X Stiff lower neck, NW SBL X / X Stiff lower neck, NW RR X NW RL X Mild inc bilat lower neck, NW Symptoms increased as indicated above, but none worsened (eased when stopped). <u>Posture:</u> Mildly flexed <u>MMT:</u> 5/5 throughout.		☐ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
*NW =Not Worsened			
Back ROM:	<u>Limited:</u> Maj Mod Min Nil <u>Symptoms</u> Flex X Not Worsened Ext X NW* SBR X NW SBL X NW RR X NW RL X NW SGR X NW SGL X NW Symptoms increased as above, but none worsened (eased when stopped). <u>Posture:</u> Mildly flexed <u>MMT:</u> 5/5 throughout. <u>Seated SLR:</u>		☒ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
*NW =Not Worsened			
R-Upper Extremity	ROM WNL's. Strength on myotomal testing 5/5 throughout.		☒ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
L- Upper Extremity	ROM WNL's. Strength on myotomal testing 5/5 throughout.		☒ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
R-Lower Extremity	ROM WNL's. Strength on myotomal testing 5/5 throughout. Able to fully squat w/ min loss of balance.		☒ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
L-Lower Extremity	ROM WNL's. Strength on myotomal testing 5/5 throughout. Able to fully squat w/ min loss of balance.		☒ Within Normal Limits ☐ Limit in motion ☐ Limited by weakness
EVALUATOR:			DATE: 7/19/10

000084

Summary:

1. Overall mildly/moderately limited cervical ROM except for extension which is more limited than this. He reports subjective discomfort at end ranges as indicated, but none were worsened. For proper ergonomics, neutral and near neutral ranges of motion are emphasized during the FCE, minimizing the affects of ROM limits on functional abilities indicated in FCE
2. His posture is somewhat flexed with a forward head position, so proper body ergonomics were instructed & reminded for all lifting, bend-reach, seated fine motor, and low-level activities.
3. Functional limitations in FCE are related to the following physical findings:

Functional limitations in FCE were not significantly affected by physical findings indicated above.

© Copyright DSI Work Solutions, inc., 2004

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine

Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 7/21/10

Robert Harrison returns to the office for follow-up after having undergone anterior cervical discectomy and fusion at C5-6 for disc herniation on the left. He states that he is doing well. He has no radicular arm pain. He will occasionally have some discomfort in the cervical paraspinous muscles which is relieved with aspirin.

On examination, there is no tenderness to palpation over the cervical spinous processes. He has a good ROM of the cervical spine. There is no focal motor or sensory deficit in the upper extremities. DTRs are trace at the biceps and triceps.

Mr. Harrison is doing satisfactorily at this time. He has completed a Functional Capacity Evaluation. At this time he has reached maximum medical improvement. He can do heavy work with a 50 pound lifting restriction. He has a 25% impairment to the whole person.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

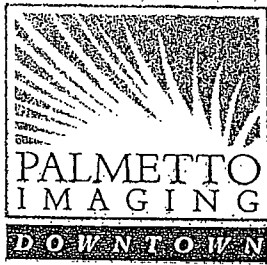
Thomas J. Holbrook, Jr., MD, FACS

TJH/KB

CNAWT: 4050

000086

15



1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

This document has been reviewed and electronically signed.

PATIENT: Harrison, Robert

MRN: 642112

DATE OF BIRTH: 7/1/1964

REF PHYSICIAN: Green Neal, MD

DATE OF EXAM: 6/14/2010

PATIENT PH#: 803-776-2327

EXAM: MRI CERVICAL SPINE WITHOUT CONTRAST

COMPARISON: 07/09/2009 preoperative study.

HISTORY: C6-7 radiculopathy after accident at work. History of anterior cervical fusion at C5-6. Severely decreased range of motion with left shoulder impingement and severe pain.

TECHNIQUE: Multiplanar, multisequence MRI cuts were obtained in sagittal and axial planes without IV contrast.

FINDINGS: Cerebellar tonsils are in normal position. Screening examination of brainstem is unremarkable. Intrinsically, the cervical and upper thoracic spinal cord is unremarkable in appearance.

Evidence of anterior cervical fusion with hardware is seen which has been placed since the previous exam. There is anatomical alignment at the operative site at C5-6.

At C2-3, no significant abnormality is visualized.

At C3-4, there is a mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord which is unchanged. Mild/moderate bilateral foraminal narrowing is unchanged.

At C4-5, there is also a mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord and mild/moderate bilateral foraminal narrowing. It is unchanged.

At C5-6, there is improvement with cord compression no longer seen and left foraminal narrowing relieved. There is persistent moderate right foraminal narrowing.

At C6-7, mild broad-based disc-osteophyte complex and moderate left as well as mild right foraminal narrowing is unchanged.



000087

16

Patient: Harrison, Robert
MRN: 642112
Exam: MRI CERVICAL SPINE WITHOUT CONTRAST

At C7-T1, no significant abnormality is seen and there has been no change.

IMPRESSION:

1. S/P ACDF with hardware at C5-6 with the abnormality which was present improved with no cord compression at that this level at this time and anatomical alignment at the operative site. Left foraminal narrowing has been relieved. Moderate right foraminal narrowing remains unchanged.
2. At C3-4, there is a mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord as well as a mild/moderate bilateral foraminal narrowing. These findings are unchanged.
3. At C4-5, there is also mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord and mild/moderate bilateral foraminal narrowing which is unchanged.
4. At C6-7, there is a mild broad-based disc-osteophyte complex with moderate left and mild right foraminal narrowing which is unchanged.

Robert L. Waldron II, M.D.
RW / hc

DD: 6/14/2010
DT: 6/14/2010
Job: 10725308

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) 482-3602 Fax (803) 482-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

ROBERT L. HARRISON

88908

Patient Name

Patient social security #

Chart #

OWEN STEEL

GALLAGHER BASSETT

Employer Name

Insurance Carrier

002979-007796-WC-01

07/21/2010

06/30/2009

Case #

Date of Service

Date of Accident

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

Return to Heavy Work with restrictions on 7/26/10- Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

PHYSICAL LIMITATIONS

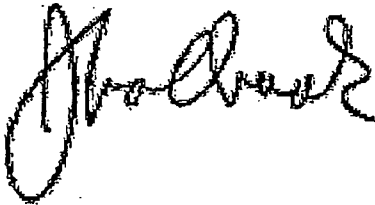
50 lb lifting restriction

FOLLOW UP

Has reached MMI Discharged with permanent above
Permanent disability rating of 25 % to the whole person.

Physician: THOMAS J. HOLBROOK, JR. MD

Signature:



000089

18

SOUTHEASTERN SPINE INSTITUTE

HARRISON, ROBERT

Independent Medical Evaluation

Patient # 313560

DOB: 09/17/1970

September 29, 2010

This patient is a 39-year old from Hopkins, SC. He is referred by his attorney for an independent medical evaluation. He is S/P a work injury of 9/17/08. He was working as a welder at that time, injured his neck and back. Subsequently he underwent nonoperative treatment which included an MRI scan. I reviewed this scan from 7/9/09. This shows pathology significantly on the left side with a disc with a focal disc herniation at C5-C6. The patient underwent surgical intervention by neurosurgeon Dr. Thomas Holbrook. I have reviewed his operative report of 11/10/09. Surgery involved an anterior cervical discectomy with harvesting of autograft. The patient relates that he did relatively well after this surgery. He went through physical therapy, worked as hard as he could. He was sent back to the workplace on a full time basis where he has been continuing to work as a welder. He has had continued problems since back to the workplace. His welding involves and requires that he bend over with his head in a flexed position for 30-40 minutes at a time on a continuous basis. His specific job requires "horizontal welds". He has had recurrence of his neck and radiating left arm pain. Currently his pain is 75% neck, 25% arm. His pain is made worse by almost all activity, improved by lying on his side or sitting. He is otherwise healthy. He had no prior neck problems. He has had a broken collar bone in the past.

ALLERGIES: He has no particular allergies.

REVIEW OF SYSTEMS: Positive for neck pain only.

SOCIAL HISTORY: He smokes 1/2 packs of cigarettes per day; drinks no alcohol.

He works as a welder. His job requires wearing a welding shield, hardhat and again having his head flexed forward.

He is accompanied by postoperative cervical MRI from 6/14/10 that I have reviewed also. The patient significantly has degenerative changes at the two levels above his fusion, specifically 3-4 and 4-5. He has a disc osteophyte with some flattening of the left side of the spinal cord at both levels. There is no gross disc herniation but these two levels are clearly abnormal, do not appear to be as the levels below.

PHYSICAL EXAMINATION: He is pleasant, articulate, and intelligent. He is accompanied by his wife. He is 5'10" 180 pounds. He has a well healed anterior scar. Range of motion is somewhat limited but appropriate for the fusion that he has had. He has pain in a radicular distribution on the left. Spurling's maneuver is provocative. He has no gross weakness or gross visual atrophy.

He is accompanied by past medical records from Dr. Holbrook that I have reviewed.
(continued)

000090

SOUTHEASTERN SPINE INSTITUTE

HARRISON, ROBERT

Patient # 313560

DOB: 07 1977

September 29, 2010

Page two

These include Dr. Holbrook's most recent not placing the patient back to the workplace with 50-pound lifting restriction and at maximum medical improvement. The patient has also had what appears to be a functional capacity evaluation that I have reviewed also. The results are that the patient demonstrates the heaviest work abilities if he does two things, stays within the FCE limits firstly and secondly avoids "poor body mechanics."

IMPRESSION:

1. Recurring neck, radiating left arm pain.
2. S/P anterior cervical fusion C5-C6.
3. Severe degenerative disc disease with disc osteophytes and stenosis left sided spinal cord C3-4, 4-5.

RECOMMENDATIONS: This patient may be able to do heavy lifting but his job does not allow the second restriction of the FCE which specifically is avoidance of poor body mechanics. My definition as a welder using a welding shield and hard hat, he has to have his head flexed forward in an awkward poor body mechanic posture on a continuous basis to do his job. I am also specifically concerned about the significant pathology of the disc above the fused level specifically 3-4 and 4-5. I think it is likely if he continues this type of work that he will have further neck surgery to extend his fusion.

I would at this time place him at maximum medical improvement. I would assign him a twenty five percent (25%) impairment to the whole person per the AMA Guides. I do not believe he can return to welding for the reasons above. I would ask that he do not prolonged flexion or extension of his head and neck. No work from shoulder level to above and he should avoid repetitive bending.

~~I think he can safely close his case but he needs to have a change of vocation or he will be looking at future neck surgery. I don't think he needs any particular long term follow up. If he changes vocation he will not be a chronic pain patient.~~

Donald R. Johnson II, M.D.

DRJ/dam

T- 10/01/10

Cc: Marvin Mullis, Esquire

000091

20

HARRISON, ROBERT (3/2/2012)

Transcription (page 1)

Patient: ROBERT HARRISON (ID# 47906) Date of Birth:
Visit on 3/2/2012 (Log# 40184707)

History of Present Illness:

The patient presents with a chief complaint of constant (but worse at times) **pain of the right shoulder** since Tue, Feb 28, 2012. The patient describes the severity as moderate Context: The patient reports it was not the result of an injury, which had a gradual onset. The patient has had similar problem in the past. seen 3 days ago for right shoulder pain, not any better. Has used steroids, Muscle relaxers and Narcotics as prescribed w/o improvement. Had cervical fusion of C5-C6 in Nov. of '09. Had MRI after that after MVA that was reported as normal and pt was asymptomatic. Pt reports hx of slowly worsening R shoulder pain from 3 weeks ago. Pt indicates Superior Trap and Levator scapularis area.

Review of Systems:

The patient **complains of** the following recent symptoms:

- Muscular:
 - **muscle pain:** began approximately 3 weeks ago, gradual onset, symptoms are constant, but worse at times, located over right shoulder pain is aching, pain is throbbing, pain is 4/10 on a 1-10 scale, no alleviating factors, alleviated by application of heat, alleviated by medication

The patient **denies** the following recent symptoms:

- Constitutional: denies change in appetite, chills, fatigue, fever, sweats, weight loss
- Neurological: denies headache, light headedness, numbness, poor balance/coordination, tingling, weakness
- Psychiatric: denies anxiety/nerves, depression
- Eyes: denies blurred vision, contact lenses, double vision, eye discharge, eye pain, wears eyeglasses
- ENT: denies dizziness, ear pain, nasal congestion, nasal discharge, sneezing, sore throat
- Respiratory: denies congestion, cough, shortness of breath, wheeze
- GI: denies abdominal pain, diarrhea, nausea, rectal/perirectal complaints, urinary/bowel changes, vomiting
- GU: denies discharge, frequent urination, nighttime urination, painful urination, sexual difficulties
- Skin: denies bruising, itching, laceration, rash, redness, skin sores

Allergies: patient reports "No allergies"

Current Medications:

- **Lortab:** by mouth, Q6h, started Wed, Feb 29, 2012
- **prednisone:** prednisone 20mg 2 tablet DAILY
- **Flexeril:** by mouth, Q8h, started Wed, Feb 29, 2012

Medical History: patient reports "No problems"

Surgeries:

- **Head/Neck/Breast surgery:** cervical fusion- 2010

Social History:

- **Alcohol:** drinks occasionally (3-6 drinks per week)
- **Tobacco Use:** denies

Family History:

- **Father:** High Blood Pressure

Vitals:

Temperature: 98.0 °F (Oral), Pulse: 83 BPM, BP: 136/92, Respirations: 16/min, Weight: 190 LBS, Height: 5' 10", BMI 27.3, Hand dominance: Rig

Physical Exam:

The following exam elements were documented to be **abnormal**:

- **Muscular (Left):** weakness/spasm/atrophy of trapezius/deltoid/upper extremity muscles
Right trapezius muscle: tenderness noted, which is moderate, no swelling, no deformity
Right deltoid muscle: no tenderness, no swelling, no deformity, Also tender at the levator scapularis

The following exam elements were documented to be **normal**:

- **Cardiovascular:** S1, S2, regular rate and rhythm, no murmur, rub or gallop
- **General:** well developed, well nourished, and no acute distress

000092

21

HARRISON, ROBERT (3/2/2012)

Transcription (page 2)

- Lymph: no lymphangitis of upper extremities or lymphadenopathy of axillary lymph nodes
- Muscular (Left): normal biceps tendon and rotator cuff
- Muscular (Left): normal arm, elbow, forearm, hand, and wrist
- Neurological (Left): upper extremity sensation intact
- Neurological (Left): upper extremity deep tendon reflexes 2+ and equal bilaterally
- Psychiatric: normal mood and affect
- Respiratory: lung clear to auscultation with good air movement bilaterally
- Skin: no swelling or tenderness of skin of shoulder bilaterally

Diagnosis:

- Sprain, Shoulder/Upper Arm, Rotator Cuff/ Capsule(840.4) - No Workup

Medication Orders:

- Prescribed: diclofenac potassium 50mg 1 tablet by mouth Three Times A Day as directed #30 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed
- Prescribed: Lortab 5-500mg 1 tablet by mouth Q4-6h as directed #12 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed
- Prescribed: prednisone 10mg 1 package by mouth as directed #21 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed

Plan

- Please follow up as directed with Orthoped for R shoulder pain
- Dr. Orthoped, Re: R shoulder pain
- Off work, and may return to work on 3/4/2012.
- Follow up for your R shoulder x-ray and MRI. Then you will need to take the results and go to the Orthoped.

Patient was discharged by Wade Reynolds on 3/2/2012 5:17:13 PM

Signed off electronically by Wade Reynolds on 3/2/2012 5:17:13 PM

Addendum Added By Added On

wendy@dx022 3/5/2012 8:45:01 AM

notified pt. of appointment with Palmetto Imaging 3/9/2012 @ 11:15

wendy@dx022 3/10/2012 10:41:17 AM

notified pt of radiology reports from Palmetto Imaging 1) faxed order for CXR per recommendation of Palmetto Imaging- they are to schedule. 2) received # to Neurosurgeon (Dr Thomas Holbrook 462-0423) from pt- unable to schedule appointment on weekend- left note for staff on Monday to work on referral.

000093

22

HARRISON, ROBERT (id #2019543, dob: 07/23/1971)

Encounter Summary

Patient

Name	HARRISON, ROBERT (40, M) ID# 2019543	Appt. Date/Time	03/14/2012 09:15AM
DOB		Service Dept.	Blanding Street
Provider	BERNARD G KIROL, MD		
Insurance	Med Primary: PLANNED ADMINISTRATORS INCORPORATED (SC PROVIDERS ONLY) Insurance # : 10158870 Policy/Group # : 698 PCP : REYNOLDS, WADE Referring Provider Name : WINGO, TIMOTHY D, MD Employer Name : OWENS STEEL Med 0: GALLAGHER BASSETT SERVICES INC Policy/Group # : 002979-004968-WC-01 Employer Name : OWENS STEEL Case # : 002979-004968-WC-01 Case Injury Date : 04/21/2008 Prescription: CMX - Member is eligible.		

Chief Complaint

Right Shoulder sprain 726.2

Problems

- Pain in joint; ankle and foot (719.47)
- Other affections of shoulder region, not elsewhere classified (726.2)

Patient's Providers

Primary Care Provider (Primary Insurance): REYNOLDS, WADE: Fax (803) 787-3902
 Referring Provider (Primary Insurance): WINGO, TIMOTHY D, MD: 811 WEST MAIN STREET, LEXINGTON
 Insurance Adjuster (Worker's Comp): BARBARA ROBINSON: Ph (803) 547-8036 EXT 212, Fax (803) 547-8055

Patient's Pharmacies

WALGREENS DRUG STORE (ERX): 7801 GARNERS FERRY RD, COLUMBIA SC 29209, Ph (803) 647-7638, Fax (803) 647-0637

Medications

Reviewed patient's medication history & made changes

Name	Date	
HYDROCODONE-ACETAMINOPHEN 5 MG-500 MG TAB	03/02/12	filled
PREDNISONE 10 MG TABS IN A DOSE PACK	03/02/12	filled
stop 03/14/2012		
DICLOFENAC POTASSIUM 50 MG TAB	03/02/12	filled
CYCLOBENZAPRINE 10 MG TAB	02/29/12	filled
HYDROCODONE-ACETAMINOPHEN 7.5 MG-500 MG TAB	02/29/12	filled
stop 03/14/2012		
PREDNISONE 20 MG TAB	02/29/12	filled
stop 03/14/2012		

Allergies

Reviewed allergy history (no data recorded) without changes
 NKDA

Past Medical History

Reviewed past medical history.

Surgical History

000094

23

HARRISON, ROBERT (id #2019543, dob: 07/23/1971)

Reviewed patient surgical history (as of 03/14/2012) without changes

- Hernia Repair
- Orthopaedic Surgery - CERVICAL FUSION

Social History

Reviewed Social History & made changes

Ortho

Alcohol intake: Occasional.

Number of children: 2.

Marital status: Married.

Diet: Regular.

Chewing tobacco: none.

Cigar/Pipe Use: N.

Non-smoker.

Smoking Status: Never smoker.

Are you currently employed?: Y.

Hand Dominance: Right.

Occupation: WELDER.

Employer: OWEN STEEL.

VitalsBP: 145/105 sitting
BMI: 29.6Ht: 5 ft 8 in
Pulse: 85 bpm

Wt: 195 lbs

HPI**Shoulder**

Reported by patient.

Hand Dominance: right

Location: right

Quality: aching; gnawing; constant; worsening

Severity: severe; pain level 8/10; worst pain 8/10

Duration: ___ weeks; continuous since onset

Timing: intermittent episodes lasting:

Context: overuse

Alleviating Factors: lying down; position change; narcotics

Aggravating Factors: lifting; carrying

Associated Symptoms: weakness; numbness; tingling

Prior Imaging: x ray; MRI

Previous Injections: none

Previous PT: none

Work Related: no

Working: regular duty

ROS

Patient reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no muscle aches, no muscle weakness, no arthralgias/joint pain, no back pain, and no swelling in the extremities. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

Patient is a 40-year-old male.

The affected shoulder shows no limitation in passive range of motion with scapular stabilization. Active range of motion is normal. AC joint is non-tender to palpation. There is no glenohumeral instability present with stress testing. There is no gross weakness with rotator cuff tendon or biceps resistance testing. There is a negative impingement sign. Cervical spine is minimally tender to palpation with discomfort with range of motion. However, there is moderate tenderness to palpation at the paracervical, rhomboid and trapezial muscles. Skin is unremarkable. No masses are palpated. There is no erythema or evidence of infection. The patient notes aching pain extending to the forearm and hand. Hand shows no gross motor deficits. The patient reports hypesthesia in the hand. Distal pulses are intact. There is no distal swelling or

000095

24

HARRISON, ROBERT (id #2019543, dob: 07/23/1971)

lym plemema present.

Previous Assessment / Plan

Date of Service

06/10/2008

1. PAN IN JOINT; ANKLE AND FOOT (719.47)

Assessment / Plan

Impression: Referred right arm pain secondary to cervical nerve root compression.

The patient is undergone an MRI scan of the cervical spine which reveals prior discectomy and fusion at C5-6. There is also a disc bulge at C6-7 and degenerative disc disease with stenosis at C3-4/C4-5. The patient's prior surgery was performed by Dr. Holbrook.

The patient has an appointment with him later this month. We do not feel that his discomfort is related to specific shoulder pathology. The patient's MRI scan of the shoulder does reveal a.c. joint arthritis however the patient is nontender to palpation at this location and the patient's rotator cuff tendon pathology is not particularly impressive.

We would be happy to see the patient back for any persistent shoulder symptoms following treatment by Dr. Holbrook.

1. OTHER AFFECTIONS OF SHOULDER REGION, NOT ELSEWHERE CLASSIFIED (726.2)

Return to Office

None recorded.

Encounter Sign-Off

Encounter signed-off by Bernard G Kirol, MD, 03/14/2012.

Encounter performed and documented by Bernard G Kirol, MD

Encounter reviewed & signed by Bernard G Kirol, MD on 03/14/2012 at 10:15am

000096

25



PALMETTO IMAGING
DOWNTOWN • IRMO • W. COLUMBIA

1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Harrison, Robert
MRN: 642112
DATE OF BIRTH: 7/22
REF PHYSICIAN: Wade Reynolds, MD
DATE OF EXAM: 3/9/2012
PATIENT PH#: 803-776-2327

EXAM: MRI OF THE RIGHT SHOULDER WITHOUT CONTRAST

HISTORY: Pain.

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echospeed magnet: Axial and coronal proton density with fat saturation, coronal and sagittal T2 with fat saturation and sagittal T1.

FINDINGS: There is arthropathy at the AC joint with mild marrow edema of the distal clavicle, marrow hypertrophy of the distal clavicle and synovial hypertrophy of the AC joint with subtle marrow edema of the acromion. There is a small intrasubstance tear of the supraspinatus measuring 4mm. There is no complete tear nor tendon retraction. The infraspinatus and teres are intact. Proximal humeral cysts are seen consistent with impingement. The subscapularis muscle and tendon is intact. There is a defect seen only in the most anterior superior labrum felt to be a sublabral foramen, developmental. The long head of the biceps is intact.

IMPRESSION:

1. Arthropathy of the AC joint.
2. Small intrasubstance tear of the supraspinatus.

Robin Daum-Kowalski, MD
RD / kp

DD: 3/9/2012
DT: 3/9/2012
Job: 14726223

This document has been electronically reviewed and signed.

- Scan into record



000097

WR
3/10/12

Note pt's info in ortho pod.

26



PALMETTO IMAGING
DOWNTOWN • IRMO • W. COLUMBIA

1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Harrison, Robert
MRN: 642112
DATE OF BIRTH: 7/21/77
REF PHYSICIAN: Wade Reynolds, MD
DATE OF EXAM: 3/9/2012
PATIENT PH#: 803-776-2327

EXAM: X-RAY OF THE RIGHT SHOULDER (TWO VIEWS)

HISTORY: Shoulder pain.

TECHNIQUE: AP views were obtained in internal and external rotation.

FINDINGS: The glenohumeral and acromioclavicular joints are well maintained. There is no fracture or subluxation. There is no peritendinous calcification. There is some density in the right apex, which is felt to be due to the right first rib. Recommend PA chest to confirm.

IMPRESSION:

1. Normal x-ray of the shoulder.
2. Density associated with first rib, I would recommend PA view of the chest to confirm.

Robin Daum-Kowalski, MD
RD / BL

DD: 3/9/2012
DT: 3/9/2012
Job: 14725213

This document has been electronically reviewed and signed.

PA added for PA chest
3/10/12
LWR
3/10/12
Place scan to second.



000098

pt. notified 3/10/12 @ 2⁵⁰ am @



**Doctors
Express**

Urgent Care When You Need It

3304 Forest Drive
Columbia, SC 29204
p 803-787-3901
f 803-787-3902

Name

Robert Harrison

Date

3/16/12

Address / D.O.B.

PA View of Chest

Rx

Density of @ 1st ribs (Abnormal @ Previous X-ray)

M.D./D.O.

W. Reynolds

M.D./D.O.

Dispense as written

Substitution permitted

REFILL 0 - 1 - 2 - 3 - 4 PRN

DEA # for Controlled Substances

NPI #:

Interchange is mandated unless the practitioner
writes the words "**No Substitution**"

Security Features include VOID screen on front, heat sensitive 'RX' symbols on back, artificial watermark on back, toner lock, chemically reactive paper, and UV verifiable fibers.

000099

faxed to Palletto Imaging 3/16/12 28

88908

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Please complete this medical questionnaire. The answers to these questions are very important in helping us take care of you. Where appropriate, fill in complete answers. Thank-you for your time and patience.

Name: Robert L. Harrison (M) F Date of Visit: _____

Age: 40 Height 5'10 Weight: 190 Date of Birth: _____

Referring Doctor: Dr. Reynolds Family Doctor: _____

1. I am (☒) right handed () left handed.

2. Chief complaint or reason for visit: Neck Pain coming down back and right arm. Numbness and tingling in thumb, index and middle fingers.

3. When did your symptoms first appear? 2/20/12

4. Did you have an injury? (☒) Yes () No If yes, was it work related? (☒) Yes () No () Other _____

5. I have been treated for this problem by: Dr. Reynolds

6. What did they do or recommend? See Dr. Holbrook

7. My medication allergies are: (☒) None or list allergies: _____

8. My current medications are: (include dose and # of times taken per day)

Prednisone
Dylocladone

9. PAST MEDICAL HISTORY: List prior injuries & illnesses, conditions, medical problems that you have (ex: diabetes, high blood pressure, heart disease) Write HOSP. beside any for which you were admitted to the hospital.

Approx. date	Reason (Give Diagnosis of problem if known)
<u>11/10/88</u>	<u>Cervical Fusion HOSP</u>
<u>7/88</u>	<u>Hernia repair</u>

10. PAST SURGICAL HISTORY: List all surgeries, even if done as an outpatient:

Approx. date	Reason
<u>11/10</u>	<u>Cervical Fusion</u>

11. SOCIAL HISTORY: Check box or fill in blank:

(☒) I do not use tobacco. () I do use tobacco; _____ packs/per day
 () I do not use beer, wine or liquor. () I do use beer, wine or liquor () daily () weekly () monthly
 I am (☒) married () widowed () divorced () single Years of formal education 12 yrs.
 I have () children, ages: _____
 I work as a Welder for DWEN Steel
 () I have been disabled since _____ due to (list reason) _____

12. FAMILY HISTORY: Please list any illness that your grand parents, parents, brothers, sisters or children have had. (for example: cancer, diabetes, heart disease, high blood pressure, stroke)

Grand Mother _____	Grand Father <u>Colon Cancer</u>
Mother _____	Father <u>High blood pressure</u>
Sister _____	Brother _____
Children _____	

13. SYSTEMS REVIEW: Please check any that apply to you:

Constitutional: _____ Fever in last 72 hrs. _____ hot or cold spells
 _____ generalized weakness _____ generalized lack of energy
 _____ unplanned weight loss _____ lbs over _____ months
 Other: _____

Eyes: _____ declining vision _____ blurred vision _____ double vision _____ seeing spots of light
 _____ black areas in field of vision _____ eye disease (cataracts, glaucoma, etc.)
 Other: _____

Ear Nose, Mouth Throat:

☐ ear aches ☐ decreased hearing ☐ ringing in ears
☐ frequent nosebleeds ☐ chronic sinus ☐ mouth ulcers
☐ mouth/throat cancer ☐ voice changes or hoarseness
Other: _____

Cardiovascular:

☐ chest pain () sharp () dull () happens only when exercising
☐ history of heart attack ☐ heart surgery or catheterization
☐ palpitations ☐ heart murmur ☐ heart rhythm disturbance
☐ shortness of breath () happens only when exercising
☐ I have a pacemaker
Other: _____

Respiratory:

History of:

☐ pneumonia ☐ bronchitis ☐ tuberculosis
☐ asthma ☐ emphysema ☐ lung cancer
☐ I cough up blood from time to time
Other: _____

Gastrointestinal:

☐ difficulty swallowing ☐ nausea/vomiting last 48hrs
☐ stomach ulcers ☐ heart burn
☐ diarrhea ☐ change in appetite
☐ stomach or bowel cancer ☐ liver disease
☐ bulimia ☐ anorexia
☐ hernia ☐ hepatitis
Other: _____

Genitourinary:

☐ frequent urinary tract infection ☐ difficulty urinating ☐ painful urination
☐ blood in urine ☐ prostate problems ☐ vaginal infections
☐ miscarriage ☐ venereal disease: () gonorrhea () herpes () syphilis
Other: _____

Musculoskeletal:

☐ joints that dislocate ☐ leg or ankle swelling ☐ osteoporosis
☐ arthritis ☐ gout ☐ fractures ☐ polio
☐ back pain ☐ leg pain () right () left
☐ back pain is relieved completely when I lie down
☐ back pain is relieved mostly when I lie down
☐ Lying down does not help my back pain
☒ neck pain () right side () left side () both sides
☒ arm pain () right () left () both

Integumentary:

☐ skin rashes
☐ skin cancer- Type: _____
☐ breast disease _____

Neurological:

☐ headaches: How often _____ ☐ with nausea ☐ with blurred vision
☐ fainting spells ☐ history of migraines
☐ confusion ☐ declining memory
☐ history of head trauma ☐ history of brain tumor
☐ facial numbness ☐ dizziness
☐ multiple sclerosis ☐ epilepsy
☒ numbness in hands or arms () right () left () both
☐ difficulty using hands () right () left () both
☐ difficulty walking/numbness in legs () right () left () both

Psychiatric:

☐ I have been treated/hospitalized for:
☐ schizophrenia ☐ depression ☐ suicide attempt
☐ alcoholism ☐ chemical dependency

Endocrine:

☐ thyroid ☐ goiter ☐ diabetes
I take the following hormone supplements: _____

Hematologic/lymphatic:

☐ bleeding disorder ☐ easy bruising ☐ anemia
☐ tendency to form blood clots in legs ☐ swollen lymph nodes
☐ Aids ☐ HIV

Immunologic:

☐ Lupus ☐ Scleroderma ☐ Rheumatoid arthritis

Other:

☐ chicken pox ☐ measles ☐ mumps ☐ Mononucleosis
☐ scarlet fever ☐ whooping cough ☐ typhoid fever ☐ rheumatic fever

14. If you have back, leg, neck or arm pain, please answer the following:

- ☐ I have taken physical therapy in the last 6 months for this problem
☒ I have taken medicines like Motrin, Aleve, muscle relaxants or pain medicine to help relieve the pain.
☒ I have had steroid injections in my back or neck for this problem.

Rate the severity of your pain on a scale from 1 to 10, with 1 the least painful and 10 being the most severe. 7

Type of pain:

☒ sharp ☐ dull ☒ throbbing ☐ aching ☒ shooting ☐ burning
☒ tingling ☒ numbness ☐ stiffness ☐ swelling ☐ cramps
Other: _____

☐ the pain comes and goes
☒ the pain is constant

If so, how often do you have this pain? _____

Does the pain interfere with ☒ work ☒ sleep ☒ daily routine ☒ recreation

Activities or movements that are painful to perform:

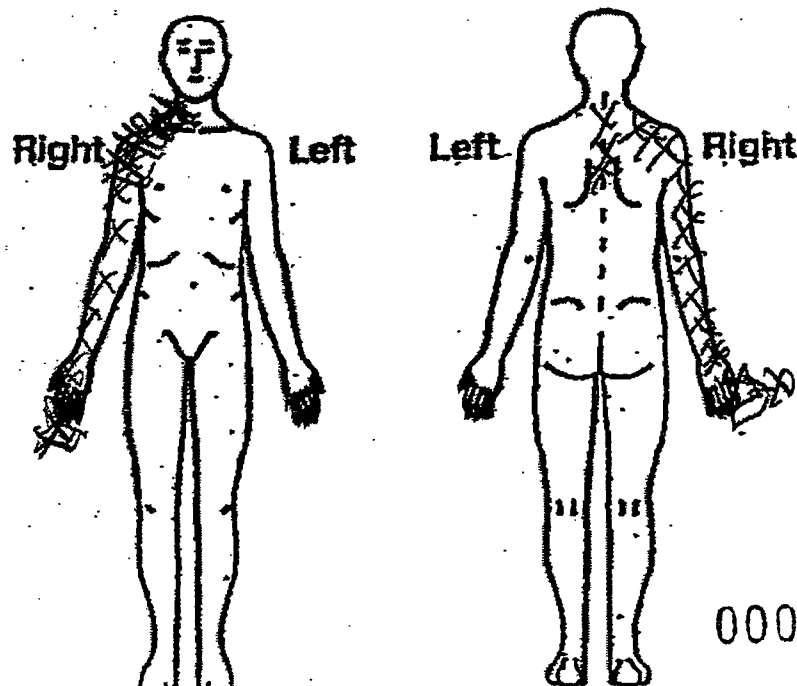
☒ sitting ☐ standing ☐ walking ☒ bending ☐ lying down
How do you sleep? ☒ back ☒ side ☐ stomach

15. Date of your last:

Physical exam _____ Spinal exam _____ MRI, CT or Bone Scan 3/12
Spinal X-ray _____ Chest x-ray _____ Blood test _____

16. I am claustrophobic (fear of being in a closed/confined place) () Yes (☒) No
I have metal in my body. (☒) Yes () No If yes, where? Neck

Mark an X on the picture where you have pain, numbness or tingling.



Robert H. H.
Patient Signature

[Signature]
Physician Signature

3/26/12
Date

000102

31

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine

Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

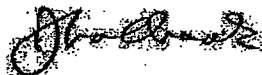
Patient: Robert L. Harrison
Chart: 88908 WC
Date: 3/26/12

Robert Harrison returns to the office for follow-up of cervical radiculopathy. He had previously undergone anterior cervical discectomy and fusion at C5-6 for radiculopathy on the left. He now complains of neck and right arm pain radiating down the right arm into the hand with some intermittent numbness and tingling in the right arm in the first three fingers on the right. He says this began about a month ago after he picked up his daughter who had fallen off the porch 2/26/12. He was seen at Doctors Care and was thought to possibly have right shoulder injury and was seen by orthopaedics who cleared this.

MRI scanning of his cervical spine from 3/9/12 shows satisfactory postoperative changes at C5-6. There is some posterior disc protrusion at C3-4 eccentric to the left and some neural foraminal narrowing bilaterally at C4-5 more so on the right.

On examination, there is some tenderness to palpation over the cervical paraspinal muscles with a moderate decrease in ROM of the cervical spine due to exacerbation of his neck pain. Sensation is intact to pinprick in the upper extremities. There is no focal motor deficit in the upper extremities. DTRs are trace at the biceps and triceps.

This gentleman is now experiencing radicular type pain on the right whereas before he had undergone surgery for radicular symptoms on the left. At this time I have written him a prescription for the anti-inflammatory, Mobic, and the muscle relaxer, Flexeril. I would also recommend some outpatient physical therapy and a cervical epidural steroid injection. I believe that he would respond satisfactorily to some further conservative measures.



Thomas J. Holbrook, Jr., MD, FACS

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

TJH/KB

CNAWT: 4050

000103

32



PALMETTO IMAGING
DOWNTOWN • RAND • W. COLUMBIA

1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Harrison, Robert
MRN: 642112
DATE OF BIRTH:
REF PHYSICIAN: Wade Reynolds, MD
DATE OF EXAM: 3/9/2012
PATIENT PH# 803-776-2327

389108
Sr
TJH

EXAM: MRI OF THE RIGHT SHOULDER WITHOUT CONTRAST

HISTORY: Pain

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echospeed magnet: Axial and coronal proton density with fat saturation, coronal and sagittal T2 with fat saturation and sagittal T1.

FINDINGS: There is arthropathy at the AC joint with mild marrow edema of the distal clavicle, marrow hypertrophy of the distal clavicle and synovial hypertrophy of the AC joint with subtle marrow edema of the acromion. There is a small intrasubstance tear of the supraspinatus measuring 4mm. There is no complete tear nor tendon retraction. The infraspinatus and teres are intact. Proximal humeral cysts are seen consistent with impingement. The subscapularis muscle and tendon is intact. There is a defect seen only in the most anterior superior labrum felt to be a sublabral foramen, developmental. The long head of the biceps is intact.

IMPRESSION:

1. Arthropathy of the AC joint.
2. Small intrasubstance tear of the supraspinatus.

Robin Dams-Kowalski, MD
RD / kp

DD: 3/9/2012
DT: 3/9/2012
Job: 14726223

This document has been electronically reviewed and signed.

- Scan into record



WV
3/10/12
Noted pt. & ref. to
ortho pod.
33

000104



PALMETTO IMAGING
DOWNTOWN • IRMO • W. COLUMBIA

1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Harrison, Robert
MRN: 642112
DATE OF BIRTH: 7/20/57
REF PHYSICIAN: Wade Reynolds, MD
DATE OF EXAM: 3/9/2012
PATIENT PH#: 803-776-2327

EXAM: MRI OF THE CERVICAL SPINE

HISTORY: Right shoulder pain with history of prior fusion.

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echospeed magnet: Sagittal T1, sagittal T2, axial gradient and T2.

COMPARISON: This is compared to the patient's most recent prior MR from 06/14/2010.

FINDINGS: The cervical cord appears normal. The cervicomedullary junction appears normal with no evidence of tonsillar ectopia.

At C2-3 the disc is well maintained.

At C3-4 there is marked loss of disc height and signal with anterior and posterior bulging of the disc and uncovertebral arthropathy with compression of the thecal sac, impression upon the cord and severe bilateral neural foraminal stenosis. This is unchanged.

At C4-5 there is similar-appearing marked loss of disc height and signal with anterior and posterior bulging of the disc with compression of the thecal sac and severe neural foraminal stenosis bilaterally. This is unchanged.

There is evidence of discectomy and fusion at C5-6 with no residual disc and no stenosis.

At C6-7 there is bulging of the disc, either eccentric towards the right or associated with a right foraminal protrusion. There is neural foraminal stenosis right greater than left. This is increased from the patient's prior MRI.

At C7-T1 there is a mild left lateral disc bulge unchanged.

No soft tissue paraspinal masses are seen.

IMPRESSION:

1. Discectomy and fusion C5-6.
2. Eccentric disc bulge versus disc bulge and protrusion C6-7.
3. Marked degenerative disc disease with stenosis at C3-4 and C4-5.

Robin Daum-Kowalski, MD
RD/ng



000105

Wm
3/10/12
Please scan into PACS
later to ortho pool
34

Patient: Harrison, Robert
MRN: 642112
Exam: MRI OF THE CERVICAL SPINE

DD: 3/9/2012
DT: 3/9/2012
Job: 14726313

This document has been electronically reviewed and signed.



000106

Page 2 of 2

35

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

December 13, 2011

J. Marvin Mullis, Jr
Mullis Law Firm, PA
P O Box 7757
Columbia, SC 29202

Re: WCC File No. 0824526
ROBERT HARRISON v. OWEN STEEL COMPANY
Date of Injury: 09/17/2008

Dear J. Marvin Mullis, Jr:

If you plan to proceed with the above referenced claim, please advise the carrier and the Commission within fourteen (14) days of receipt of this letter. If the receipt of your intention is not received by the below listed carrier within the next 14 days, the carrier is advised to file a Form 19 with regard to this case.

Thank you for your attention to this matter.

Sincerely,

Gregory S. Line
Director of Claims
(803) 737-5723

c:
Old Republic General Insurance Corporation
Carrier Code No.: 01095
Carrier File No.: 002979007796WC01
Gallagher Bassett Services
8731 Red Oak Blvd. #240
CHARLOTTE, NC 28217

Sent letter

000107

36

MULLIS LAW FIRM

1229 ELMWOOD AVENUE
THE HALTZWANGER HOUSE
P.O. Box 7757

COLUMBIA, SOUTH CAROLINA 29202-7757

Office (803) 799-9577 • Fax (803) 254-8956

FILE COPY

J. MARVIN MULLIS, JR.

ATTORNEY AT LAW, PA

HOME TELEPHONE 736-9937

PAMELA R. MULLIS

ATTORNEY AT LAW

December 30, 2011

SC Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715
Attention: Claims Department, Greg Line

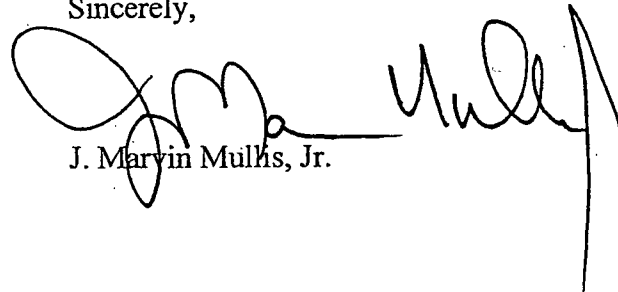
RE: Employee: Robert Harrison
WCC# ~~0804580~~ 0824526

Dear Greg:

Please note that we plan to pursue the above referenced claim. By copy of this letter to the carrier, we are notifying them of our intentions to pursue this claim.

If you should have any questions, please do not hesitate to call my office.

Sincerely,



J. Marvin Mullis, Jr.

JMMjr/cds

cc: Gallagher Bassett Services
P.O. Box 607
Ft. Mill, SC 29715

00Q108

37



Claimant's Name: Robert Harrison SSN: Employer's Name: Owen Steel Company
Address: 7290 Cabin Creek Road Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: (803) 776-2327 Work Phone: (803) 251-7582 Insurance Carrier: Gallagher Bassett Services
Preparer's Name: Tara Potter Preparer's Phone #: (803) 547-8036

Date of Injury: 09/17/2008
month day year

A. Total Wages Paid

- Check Applicable Method:
 - ☒ Report of earnings of injured employee based on four completed quarters.
 - ☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
 - ☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire date: 04/28/1997
 - ☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just (attach documentation to show how average weekly wage and compensation rate were calculated).
- List total wages paid as reported to the Employment Security Commission on the Employer Quarterly Contribution and Age Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid	
1st	6/30/08	\$ 10003.49	
2nd	3/31/08	\$ 10782.28	
3rd	12/31/07	\$ 10452.97	
4th	9/30/07	\$ 9825.86	Total Paid 2. \$ 41064.60
			3. \$
			4. \$ 41064.60
			5. 52

- List total value of other allowances of any character made in lieu of wages during four quarters above.
- Add lines 2 and 3.
- List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

TOTAL WAGES PAID:

B. Average Weekly Wage

- To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE: 6. \$ 789.70

C. Compensation Rate

- The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate.
- The compensation rate is as follows (choose one):
 - ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
 - ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
 - ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
 - ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8.
 - ☒ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

7. \$ 526.49

WEEKLY COMPENSATION RATE: 8. \$ 526.49

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED, THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

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

ROBERT HARRISON,
EMPLOYEE, CLAIMANT,
APPELLANT

v.

OWEN STEEL COMPANY,
EMPLOYER,

and

OLD REPUBLIC GENERAL INSURANCE CO.,
INSURER,
RESPONDENTS

WCC FILE NO. 0824526

Appellate Panel Review held in Columbia,
South Carolina on February 18, 2014, per notices
timely and properly served upon all parties.

APPEARANCES: Claimant Represented by Frank A. Barton, Esquire and the Mullis Law
Firm, Columbia, South Carolina.

Defendant represented by Jason W. Lockhart, McGangus, Goudelock &
Courie, LLC, Columbia, South Carolina.

STATEMENT OF THE CASE

Claimant sought benefits related to an injury to his back resulting from an accident arising out of and in the course of his employment on September 17, 2008. The parties were heard by Commissioner Avery B. Wilkerson, Jr. on August 8, 2013, in Columbia, South Carolina. On November 7, 2013, Commissioner Wilkerson issued his Order with the following specific Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is Seven Hundred Eighty Nine Dollars (\$789.70) and 70/100 with a corresponding compensation rate of Five Hundred Twenty Six Dollars (\$526.49) and 49/100.
3. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation to Claimant on December 7, 2009. (See Form 18 dated May 21, 2013).
4. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant reached maximum medical improvement on July 21, 2010. (See Claimant's APA, p. 15).
5. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant did not initially file a Form 50, Request for Hearing, until May 8, 2013. (See Claimant's Form 50 filed May 8, 2013).

6. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident. (See Claimant's Form 50 filed May 8, 2013).

7. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to the Claimant. (See Claimant's Form 50 filed May 8, 2013).

8. Based on the entirety of the evidence, including Claimant's testimony, Claimant is currently earning greater wages with the Defendants than he was earning in 2008, 2010, and 2012 based on the Claimant's different jobs with the Defendants. (Hr'g Tr. 27:23 – 28:2).

9. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with Defendants, earning a greater wage with Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with Defendants than he was working in 2008 or 2010. (Hr'g Tr. 26:9-11, 27:23 – 28:2).

CONCLUSIONS OF LAW

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

1. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. S.C. Code Ann. § 42-1-100 states "[t]he term '*compensation*' means the money allowance payable to an employee or to his dependents as provided for in this Title and includes funeral benefits provided in this Title."
4. S.C. Code Ann. § 42-15-40 states "[t]he right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident."
5. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation, as defined by S.C. Code Ann. § 42-1-100, to Claimant on December 7, 2009. See Hucks v. Green's Fuel of S.C., 247 S.C. 457, 148 S.E.2d 149 (The filing of a report by the employer and carrier did not constitute the filing of a claim for compensation within the statute of limitations).
6. Where an employer paid an employee compensation for a period time after an accident, the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on the date the employer made its last compensation payment to the employee. Hopkins v. Floyd's Wholesale, 295 S.C. 154, 367 S.E.2d 447, *aff'd* 299 S.C. 127, 382 S.E.2d 907.

7. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on December 7, 2009 and would have expired on December 7, 2011.
8. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant did not file a claim for compensation until the filing of a Form 50, Request for Hearing, by Claimant's attorney on May 8, 2013 which was outside the 2-year statute of limitations. See Hucks, 247 S.C. 457, 148 S.E.2d 149 (Lack of diligence on the part of the attorney for the claimant is attributable to and binding upon claimant).
10. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident.
11. Assuming that workers' compensation claimant relied on employer's alleged assurances that her claim would be handled without a formal finding, limitations period for filing her claim was tolled only during period of her reliance, that is, until date of last payment of benefits to her. Rogers v. Spartanburg Regional Medical Center, 328 S.C. 415, 491 S.E.2d 708 (Ct. App. 1997).
12. Pursuant to S.C. Code Ann. § 42-15-40, Hopkins, and Rogers, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to Claimant.

13. Pursuant to S.C. Code Ann. § 42-9-30, and based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with the Defendants, earning a greater wage with the Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with the Defendants than he was working in 2008 or 2010."

Within the statutory period for review, counsel for Claimant filed an application for review setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument before the Appellate Panel on February 18, 2014.

DISCUSSION

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and have since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1989), review the award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After considering all of the evidence in the record and the arguments presented, the Appellate Panel, by unanimous vote, reverses the Order of the Hearing Commissioner with regard to the Statute of Limitations. The case is remanded to the Jurisdictional Commissioner

for findings with regard to issues of intervening accidents, laches, and permanency, which were not determined by the Appellate Panel.

FINDINGS OF FACT

1. The Claimant sustained an injury to his back arising out of and in the course of his employment on September 17, 2008;
2. The claim for benefits related to the September 17, 2008, work accident was properly and timely filed with the Commission on September 14, 2009;

CONCLUSIONS OF LAW

1. Pursuant to §42-1-60, the Claimant sustained an injury to his back arising out of and in the course of his employment on September 17, 2008;
2. That the claim for benefits related to the September 17, 2008, work accident was timely filed by claim letter dated September 14, 2009;
3. That the September 14, 2009, letter meets the dictates of S.C. Code Ann. Section 42-15-40, pursuant to Regulation 67-206.

ORDER

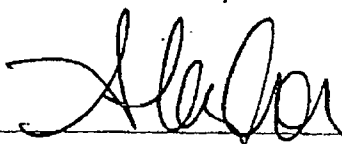
IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above captioned matter on November 7, 2013 is hereby **REVERSED**.

IT IS FURTHER ORDERED that the case is remanded to the Jurisdictional Commissioner for findings with regard to issues of intervening accidents, laches, and permanency which were not determined by the Appellate Panel.

AND IT IS SO ORDERED.

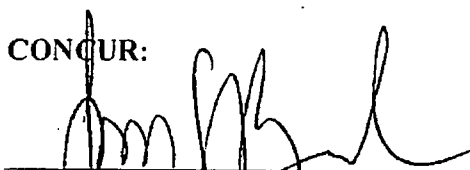
South Carolina Workers' Compensation Commission

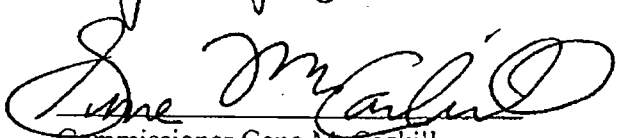
By: _____


Commissioner Aisha Taylor, Chair
South Carolina Workers' Compensation Commission

REVERSAL

CONCUR:


Commissioner Susan S. Barden, Chair


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

By Kim Falls on May 12, 2014

000117

46



PRE-HEARING BRIEF
WCC File No: 0824526

Claimant's Name: Robert L. Harrison SSN: _____
Address: 7290 Cabin Creek Road
Hopkins, South Carolina 29061
Home Phone: (803) 776-2327 Work Phone: _____
Preparer's Name: Jason W. Lockhart

Employer's Name: Owen Steel Company, Inc.
Address: 727 Mauney Drive
Columbia, South Carolina 29201
Carrier: Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc.
Preparer's Phone #: (803) 227-2283

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$526.49 2. AWW: \$ 789.70 Date of Injury: 09/17/08
3. Type of injury and body part(s): Alleged injuries to the back, neck, right shoulder, left shoulder, and nervous condition (denied claim).
4. Facts in controversy: Is the Claimant entitled to any benefits under the Act? Is this claim barred by the equitable defense of laches? Can the Claimant prove entitlement to benefits for an alleged 2008 work injury, when he already received PPD benefits pursuant to a Form 16 for a subsequent work injury to the same body part on October 4, 2010? Can Claimant prove his current symptoms, if any, are causally related to the alleged 2008 work injury, when he had an additional work injury and several intervening accidents?
Defendants deny Claimant is entitled to any benefits under the Act. This claim is barred by the doctrine of laches, given Claimant's failure to pursue the claim. Claimant has already been paid PPD for an October 4, 2010 work injury to the neck. He was previously placed at MMI by Dr. Holbrook in July 2010, prior to his subsequent work injury. Additionally, Claimant has sustained several intervening accidents and does not have sufficient medical evidence to prove any causation to an alleged 2008 work injury.
5. Legal issues involved: South Carolina Code Ann. Section 42-1-120; 42-1-160; 42-9-10; 42-9-35; 42-17-90; Laches and additional legal issues.
6. Unusual aspects: Claimant was already paid PPD for an October 4, 2010 work injury. Claimant does not have sufficient evidence to prove causation. Defendants request that WCC File No: 1013900 be made part of the record.
7. Witnesses (designate if expert):* David Zalesne, Myron Samuels, Terry Hartwell. (Claimant's current supervisor, Ian Perrai, and additional representatives from the Employer. Defendants specifically reserve the right to call any witnesses listed by the Claimant.
8. Exhibits: Portions of the Claimant's personnel, attendance, and/or payroll information may be submitted in response to evidence presented by the Claimant; Claimant's deposition transcript; WCC File No: 1013900; Surveillance obtained by Merge Investigations, Inc. (dated 7/11/14-7/12/14); Claimant's written statement (dated 3/15/12)(consisting of 1 page); Form 16A (for WCC File No: 1013900)(dated 9/8/11)(consisting of 1 page).
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Records from South Hampton Family Practice (dated 10/21/13-4/16/14)(consisting of 15 pages); Palmetto Health (dated 4/4/10)(consisting of 4 pages); Dr. Raymond C. Sweet, M.D. (dated 11/2/10-11/23/10)(consisting of 6 pages); Doctor's Express (dated 2/29/12-7/20/12)(consisting of 10 pages); Doctor's Care (dated 9/17/08-1/6/09)(consisting of 8 pages); Dr. Andrew H. Rhea, M.D. (dated 11/12/10)(consisting of 5 pages).
10. Name, address, and specialty, if any, of the treating physician: This is a denied claim. Claimant previously treated with Dr. Thomas Holbrook, M.D., in addition to a number of other physicians.
11. Impairment rating(s); body part(s); physician and date of opinion: 25% whole person (Dr. Thomas Holbrook, M.D. - Columbia Neurosurgical Associates)(dated 7/21/10).
12. I am amending my Form 50/51 in the following manner: Not applicable.

☐ **Mediation**

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

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

I verify the contents of this form are accurate and true to the best of my knowledge.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to

Post Office Box 7757
address Columbia, South Carolina 29202
by ☒ first class postage ☐ certified mail ☐ personal service.

Frank A. Barton, Esquire, Mullis Law Firm

on the 22nd day of July 20 14.

Signature: [Signature]
Date of Hearing: August 1, 2014

Email: jlockhart@mgclaw.com
Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0824526

ROBERT L. HARRISON,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

OLD REPUBLIC INSURANCE COMPANY
C/O GALLAGHER BASSETT SERVICES,
INC.,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND FRANK A. BARTON, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

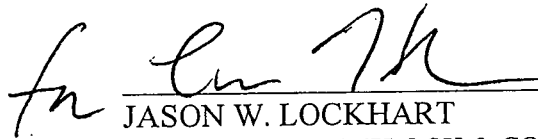
APA#	DOCTOR/EXHIBITS	DATES	PAGES
10.	Claimant's written statement	3/15/12	46
11.	Form 16A (for WCC File No: 1013900).	9/8/11	47
12.	Records from South Hampton Family Practice	10/21/13-4/16/14	48-62
13.	Palmetto Health	4/4/10	63-66
14.	Dr. Raymond C. Sweet, M.D.	11/2/10-11/23/10	67-72
15.	Doctor's Express	2/29/12-7/20/12	73-82
16.	Doctor's Care	9/17/08-1/6/09	83-90
17.	Dr. Andrew H. Rhea, M.D.	11/12/10	91-95

000119

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: David Zalesne, Myron Samuels, Terry Hartwell (Claimant's current supervisor, Ian Perrai, and additional representatives from the Employer. Defendants specifically reserve the right to call any witnesses listed by the Claimant.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
July 22, 2014

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



WCC File #: 1013900

Carrier File #: 02979-019578-WC-01

Carrier Code #:

Employer FEIN #:

Robert L. Harrison

Claimant's Name SSN

7290 Cabin Creek Road
Hopkins, South Carolina 29061

Address City State Zip

(803) 776-2327

Home Phone #

Jason W. Lockhart

Work Phone #

McAngus Goudelock & Courie

Preparer's Name

Law Firm

Owen Steel Company, Inc.

Employer's Name

727 Mauney Drive
Columbia, South Carolina 29201

Address City State Zip

Old Republic Insurance Company c/o Gallagher Bassett
Services, Inc.

Insurance Carrier

(803) 227-2283

Phone Number

This form is only applicable to injuries by accident occurring on or after July 1, 2007 pursuant to Title 42-15-60 (A) as amended. The execution of this document is an agreement between the parties relating to a Workers' Compensation claim under §§42-1-160, 42-1-172 or 42-11-10.

Date of Injury or Illness: October 4, 2010

The above parties agree to pay and accept compensation based on the following facts:

A compensable ☒ Injury ☐ Illness ☐ Repetitive Trauma occurred on: October 4, 2010 (month/day/year).

The injury was to back body part(s) injured and also the injury affected neck other body part(s).

The authorized treating physician has released the Claimant from his or her care and has found maximum medical improvement on 11/2/2010 (month/day/year) with an impairment rating of 15 percent.

Average weekly wage 734.72

Compensation rate 489.81

By agreement of the parties, the following award has been referred to the Commission for approval:

28 Percentage loss of use to: back (body part(s) injured).

84 weeks

Percentage loss of use to: (body part(s) affected).

weeks

Percentage loss of use to: whole person

weeks

Disfigurement to:

weeks

Wage Loss: \$ 1,049.59 amount

weeks

Total and Permanent Disability:

weeks

Other:

weeks

Estimated award (number of weeks times compensation rate) \$ 42,193.63

The estimated award is subject to verification by the Commission

Additionally, the Employer's Representative agrees to pay and the Claimant accepts the following medical care and treatment as recommended by the authorized treating physician pursuant to the attached physician's statement, Form 14B

Additional medical ordered: ☒ Yes ☐ No

See attached 14B physician's statement dated: 11/2/2010

This agreement is binding on approval by the Commission. A claim for additional compensation based on a worsening of the Claimant's condition must be filed no later than one (1) year from the date of the last payment of compensation. Only medical care specifically detailed herein will be paid under this agreement. If a dispute arises with regard to continued medical treatment, either party may request a hearing before the Commission pursuant to 42-15-60(B) 3 and (C).

Claimant's Signature

Date Agreement Signed 9/2/11

Employer's Representative

Jason W. Lockhart
Attorney for Carrier

Deputy Commissioner

Date agreement approved SEP 08 2011

Jurisdictional Commissioner
Division of Claims

WCC Form # 16A
9/07

16A
-46-

000121 Agreement for Permanent Disability/
Disfigurement Compensation

~~MOB~~ MOB 15 2012

On Feb 26th 2012 I bent over to pick up my 4 year old daughter who had fallen off the front porch. While picking her up I felt a sharp pinch between my neck and my right shoulder. The pain lasted that night until the next morning. On Feb 28th 2012 as I was running the gentry around 1:30-2:00am I started feeling the same pain in my right shoulder. As I continued to work the pain started going down my right arm and my thumb, index and middle fingers went numb and also had a tingling feeling in the tips. I told my supervisor about my situation and told him that I was going to the doctor that day.

Rafael

000122

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Well Adult Exam - Male *

Patient: HARRISON, ROBERT LEWIS MRN: 147264 FIN: B2013100704108
Age: 42 years Sex: Male DOB: ...
Associated Diagnoses: Annual exam
Author: Shumpert NP, Diane

Chief Complaint

10/21/2013 9:18 AM EDT PHYSICAL

Well Adult History

Well Adult History

The patient presents for well adult exam. The patient's general health status is described as good. The patient's diet is described as balanced. Exercise: none. Compliance problems: not watching diet. Also c/o HA 3-4 x a week in the evening when he wakes up. Thinks it is related to smoking. When he quits smoking the HA's resolve. He works night shift. HA over temples. Denies visual disturbance. ASA helps.

Review of Systems

Constitutional: Negative.
Eye: Negative.
Ear/Nose/Mouth/Throat: Negative.
Respiratory: Negative.
Cardiovascular: Negative.
Gastrointestinal: Negative.
Genitourinary: Negative.
Hematology/Lymphatics: Negative.
Endocrine: Negative.
Immunologic: Negative.
Musculoskeletal: Negative.
Integumentary: Negative.
Neurologic: Negative.
Psychiatric: Negative.

Health Status

Allergies:

No allergies have been recorded.

Medications: (Selected)

Prescriptions

Prescribed

Voltaren 75 mg oral delayed release tablet: 1 tab(s) (75 mg), PO, BID, # 60 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Walgreens Drug Store 11379, 1 tab(s) po bid
Zanaflex 4 mg oral capsule: 1 cap(s) (4 mg), po, qhs, # 30 cap(s), 0 Refill(s), Type: Maintenance, Pharmacy: Walgreens Drug Store 11379, 1 cap(s) po qhs

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 1 of 5
(Continued)

000123

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

General Complaint *

Patient: HARRISON, ROBERT LEWIS MRN: 147264 FIN: B2014031001142
Age: 42 years Sex: Male DOB:
Associated Diagnoses: Back pain, acute; Neck pain
Author: Shumpert NP, Diane

Visit Information

Date of Service: 03/11/2014 10:23 am Performing Location: South Hampton Family Practice Encounter#: B2014031001142

Chief Complaint

03/11/2014 10:57 AM EDT FU TO MVA

History of Present Illness

The patient presents with f/u ER visit to Baptist on 3-9-14 at 2 am. Patient was involved in a MVA on 3-8-14 @ 8 pm. Patient was restrained driver T-boned. Airbag did not deploy. Now having pain from the top of his neck to the top of his right buttocks. Given norco and flexeril in the ER not helping. Had a CT of neck and x-ray of lower back which showed muscle spasms. Has tingling in his right hand on/off. Tingles for about 30 minutes or so.

Review of Systems

Constitutional: Negative.
Eye: Negative.
Ear/Nose/Mouth/Throat: Negative.
Respiratory: Negative.
Cardiovascular: Negative.
Gastrointestinal: Negative.
Genitourinary: Negative.
Hematology/Lymphatics: Negative.
Endocrine: Negative.
Immunologic: Negative.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative.
Neurologic: Negative.
Psychiatric: Negative.

Health Status

Allergies:

Allergic Reactions (All)

No known allergies

Problem list:

All Problems

Tobacco user / ICD-9-CM 305.1 / Probable

Printed by: Sanders, Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 1 of 4
(Continued)

000124

Histories**Past Medical History:**Resolved

hematuria: Onset in 1993 at 21 years. Resolved.

Comments:

10/21/2013 EDT 9:45 AM EDT - Shumpert NP, Diane

Worked up in military and was told he was fine

Family History:

Colon cancer

Grandfather (P) (Deceased)

HTN

Father

Seizures.

Mother

Procedure history:

cervical fusion in 2009 at 38 Years.

Comments:

10/21/2013 9:46 AM - Shumpert NP, Diane

Dr. Holbrook

hernia repair right inguinal in 1988 at 17 Years.

Social History:**Alcohol Assessment:** Denies Alcohol Use**Tobacco Assessment**

Current, .2 per day. 14 year(s). Started age 14 Years.

Substance Abuse Assessment: Denies Substance Abuse**Employment and School Assessment**

Employed, Work/School description: Welder.

Home and Environment Assessment

Marital status: Married. 1 children.

Sexual Assessment

Sexually active: Yes.

Physical Examination**VS/Measurements****Vital Signs**

03/11/2014 10:57 AM EDT

Peripheral Pulse Rate

72 bpm

Respiratory Rate

18 br/min

Systolic Blood Pressure

124 mmHg

Diastolic Blood Pressure

82 mmHg

Mean Arterial Pressure

96 mmHg

BP Site

Left arm

Printed by: Sanders, Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 2 of 4
(Continued)

000125

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Measurements from flow sheet : Measurements
03/11/2014 10:57 AM EDT

Height	70 in
Weight	180 lb
BSA	2.01 m2
Body Mass Index	25.82 kg/m2

General: Alert and oriented, No acute distress.

Neck: Supple, No carotid bruit, No jugular venous distention, No lymphadenopathy, No thyromegaly, point tenderness at nap of neck. No ~~EEE~~ FROM with mild discomfort noted.

Respiratory: Lungs are clear to auscultation, Respirations are non-labored, Breath sounds are equal, Symmetrical chest wall expansion, No chest wall tenderness.

Cardiovascular: Normal rate, Regular rhythm, No murmur, Normal peripheral perfusion, No edema.

Review / Management

Results review: Lab results

01/22/2014 11:21 AM EST

Urine Color Urine Dipstick	Yellow
Urine Appearance Urine Dipstick	Clear
Glucose Urine Dipstick	Negative
Bilirubin Urine Dipstick	Negative
Ketones Urine Dipstick	Negative
Specific Gravity Urine Dipstick	1.020
Blood Urine Dipstick	Moderate
pH Urine Dipstick	6.5
Protein Urine Dipstick	Negative
Urobilinogen Urine Dipstick	0.2 mg/dl
Nitrite Urine Dipstick	Negative
Leukocytes Urine Dipstick	Negative

Impression and Plan

Diagnosis

Back pain, acute (ICD9 724.5).

Neck pain (ICD9 723.1).

Patient Instructions: Counseled: Patient, Regarding diagnosis, Regarding treatment, Regarding medications, Verbalized understanding.

Orders

Orders (Selected)

Prescriptions

Prescribe

predniSONE 10 mg oral tablet: See instructions, Instructions: 6 qd x 2d, 5qd x 2d, 4qd x2d, 3 qd x 2d, 2 qd x2d, 1 qd x 2d tab(s), # 48 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Walgreens Drug Store

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 3 of 4
(Continued)

000126

11379.

Continue muscle relaxers. Ice 20 minutes TID. F/U in 1 week if symptoms persist.

Signature Line

Signed and Authored by Diane Shumpert on 03/14/2014 11:16 AM EDT

Charted Date: March 11, 2014 11:34 AM EDT

Subject / Title: General Complaint *

Performed By: Shumpert NP, Diane on March 11, 2014 11:59 AM EDT

Electronically Signed By:

Shumpert NP, Diane on March 14, 2014 11:16 AM EDT

Visit Information: B2014031001142, South Hampton Family Practice, Outpatient, 3/11/2014 - 3/13/2014

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

General Complaint *

Patient: HARRISON, ROBERT LEWIS MRN: 147264 FIN: B2014031302068
Age: 42 years Sex: Male DOB: 01/15/1972
Associated Diagnoses: Neck pain; Low back pain
Author: Shumpert NP, Diane

Visit Information

Date of Service: 03/14/2014 10:31 am Performing Location: South Hampton Family Practice Encounter#: B2014031302068

Chief Complaint

3/14/2014 10:43 AM EDT PAIN NO BETTER SINCE LAST VISIT

History of Present Illness

The patient presents with Complain of pain in neck and back from MVA. States symptoms are getting worse instead of better. Went to the ER and x-rays were within normal limits. Most of the pain is on his right side. Denies tingling or numbness in fingers or toes.

Review of Systems

Constitutional: Negative.

Eye: Negative.

Ear/Nose/Mouth/Throat: Negative.

Respiratory: Negative.

Cardiovascular: Negative.

Gastrointestinal: Negative.

Genitourinary: Negative.

Hematology/Lymphatics: Negative.

Endocrine: Negative.

Immunologic: Negative.

Musculoskeletal: Negative except as documented in history of present illness.

Integumentary: Negative.

Neurologic: Negative.

Psychiatric: Negative.

Health Status

Allergies:

Allergic Reactions (All)

No known allergies

Medications: (Selected)

Prescriptions

Prescribed

predniSONE 10 mg oral tablet: See Instructions, Instructions: 6 qd x 2d, 5qd x 2d, 4qd x2d, 3 qd x 2d, 2 qd x2d, 1

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 1 of 4
(Continued)

000128

qd x 2d tab(s), # 48 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Walgreens Drug Store 11379, 6 qd x 2d, 5qd x 2d, 4qd x2d, 3 qd x 2d, 2 qd x2d, 1 qd x 2d tab(s)...

Problem list:

All Problems

Tobacco user / SNOMED CT 175325014 / Probable

Histories

Past Medical History:

Resolved

Hematuria (485846015): Onset in 1993 at 22 years. Resolved.

Comments:

10/21/2013 EDT 9:45 AM EDT - Shumpert NP, Diane

Worked up in military and was told he was fine

Family History:

Colon cancer

Grandfather (P) (Deceased)

HTN

Father

Seizures.

Mother

Procedure history:

cervical fusion in 2009 at 38 Years.

Comments:

10/21/2013 9:46 AM - Shumpert NP, Diane

Dr. Holbrook

hernia repair right inguinal in 1988 at 17 Years.

Social History:

Alcohol Assessment: Denies Alcohol Use

Tobacco Assessment

Current, .2 per day. 14 year(s). Started age 14 Years.

Substance Abuse Assessment: Denies Substance Abuse

Employment and School Assessment

Employed, Work/School description: Welder.

Home and Environment Assessment

Marital status: Married. 1 children.

Sexual Assessment

Sexually active: Yes.

Physical Examination

VS/Measurements

Vital Signs

3/14/2014 10:43 AM EDT

Peripheral Pulse Rate

76 bpm

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 2 of 4
(Continued)

000129

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Respiratory Rate	18 br/min
Systolic Blood Pressure	130 mmHg
Diastolic Blood Pressure	92 mmHg HI
Mean Arterial Pressure	105 mmHg
BP Site	Left arm

Measurements from flow sheet : Measurements
3/14/2014 10:43 AM EDT

Height	70 in
Weight	180 lb
BSA	2.01 m2
Body Mass Index	25.82 kg/m2

General: Alert and oriented, No acute distress.

Neck: Supple, Non-tender, No carotid bruit, No jugular venous distention, No lymphadenopathy, No thyromegaly.

Respiratory: Lungs are clear to auscultation, Respirations are non-labored, Breath sounds are equal, Symmetrical chest wall expansion, No chest wall tenderness.

Cardiovascular: Normal rate, Regular rhythm, No murmur, Normal peripheral perfusion, No edema.

Musculoskeletal: Normal range of motion, Normal strength, No swelling, No deformity, Normal gait, Point tenderness right side of neck and lower back.

Review / Management

Results review: Lab results
1/22/2014 11:21 AM EST

Urine Color Urine Dipstick	Yellow
Urine Appearance Urine Dipstick	Clear
Glucose Urine Dipstick	Negative
Bilirubin Urine Dipstick	Negative
Ketones Urine Dipstick	Negative
Specific Gravity Urine Dipstick	1.020
Blood Urine Dipstick	Moderate
pH Urine Dipstick	6.5
Protein Urine Dipstick	Negative
Urobilinogen Urine Dipstick	0.2 mg/dl
Nitrite Urine Dipstick	Negative
Leukocytes Urine Dipstick	Negative

Impression and Plan

Diagnosis

Neck pain (ICD9 723.1).

Low back pain (ICD9 724.2).

Patient Instructions: Counseled: Patient, Regarding diagnosis, Regarding treatment, Regarding medications, Verbalized understanding.

Printed by: Sanders, Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 3 of 4
(Continued)

000130

Orders

Orders (Selected)

Prescriptions

Prescribed

Tylenol with Codeine #3 oral tablet: 2 tab(s), PO, q4hr, PRN: for pain, # 30 tab(s), 0 Refill(s), Type: Maintenance

Zanaflex 4 mg oral capsule: 1 cap(s) (4 mg), po, tid, # 60 cap(s), 0 Refill(s), Type: Maintenance,
Pharmacy: Walgreens Drug Store 11379, 1 cap(s) po tid.

Continue prednisone.

Refer to physical therapy.

Signature Line

Signed and Authored by Diane Shumpert on 03/18/2014 01:34 PM EDT

Charted Date: March 14, 2014 11:12 AM EDT

Subject / Title: General Complaint *

Performed By: Shumpert NP, Diane on March 14, 2014 11:19 AM EDT

Electronically Signed By:

Shumpert NP, Diane on March 18, 2014 1:34 PM EDT

Visit Information: B2014031302068, South Hampton Family Practice, Outpatient, 3/14/2014 - 3/16/2014

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

General Complaint *

Patient: HARRISON, ROBERT LEWIS MRN: 147264 FIN: B2014041002379
Age: 42 years Sex: Male DOB: 01/01/1972
Associated Diagnoses: Neck pain; Low back pain
Author: Shumpert NP, Diane

Visit Information

Date of Service: 04/11/2014 01:39 pm Performing Location: South Hampton Family Practice Encounter#: B2014041002379

Chief Complaint

04/11/2014 1:43 PM EDT BACK PAIN

History of Present Illness

The patient presents with continued c/o low back pain. States that the prednisone/flexeril and physical therapy was helping but this past weekend he started having sharp stabby pains intermittently. Now it hurts to stand for any amount of time. In control of bowel and bladder. has tingling in his toes. no numbness. Has PT 2 days a week. Has throbbing pain the days in between PT. Last appointment was Tuesday. Cancelled today's appointment related to this appointment.

Review of Systems

Constitutional: Negative.
Eye: Negative.
Ear/Nose/Mouth/Throat: Negative.
Respiratory: Negative.
Cardiovascular: Negative.
Gastrointestinal: Negative.
Genitourinary: Negative.
Hematology/Lymphatics: Negative.
Endocrine: Negative.
Immunologic: Negative.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative.
Neurologic: Negative.
Psychiatric: Negative.

Health Status

Allergies:

Allergic Reactions (All)

No known allergies

Medications: (Selected)

Prescriptions

Prescribed

Printed by: Sanders, Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 1 of 4
(Continued)

000132

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Tylenol w ith Codeine #3 oral tablet: 2 tab(s), PO, q4hr, PRN: for pain, # 30 tab(s), 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Tobacco user / SNOMED CT 175325014 / Probable

Histories

Past Medical History:

Resolved

Hematuria (485846015): Onset in 1993 at 22 years. Resolved.

Comments:

10/21/2013 EDT 9:45 AM EDT - Shumpert NP, Diane

Worked up in military and w as told he w as fine

Family History:

Colon cancer

27-MAR-2014 22:18:03<\$>

Grandfather (P) (Deceased)

HTN

Father

Seizures.

Mother

Procedure history:

cervical fusion in 2009 at 38 Years.

Comments:

10/21/2013 9:46 AM - Shumpert NP, Diane

Dr. Holbrook

hernia repair right inguinal in 1988 at 17 Years.

Social History:

Alcohol Assessment: Denies Alcohol Use

Tobacco Assessment

Current, .2 per day. 14 year(s). Started age 14 Years

Substance Abuse Assessment: Denies Substance Abuse

Employment and School Assessment

Employed, Work/School description: Welder.

Home and Environment Assessment

Marital status: Married. 1 children.

Sexual Assessment

Sexually active: Yes.

Physical Examination

VS/Measurements

Vital Signs

04/11/2014 1:43 PM EDT

Peripheral Pulse Rate

76 bpm

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 2 of 4
(Continued)

000133

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Respiratory Rate	18 br/min
Systolic Blood Pressure	132 mmHg
Diastolic Blood Pressure	96 mmHg HI
Mean Arterial Pressure	108 mmHg
BP Site	Left arm

Measurements from flow sheet : Measurements
04/11/2014 1:43 PM EDT

Height	70 in
Weight	177 lb
BSA	1.99 m2
Body Mass Index	25.39 kg/m2

General: Alert and oriented, No acute distress.

Neck: Supple, Non-tender, No carotid bruit, No jugular venous distention, No lymphadenopathy, No thyromegaly.

Respiratory: Lungs are clear to auscultation, Respirations are non-labored, Breath sounds are equal, Symmetrical chest wall expansion, No chest wall tenderness.

Cardiovascular: Normal rate, Regular rhythm, No murmur, Normal peripheral perfusion, No edema.

Musculoskeletal: point tenderness nap of neck and down over trapezius. No EEE. Also has point tenderness over bilateral SI joints. R>L. Walks with guarded gait. Movements are deliberate and slow. No EEE.

Review / Management

Results review: Lab results

01/22/2014 11:21 AM EST

Urine Color Urine Dipstick	Yellow
Urine Appearance Urine Dipstick	Clear
Glucose Urine Dipstick	Negative
Bilirubin Urine Dipstick	Negative
Ketones Urine Dipstick	Negative
Specific Gravity Urine Dipstick	1.020
Blood Urine Dipstick	Moderate
pH Urine Dipstick	6.5
Protein Urine Dipstick	Negative
Urobilinogen Urine Dipstick	0.2 mg/dl
Nitrite Urine Dipstick	Negative
Leukocytes Urine Dipstick	Negative

Impression and Plan

Diagnosis

Neck pain (ICD9 723.1).

Low back pain (ICD9 724.2).

Patient Instructions: Counseled: Patient, Regarding diagnosis, Regarding treatment, Regarding medications, Verbalized understanding.

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 3 of 4
(Continued)

000134

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Orders

MRI of L-S spine ordered. F/U pending results.

Signature Line

Signed and Authored by Diane Shumpert on 04/11/2014 04:54 PM EDT

Charted Date: April 11, 2014 1:56 PM EDT

Subject / Title: General Complaint *

Performed By: Shumpert NP, Diane on April 11, 2014 1:56 PM EDT

Electronically Signed By:

Shumpert NP, Diane on April 11, 2014 4:54 PM EDT

Visit Information: B2014041002379, South Hampton Family Practice, Outpatient, 4/11/2014 - 4/13/2014

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:18 PM EDT

Page 4 of 4
(End of Report)

000135

Family Practice Note

HARRISON, ROBERT LEWIS - 147264

Freertext Note *

Patient: HARRISON, ROBERT LEWIS MRN: 147264 FIN: B2014041002379
Age: 42 years Sex: Male DOB: _____
Associated Diagnoses: None
Author: Shumpert NP, Diane

Patient notified of Normal MRI l-s spine results. Will continue physical therapy.

Signature Line

Signed and Authored by Diane Shumpert on 04/16/2014 05:25 PM EDT

Charted Date: April 16, 2014 5:25 PM EDT
Subject / Title: Freertext Note *
Performed By: Shumpert NP, Diane on April 16, 2014 5:25 PM EDT
Electronically Signed By:
Shumpert NP, Diane on April 16, 2014 5:25 PM EDT
Visit Information: B2014041002379, South Hampton Family Practice, Outpatient, 4/11/2014 -
4/13/2014

Printed by: Sanders , Ouida
Printed on: 7/14/2014 7:17 PM EDT

Page 1 of 1
(End of Report)

000136

Emergency Dept

HARRISON, ROBERT LEWIS - R000039055

Result type: Emergency Dept
Result date: 04 April 2010 20:24
Result status: Auth (Verified)
Result title: Emergency Dept
Performed by: Heritage MD, Erin on 04 April 2010 20 24
Verified by: Moats MD, Leslie M on 09 April 2010 18:32
Encounter info: R1009400312, Richland, ERR-Emergency Room, 04/04/10 - 04/04/10

Emergency Dept (Verified)

PATIENT: HARRISON, ROBERT
MR #: 000039055
ADMITTED: 04/04/2010
ACCOUNT #: 1009400312
DICT: Erin Heritage, MD-R
DOB: [REDACTED]
PT.LOC: PD5

DATE OF VISITATION: 04/04/2010

ACCOUNT NUMBER: 1009400312

ATTENDING PHYSICIAN: Leslie M. Moats, MD

MODE OF ARRIVAL: EMS.

CHIEF COMPLAINT: Motorcycle crash.

HISTORY OF PRESENT ILLNESS: This is a 38-year-old male with no significant past medical history who presents to the emergency department today complaining of abrasions and pain in his left shoulder. The patient states that he was riding on his motorcycle and trying to come to a stop when somebody pulled in front of him, and he ran into the vehicle. He states that he had no loss of consciousness. He denies any pain in his head, any altered mental status or dizziness. He does have pain in his abrasions and pain in his left shoulder. ~~He denies any neck pain at this time.~~ He denies any chest pain, shortness of breath, or abdominal pain and also reports that he has not had anything to eat or drink.

REVIEW OF SYSTEMS: He has abrasions with pain. He has no extremity pain. No vomiting, diarrhea. No recent cough or congestion. Rest of the systems was reviewed and was negative.

FAMILY HISTORY: Denies hypertension or diabetes.

PAST MEDICAL HISTORY: Neck surgery. Otherwise negative.

MEDICATIONS: Pain medication that he does not remember for his neck.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: The patient lives with his wife and 2 children. He smokes cigarettes, drinks alcohol occasionally, and denies other drug use.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature is 97.7 orally. Pulse is 70, respirations 20, blood pressure 139/96, and pulse ox 98% on room air, normal.

GENERAL APPEARANCE: This is a well-developed, well-nourished 30-year-old male. He is awake, alert and oriented x3. He is in no acute distress, very pleasant and cooperative.

NEUROLOGIC: Cranial nerves are intact. Sensation is intact by touch. The reflexes are symmetric bilaterally. He has no focal neurological deficits.

HEENT: Eyes: The pupils are equal and reactive to light. Extraocular movements are intact. The sclerae are anicteric, and the conjunctivae are pink.

ENT: The oropharynx is clear. Mucous membranes are moist. Midface is stable. Tympanic membranes are clear bilaterally.

NECK: Nontender to palpation. He has pain in his clavicle when he moves his neck, but otherwise no midline tenderness to palpation. No step-offs or deformities.

RESPIRATORY: Lungs clear to auscultation bilaterally. There is no accessory muscle use. No tenderness to palpation of the chest wall. No crepitus.

CARDIOVASCULAR: Heart sounds are normal. Distal pulses are palpable in all 4 extremities.

GASTROINTESTINAL: Abdomen is soft, nontender, nondistended. Bowel sounds are present and normal.

MUSCULOSKELETAL: The patient has pain in his left clavicle with gross deformity in this area. He has no tenderness to palpation over the glenohumeral joint or the rest of the left upper extremity. He is neurovascularly intact to the left upper extremity. Otherwise, he has no signs of musculoskeletal injuries.

SKIN: The patient has multiple abrasions including left side of his head, his right arm, his palm as well as his knees. None of these are lacerations, and there fairly clean without debris.

MEDICAL DECISION MAKING: Upon presentation this is a patient who presents to the emergency department today complaining of a motorcycle crash with multiple abrasions and left clavicle pain. At this time, an x-ray of the left clavicle was obtained for evaluation, as the patient has no other signs of injury. The patient obviously has abrasions. He has not had any head injury is acting appropriately, and, therefore, no CT scan was obtained of his head or neck, but I do suspect that he does have a clavicle fracture.

LABORATORY DATA: The x-ray showed a fracture of the left clavicle.

EMERGENCY DEPARTMENT COURSE: The patient was seen and evaluated upon arrival to the emergency department. Following his initial evaluation, an IV was placed, and the patient was given morphine for his pain. He was then given a dose of Zofran, as he developed nausea following his morphine. The patient's wounds were cleaned thoroughly and dressed with nonstick dressings. He was not given a tetanus shot, because his last tetanus was 4 years ago. I did consult Orthopedics to have them review the film, as far as the clavicle was concerned. At this time, they would like him to follow up with Premier Orthopedic. He should call tomorrow to set up an appointment within the next 1-2 weeks. At this time, the patient was slowly set up. He did have some further nausea. Therefore, he did not want his Tylox, and he was slowly allowed to stand up and ambulate. The patient was able to ambulate without difficulty. Therefore, he was ready for discharge to home with a

prescription for Tylox.

DIAGNOSES/IMPRESSION:

1. Left clavicle fracture.
2. Multiple abrasions.
3. Status post motorcycle crash.

DISPOSITION: The patient will be discharged to home. He should follow up with Premier Orthopedics. He should return to the emergency department as needed especially for signs of infection or fever or appearance of chest or abdominal pain or difficulty breathing. He should also follow up with his regular doctor within the next 1-2 weeks. He was given a prescription for Tylox for pain.

NOTE: Discussed the patient's care with attending physician, Dr. Leslie Moats, who was present for evaluation.

D: 04/04/2010 20:04 T: 04/04/2010 20:24 TID: km
Job #: 57716 Doc #: 10087421
cc: Erin Heritage, MD-R
Leslie M. Moats, MD

I was present with the resident during the history and exam. I discussed the case with the resident and agree with the findings and plan as documented in the resident's note. I supervised all above procedures done by the resident.

Signature Line

Electronically Signed & Verified on 04/07/2010 07:58
by Heritage MD, Erin

Electronically Signed & Verified on 04/09/10 18:32
by Moats MD, Leslie M

Completed Action List:

- * Perform by Heritage MD, Erin on 04 April 2010 20:24
- * Sign by Heritage MD, Erin on 07 April 2010 07:58 Requested on 04 April 2010 22:19
- * Sign by Moats MD, Leslie M on 09 April 2010 18:32 Requested by Heritage MD, Erin on 07 April 2010 07:58
- * Modify by Moats MD, Leslie M on 09 April 2010 18:32
- * VERIFY by Moats MD, Leslie M on 09 April 2010 18:32

Emergency Dept

HARRISON, ROBERT LEWIS - R000039055

USC DEPARTMENT OF NEUROSURGERY
Three Richland Medical Park, Suite 310, Columbia, SC 29203
PHONE 803-434-8323, FAX 803-434-8326
CONSULTATION REPORT

PATIENT: Robert Harrison
VISIT DATE: 11/02/10

Chart #: 65447
DOB: 07/23/71

REFERRED BY: Workers Comp Nurse, Marty Mackey, Genex

CHIEF COMPLAINT: A 39-year-old, right-handed black male is complaining of shooting pain down the neck and back into the left arm.

HISTORY OF PRESENT ILLNESS: He states this started October 10 at work lifting a 50 pound spool over his head. Pain immediately went down the side. States he works at Owens Field. He was taken by ambulance to Palmetto Richland. He was told he had a bulging disc. Two weeks later he started with Doctors Care. He has been in the ER x2. He has been on Valium and Tylox and physical therapy. Pain is averaging 7, sharp, throbbing, constant. He feels he is getting worse.

He originally had an ACF 11/09 by Dr. Holbrook and was still having some pain in the left arm and never completely recovered, but it is worse now and he was sent back to full duty with a 50-60 pound weight restriction.

REVIEW OF SYSTEMS: See yellow sheet.

PAST MEDICAL HISTORY: See yellow sheet.

SOCIAL HISTORY: See yellow sheet. He does smoke and denies hypertension and diabetes.

PHYSICAL EXAMINATION: He is 5 feet 10 inches, 180 pounds.

Vital Signs: Blood pressure 142/92. Pulse 68. Respirations 12. Appears to be in moderate pain with glasses.

Eyes, Ears, Nose and Throat: He is bald.

000141

CONSULTATION REPORT

Raymond C. Sweet, M.D., F.A.C.S.

PATIENT: Robert Harrison
VISIT DATE: 11/02/10
CHART #: 65447
PAGE: 2

Head and Face: He has a mustache, no smiling.

Respiratory: Lungs clear.

Cardiovascular: Heart regular rate and rhythm.

GI: Abdomen is soft.

GU/Rectal: Deferred.

Skin: He has a tattoo on the right forearm of a dog. An abraded, raising scar on the lateral deltoid.

Musculoskeletal: Negative.

Extremities: Dorsalis pedis pulse is intact.

Spine: Cervical, mildly decreased range in the neck in all four directions. ACF scar on the right. Back he has had no spasm or tenderness. Two feet to toes on trunk flexion. Straight leg-raising test is negative.

Neurological Exam: Mental status oriented x3 and cooperative. No aphasia. Cranial nerves II-XII. Pupils equal and reactive to light. Full extraocular movements. Symmetrical face. Vision grossly intact. Tongue midline. Except for decreased pin in the left hand on not anatomical. Reflex intact and symmetrical. No Babinski. Finger-nose-finger intact. Gait unremarkable.

PERTINENT X-RAY DATA: Review of the medical data was done including cervical MRI and report which showed postoperative changes at C5-6.

IMPRESSION: Left arm pain of unclear etiology, status post ACF at 5-6 and mild cervical spondylosis post operative changes.

000142

CONSULTATION REPORT

Raymond C. Sweet, M.D., F.A.C.S.

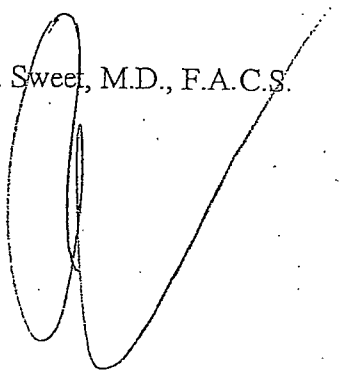
PATIENT: Robert Harrison
VISIT DATE: 11/02/10
CHART #: 65447
PAGE: 3

PLAN: I feel he needs a cervical myelogram, postmyelogram CT and will consider epidural steroid injections. This was stressed to the patient and the rehab nurse. I have given him a prescription for this and we will see him after these things are done.

Raymond C. Sweet, M.D., F.A.C.S.

RCS:TrUSA0366-313169.1

mailed 11-5-10

A large, stylized handwritten signature, likely of Raymond C. Sweet, consisting of a large loop and a long, sweeping stroke.

000143

CONSULTATION REPORT

Raymond C. Sweet, M.D., F.A.C.S.

USC DEPARTMENT OF NEUROSURGERY
Three Richland Medical Park, Suite 310, Columbia, SC 29203
PHONE 803-434-8323, FAX 803-434-8326
FOLLOWUP VISIT

PATIENT: Robert Harrison
VISIT DATE: 11/18/10

Chart #: 65447
DOB: 0-0-00

CHIEF COMPLAINT: A 39-year-old, right-handed black male who has been evaluated for neck pain going into the back of the neck, some left arm pain which has settled down.

HISTORY OF PRESENT ILLNESS: He had an ACF in November of 2009 by Dr. Holbrook and returned to work. He does heavy lifting, 50 to 60 pounds a day.

He is currently on light duty not lifting more than 10 pounds. He states he does a lot better with that and currently having only some achy neck pain without arm pain. He was sent for a myelogram/postmyelogram CT by me when I saw him on the last visit of 11/02/10.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/SOCIAL HISTORY/FAMILY MEDICAL HISTORY: No change. Allergies: None.

EXAMINATION TODAY: Vital Signs: Blood pressure 140/96, pulse 76, respirations 16. Neurologically unchanged. Slightly decreased range of motion of the neck, a well-healed ACF scar, good grips, a negative Hoffmann's, slightly decreased pin in the left hand, non-anatomical.

PERTINENT X-RAY DATA: I reviewed the myelogram/postmyelogram CT. Not a completely solid fusion at C5-6 but it is unlikely that there is any movement. I do not see that the screws have come back or loosened in the area. There is no spinal cord compression or nerve root compression.

IMPRESSION: I feel that he is probably mainly complaining of chronic achy low neck pain. I talked about the risks, benefits and alternatives of posterior fusion with the patient which I do not think really should be done at this point. He feels that he can do a lot better if he is kept long-term light-duty.

PLAN: He has not had a functional capacity evaluation; my plan would suggest that he have one done and that long-term work restrictions should include not lifting over 15 to

RECEIVED
APR 29 2011

000144

OFFICE NOTE

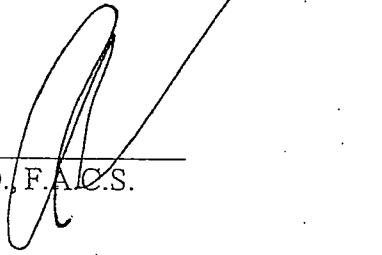
Raymond C. Sweet, M.D., F.A.C.S.

BY:

PATIENT: Robert Harrison
VISIT DATE: 11/18/10
PAGE TWO

20 pounds on a regular basis. I will not see him again unless something should change.

ADDENDUM: I spoke with his caseworker today as well and explained these things to her.



Raymond C. Sweet, M.D., F.A.C.S.

RCS/TrUSA0369-313959.2

cc: Marty McKay, Nurse Case Manager

000145

OFFICE NOTE

Raymond C. Sweet, M.D., F.A.C.S.

11/24/2010 09:13
NOV 10 10 06:00

8834348326

USC NEUROSURGERY

PAGE 02/02
p.2

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



Physician's Statement

Claimant's Name: Robert Harrison
Physician's Name: Raymond Sweet
Practice/Clinic: USC Dept. of Neurosurgery
Preparer's Name: _____
Phone: () _____

Employer's Name: Owen Steel
Insurance Carrier: Gallagher Bassett Services
SCWCC File No: 002979-019578-WC-01

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 10-4-10

Date of first office visit: 11-2-10

Date of last visit: 11-18-10

Diagnosis or nature of Injury or Illness: Ruptured Cervical Disc

Body part(s) injured: Cervical Spine

Body part(s) affected: Cervical Spine

Date of Maximum Medical Improvement: 11/2/10

Based on the AMA Guidelines, the claimant has sustained a 15 % medical impairment to total body injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

☐ The claimant is able to return to work without restriction.

☒ The claimant is able to return to work with the following restrictions:

Not a lifter 30lb

☒ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☐ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☒ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

chronic medications and MR

Follow-up: 3-4x/yr

Treating Physician

Date

11/23/10

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (2/29/2012)

Transcription (page 1)

Patient: ROBERT HARRISON (ID# 47906) Date of Birth:
Visit on 2/29/2012 (Log# 40181590)

History of Present Illness:

The patient presents with a chief complaint of constant (but worse at times) muscle pain of the right shoulder since approximately Mon, Feb 27, 2012. It has the following qualities: sharp and ache. Context: The patient reports it was not the result of an injury. pt complains of muscle pain in (R) shoulder x 2 days- Hx of (L) shoulder-cervical fusion. Works as a welder.

Review of Systems:

The patient complains of the following recent symptoms:

- Muscular:
 - muscle pain: See HPI

The patient denies the following recent symptoms:

- Constitutional: denies change in appetite, chills, fatigue, fever, sweats, weight loss
- Neurological: denies headache, light headedness, numbness, poor balance/coordination, tingling, weakness
- Lymph: denies frequent infections, lymph nodes
- Eyes: denies blurred vision, contact lenses, double vision, eye discharge, eye pain, wears eyeglasses
- Respiratory: denies congestion, cough, shortness of breath, wheeze
- GI: denies abdominal pain, diarrhea, nausea, rectal/perirectal complaints, urinary/bowel changes, vomiting
- Muscular: denies joint pain, swelling
- Skin: denies bruising, itching, laceration, rash, redness, skin sores

Allergies: patient reports "No allergies"

Current Medications: patient reports "No medications"

Medical History: patient reports "No problems"

Surgeries:

- Head/Neck/Breast surgery: cervical fusion- 2010

Social History:

- Alcohol: drinks occasionally (3-6 drinks per week)
- Tobacco Use: denies

Family History:

- Father: High Blood Pressure

Vitals:

Temperature: 97.0 °F (Oral), Pulse: 70 BPM, BP: 134/86, Respirations: 18/min, Weight: 190 LBS, Height: 5' 10", BMI 27.3, Hand dominance: Right

Physical Exam:

The following exam elements were documented to be abnormal:

- Muscular (Right): weakness/spasm/atrophy of trapezius/deltoid/upper extremity muscles
Right trapezius muscle: tenderness noted, which is moderate
Right deltoid muscle: no tenderness, no swelling, no deformity
Right upper extremity muscles: no tenderness, no swelling, no deformity, R levator scapularis mm spasm.

The following exam elements were documented to be normal:

- Cardiovascular: S1, S2, regular rate and rhythm, no murmur, rub or gallop
- General: well developed, well nourished, and no acute distress
- Lymph: no lymphangitis of upper extremities or lymphadenopathy of axillary lymph nodes
- Muscular: neck supple with good range of motion
- Muscular: normal gait and posture
- Muscular (Right): no shoulder weakness
- Muscular (Right): normal biceps tendon and rotator cuff
- Neurological (Right): upper extremity sensation intact

000147

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (2/29/2012)

Transcription (page 2)

- Respiratory: lung clear to auscultation with good air movement bilaterally
- Skin: no swelling or tenderness of skin of shoulder bilaterally
- Skin: no ecchymosis or rash of skin of shoulder bilaterally

Diagnosis:

- Muscle Spasm(728.85) - No Workup

Medication Orders:

- Prescribed: prednisone 20mg 2 tablet(s) by mouth Daily for 30 Days #2 Refills(0).
Prescribed at 2:15 PM on 2/28/2012
Prescription printed
- Prescribed: Lortab 7.5-500mg 1 tablet by mouth Every 6 Hours as directed #8 Refills(0).
Prescribed at 2:15 PM on 2/28/2012
Prescription printed
- Prescribed: Flexeril 10mg 1 tablet by mouth Every 8 Hours for 30 Days #7 Refills(0).
Prescribed at 2:15 PM on 2/28/2012
Prescription printed

Plan

- Please return to the clinic in 3 days if not better. Call or return to this clinic sooner if your condition worsens or if you have any concerns.
- Off work, and may return to work on 3/2/2012.
- Rest apply heat to the soar area with the arm elevated

Patient was discharged by Wade Reynolds on 2/29/2012 2:16:44 PM
Signed off electronically by Wade Reynolds on 2/29/2012 2:16:44 PM

000148

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (3/2/2012)

Transcription (page 1)

Patient: ROBERT HARRISON (ID#47906) Date of Birth: C
Visit on 3/2/2012 (Log# 40184707)

History of Present Illness:

The patient presents with a chief complaint of constant (but worse at times) pain of the right shoulder since Tue, Feb 28, 2012. The patient describes the severity as moderate Context: The patient reports it was not the result of an injury, which had a gradual onset. The patient has had a similar problem in the past. seen 3 days ago for right shoulder pain, not any better. Has used steroids, Muscle relaxers and Narcotics as prescribed w/o improvement. Had cervical fusion of C5-C6 in Nov. of 09. Had MRI after that after MYA that was reported as normal and pt was asymptomatic. Pt reports hx of slowly worsening R shoulder pain from 3 weeks ago. Pt indicates Superior Trap and Levator scapularis area.

Review of Systems:

The patient complains of the following recent symptoms:

- Muscular:
 - muscle pain: began approximately 3 weeks ago, gradual onset, symptoms are constant, but worse at times, located over right shoulder, pain is aching, pain is throbbing, pain is 4/10 on a 1-10 scale, no alleviating factors, alleviated by application of heat, alleviated by medication

The patient denies the following recent symptoms:

- Constitutional: denies change in appetite, chills, fatigue, fever, sweats, weight loss
- Neurological: denies headache, light headedness, numbness, poor balance/coordination, tingling, weakness
- Psychiatric: denies anxiety/nerves, depression
- Eyes: denies blurred vision, contact lenses, double vision, eye discharge, eye pain, wears eyeglasses
- ENT: denies dizziness, ear pain, nasal congestion, nasal discharge, sneezing, sore throat
- Respiratory: denies congestion, cough, shortness of breath, wheeze
- GI: denies abdominal pain, diarrhea, nausea, rectal/perirectal complaints, urinary/bowel changes, vomiting
- GU: denies discharge, frequent urination, nighttime urination, painful urination, sexual difficulties
- Skin: denies bruising, itching, laceration, rash, redness, skin sores

Allergies: patient reports "No allergies"

Current Medications:

- Lortab: by mouth, Q6h, started Wed, Feb 29, 2012
- prednisone. prednisone 20mg/2 tablet DAILY
- Flexeril: by mouth, Q8h, started Wed, Feb 29, 2012

Medical History: patient reports "No problems"

Surgeries:

- Head/Neck/Breast surgery: cervical fusion- 2010

Social History:

- Alcohol: drinks occasionally (3-6 drinks per week)
- Tobacco Use: denies

Family History:

- Father: High Blood Pressure

Vitals:

Temperature: 98.0 °F (Oral), Pulse: 83 BPM, BP: 136/92, Respirations: 16/min, Weight: 190 LBS, Height: 5' 10", BMI 27.3, Hand dominance: Right

Physical Exam:

The following exam elements were documented to be abnormal:

- Muscular (Left): weakness/spasm/atrophy of trapezius/deltoid/upper extremity muscles
Right trapezius muscle: tenderness noted, which is moderate, no swelling, no deformity
Right deltoid muscle: no tenderness, no swelling, no deformity, Also tender at the levator scapularis

The following exam elements were documented to be normal:

- Cardiovascular: S1, S2, regular rate and rhythm, no murmur, rub or gallop
- General: well developed, well nourished, and no acute distress

000149

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (3/2/2012)

Transcription (page 2)

- Lymph: no lymphangitis of upper extremities or lymphadenopathy of axillary lymph nodes
- Muscular (Left): normal biceps tendon and rotator cuff
- Muscular (Left): normal arm, elbow, forearm, hand, and wrist
- Neurological (Left): upper extremity sensation intact
- Neurological (Left): upper extremity deep tendon reflexes 2+ and equal bilaterally
- Psychiatric: normal mood and affect
- Respiratory: lung clear to auscultation with good air movement bilaterally
- Skin: no swelling or tenderness of skin of shoulder bilaterally

Diagnosis:

- Sprain, Shoulder/Upper Arm, Rotator Cuff/ Capsule(840.4) - No Workup

Medication Orders:

- Prescribed: diclofenac potassium 50mg 1 tablet by mouth Three Times A Day as directed #30 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed
- Prescribed: Lortab 5-500mg 1 tablet by mouth Q4-6h as directed #12 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed
- Prescribed: prednisone 10mg 1 package by mouth as directed #21 Refills(0).
Prescribed at 5:11 PM on 3/2/2012
Prescription printed

Plan

- Please follow up as directed with Orthoped for R shoulder pain
- Dr. Orthoped, Re: R shoulder pain
- Off work, and may return to work on 3/4/2012.
- Follow up for your R shoulder x-ray and MRI. Then you will need to take the results and go to the Orthoped.

Patient was discharged by Wade Reynolds on 3/2/2012 5:17:13 PM

Signed off electronically by Wade Reynolds on 3/2/2012 5:17:13 PM

Addendum Added By Added On

wendy@dx022 3/5/2012 8:45:01 AM

notified pt. of appointment with Palmetto Imaging 3/9/2012 @ 11:15

wendy@dx022 3/10/2012 10:41:17 AM

notified pt of radiology reports from Palmetto Imaging 1) faxed order for CXR per recommendation of Palmetto Imaging- they are to schedule, 2) received # to Neurosurgeon (Dr Thomas Holbrook 462-0423) from pt- unable to schedule appointment on weekend- left note for staff on Monday to work on referral.

000150

Filters Used:

1 Tagged Record

Note Report

Summary Format

Date Printed: 3/14/2012

Time Printed: 11:25AM

Printed By: CSOLES

font: 3/13/2012 Time 3:41PM - 3:41PM Duration: 0.00 (hours) Code

Desc TALKED TO CLIENT SEE BELOW

Staff Connie D Soles

Client HARRISON, ROBERT

CaseRef

CaseNo

Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

STATES HE WAS IN THE BACK YARD AND WAS LIFTING HIS DAUGHTER....AGE 5....WT APPROX. 30 LBS....TO 35 LBS..

'STATES AFTERWARDS APPROX. 2 OR 3 DAYS LATER NOTICED SORENESS AND WENT TO DR. REYNOLDS AT DRS EXPRESS ON FORREST DRIVE..

...THEY ORDERED ANOTHER MRI AND TO HIS CERVICAL AND SAID THEY WOULD RATHER HE SEE DR. HOLBROOK AND HAVE SCHEDULED HIM TO SEE HIM ON 3/26/12 AT 1:45...

'MRI WAS DONE AT PALMETTO IMAGING....

ONE WAS DONE ON NECK AND ONE ON SHOULDER....

000151

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (3/15/2012)

Transcription (page 1)

Patient: ROBERT HARRISON (ID# 47906) Date of Birth: 01/01/1951
Visit on 3/15/2012 (Log# 40202196)

History of Present Illness:

The patient presents with a chief complaint of constant (but worse at times) neck pain of the neck and back since Wed, Feb 29, 2012. The patient describes the severity as moderate Context: patient complaining neck pain and needing more pain meds until his next appointment.

Review of Systems:

The patient denies the following recent symptoms:

- Constitutional: denies change in appetite, chills, fatigue, fever, sweats, weight loss
- Neurological: denies headache, light headedness, numbness, poor balance/coordination, tingling, weakness
- Lymph: denies frequent infections, lymph nodes
- Eyes: denies blurred vision, contact lenses, double vision, eye discharge, eye pain, wears eyeglasses
- ENT: denies dizziness, ear pain, nasal congestion, nasal discharge, sneezing, sore throat
- Respiratory: denies congestion, cough, shortness of breath, wheeze
- GU: denies discharge, frequent urination, nighttime urination, painful urination, sexual difficulties
- Skin: denies bruising, itching, laceration, rash, redness, skin sores

Allergies: patient reports "No allergies"

Current Medications:

- diclofenac potassium: by mouth, TID, started Fri, Mar 02, 2012

Medical History: patient reports "No problems"

Surgeries:

- Head/Neck/Breast surgery: cervical fusion- 2010
- Abdominal/Pelvic surgery: Hernia surgery:

Social History:

- Alcohol: drinks occasionally (3-6 drinks per week)
- Tobacco Use: denies

Family History:

- Father: High Blood Pressure

Preventive Measures:

- Td (adult tetanus): Td immunization up to date

Vitals:

Temperature: 98.2 °F (Oral), Pulse: 84 BPM, BP: 138/99, Respirations: 16/min, Weight: 185 LBS, Height: 5' 10", BMI 26.5, Hand dominance: Right

Physical Exam:

The following exam elements were documented to be abnormal:

- Muscular (Left): weakness/spasm/atrophy of trapezius/deltoid/upper extremity muscles
Left trapezius muscle: tenderness noted, which is moderate

The following exam elements were documented to be normal:

- Cardiovascular: S1, S2, regular rate and rhythm, no murmur, rub or gallop
- General: well developed, well nourished, and no acute distress
- Lymph: thyroid without swelling, mass or tenderness
- Muscular: normal gait and posture
- Neurological (Left): upper extremity sensation intact
- Psychiatric: normal mood and affect
- Respiratory: lung clear to auscultation with good air movement bilaterally
- Skin: no ecchymosis or rash of skin of neck

000152

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (3/15/2012)

Transcription (page 2)

Diagnosis:

- CERVICALGIA(723.1) - No Workup

Medication Orders:

- Prescribed: prednisone 10mg 1 package by mouth as directed #21 Refills(0).
Prescribed at 3:26 PM on 3/15/2012
Prescription printed
- Prescribed: Lortab 10-500mg 1 tablet by mouth Every 8 Hours for 30 Days #30 Refills(0), pm break through pain at night.
Prescribed at 3:26 PM on 3/15/2012
Prescription printed

Plan

- Please follow up as directed with Neurosurgeon for cervical impingement syndrome on 3/26

Patient was discharged by Wade Reynolds on 3/15/2012 3:26:41 PM

Signed off electronically by Wade Reynolds on 3/15/2012 3:26:41 PM

000153

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (7/20/2012)

Transcription (page 1 of 3)

Patient: ROBERT HARRISON (ID# 47906) Date of Birth: [redacted]
Visit on 7/20/2012 (Log# 40371431)

History of Present Illness:

The patient presents with a chief complaint of constant (but worse at times) sore throat of the neck since Tue, Jul 17, 2012. The patient describes the severity as moderate. Context: The patient reports it was not the result of an injury, which had a gradual onset. The patient had no similar problems in the past. The patient reports no contact with a person with similar symptoms. complains of sore throat for 3 days. 40 YO AAM, STATES HAD HEARTBURN SX EARLIER IN WEEK, WHEN HE WAS TRAVELLING BACK AND FORTH TO NJ FOR WORK. STATES SORE THROAT BEGAN 3 DAYS AGO, ALSO WITH H/A, CHILLS. NOW HAS SLIGHT COUGH, RELATED TO THROAT IRRITATION, FEELS LIKE SOMETHING IS STUCK. The patient also reports chills, cough, fever, headache, and sweats as abnormal symptoms related to the complaint.

Review of Systems:

The patient complains of the following recent symptoms:

- Constitutional:
 - chills
 - fever: began approximately 3 days ago, symptoms are intermittent, feels feverish, but did not record temperature
 - sweats
- Neurological:
 - headache
- ENT:
 - sore throat: See HPI
- Respiratory:
 - cough

The patient denies the following recent symptoms:

- ENT: denies ear pain, nasal discharge, sneezing
- Respiratory: denies shortness of breath, wheeze
- GI: denies abdominal pain, diarrhea, nausea, vomiting

Allergies: patient reports "No allergies"

Current Medications: patient reports "No medications"

Medical History: patient reports "No problems"

Surgeries:

- Head/Neck/Breast surgery: cervical fusion- 2010
- Abdominal/Pelvic surgery: Hernia surgery:

Social History:

- Alcohol: drinks occasionally (3-6 drinks per week)
- Tobacco Use: denies

Family History:

- Father: High Blood Pressure

Preventive Measures:

- Td (adult tetanus): Td immunization up to date

Vitals:

Vital signs obtained 07/20/2012 8:54 AM

Temperature: 99.1 °F (Oral), Pulse: 72 BPM, BP: 132/86, Respirations: 16/min, Weight: 184 LBS, Height: 5' 10", BMI: 26.4, Hand dominance: Right

Physical Exam:

The following exam elements were documented to be abnormal:

- ENT: pharynx abnormality noted injected, moderately injected; with swelling, severe swelling

000154

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (7/20/2012)

Transcription (page 2 of 3)

Right: lymphadenopathy of anterior cervical lymph nodes noted, with enlargement, shotty enlargement, tenderness noted, mild tenderness, fixed;
Left: lymphadenopathy of anterior cervical lymph nodes noted, with enlargement, shotty enlargement, tenderness noted, mild tenderness, mobile

The following exam elements were documented to be normal:

- Cardiovascular: S1, S2, regular rate and rhythm, no murmur, rub or gallop
- ENT: external ear canal normal bilaterally
- ENT: ear pinnae and external nose without tenderness, deformity or lesion bilaterally
- ENT: tympanic membranes normal bilaterally
- ENT: tonsils without erythema, swelling, or exudate
- Eyes: conjunctivae non-icteric and not injected bilaterally
- General: well developed, well nourished, and no acute distress
- Muscular: normal gait and posture
- Psychiatric: normal mood and affect
- Respiratory: lung clear to auscultation with good air movement bilaterally
- Respiratory: no increased work of breathing
- Skin: skin normal in temperature and nontender on palpation

Labs:

- Strep A Ag - rapid
Code(s): 87690
Results
 - Strep A - rapid: Negative (Normal)
 - See scanned / attached documentation.

Ordered 07/20/2012 10:32 by Jones, Cynthia
Completed 07/20/2012 10:33 by Jones, Cynthia
Reviewed 07/20/2012 10:33 by Jones, Cynthia

Diagnoses:

- Pharyngitis, acute(462) - Workup
- Cough(786.2) - Workup
- Headache(784.0) - Workup
- REFLUX ESOPHAGMS(530.11) - Workup
- Upper Respiratory Infection, acute, site unspecified(465.9) - No Workup

Medication Orders:

- Prescribed: lidocaine HCl 2% (Visc) 5 mL(s) by mouth Four Times A Day as directed #100 Refills(2), MIX AS DIRECTED ON DISCHARGE INSTRUCTIONS.
Prescribed at 10:44 AM on 7/20/2012
Prescription attempted to be sent electronically
Prescription sent to Walgreens Drug Store 11379 Phone: 803-947-7538 7801 Gamewell Ferry Rd Columbia
- Prescribed: azithromycin 250mg Add1 Sig tablet by mouth as directed #6 Refills(0), TAKE 2 TABS ON DAY 1, FOLLOWED BY ONE TAB ON DAYS 2 THROUGH 5.
Prescribed at 10:44 AM on 7/20/2012
Prescription attempted to be sent electronically
Prescription sent to Walgreens Drug Store 11379 Phone: 803-947-7538 7801 Gamewell Ferry Rd Columbia
- Prescribed: Tessalon 200mg 1 capsule by mouth Three Times A Day as directed #21 Refills(0), TAKE AS NEEDED FOR COUGH.
Prescribed at 10:44 AM on 7/20/2012
Prescription attempted to be sent electronically
Prescription sent to Walgreens Drug Store 11379 Phone: 803-947-7538 7801 Gamewell Ferry Rd Columbia
- Prescribed: Protonix 40mg 1 tablet by mouth Daily as directed #30 Refills(2), FOR HEARTBURN SYMPTOMS.
Prescribed at 10:44 AM on 7/20/2012
Prescription attempted to be sent electronically
Prescription sent to Walgreens Drug Store 11379 Phone: 803-947-7538 7801 Gamewell Ferry Rd Columbia

Exit Care Documents:

- Pharyngitis (Viral and Bacterial)

000155

Doctors Express Columbia
3304 FOREST DRIVE
COLUMBIA, SC 29204
803-787-3901



HARRISON, ROBERT (7/20/2012)

Transcription (page 3 of 3)

- Gastroesophageal Reflux Disease (GERD)

Plan

- Please return to the clinic in 14 days if not better. Call or return to this clinic sooner if your condition worsens or if you have any concerns.
- Mix 1 tsp lidocaine with equal amount liquid Benadryl and liquid Maalox. Gargle with mixture until throat is numb, then spit out.

FOLLOW GUIDELINES PRINTED FOR GERD. IF THIS MEDICINE DOES NOT HELP WITH SORE THROAT, MAY NEED TO SEE G.I. DOCTOR.

Patient was discharged by Cynthia Jones on 7/20/2012 10:48:24 AM
Signed off electronically by Cynthia Jones on 7/20/2012 10:48:24 AM

000156

DOCTORS CARE

9:10pm

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET
258098	09/17/08	08:07pm	DC COLUMBIA EAST,	1041191

AME & ADDRESS WEDNESDAY

HARRISON, ROBERT

DOB: (37 years)

7290 CABIN CREEK RD
HOPKINS, SC 29061
803-776-2327

GENDER: M
FCL: 6
CELL:

WRK:

INSURED: HARRISON, ROBERT

INS: WC/OWENSTEEL ***ALL***

REASON: SEE SHEET

NICKNAME: Sharp pain (R) Neck & to middle back x 1 day

COPAY: COMP BT

INSURANCE \$0.00
BALANCEACCOUNT \$0.00
BALANCECURRENT
CHARGESAMOUNT
PAIDNEW
BALANCE

CASH CHECK MO C.C.

ISTORY: (- or +, or details)

Personal Hx

Family Hx

Social Hx

ROS (I or O)

M

DM

Alcohol

Fever, Chills

TN

HTN

Tobacco

N, V, D Constip.

V

MI<50

Drugs

SOB, CP

A

CVA

Reg. Exer.

Headache, Fatigue

urg

CA

Occup

UTI Sx. & Compl.

av. chart rev., no sig chg

Above Hx reviewed

IGT

BP

Pulse

Resp

Temp

793

120/86

76

20

97.8

HYSICAL: (see reverse) Omit if N/A

/ if nml, O if abnml. & give details

General

HEENT

Neck

Nodes

Lungs

CV

Abd

Back

Ext

GU

Neuro

Skin/Breasts

ests/Labs: (in-house)

CBC

Strep

Mono

U/A

□ Labs - sent out

□ H-Pylori

□ FBS

□ U Preg

□ Hemo

□ Microalbumin

□ HbA1c

□ KOHD IV

□ Wet Prep

□ EKG

□ X-Ray

□ Inject / Rx

Allergies:

NKA-

Medications:

O

Chief Complaint:

No working bent over N 1-2h
HPI (4 items):
appx felt sharp pain in
side of neck into
shoulder blade
Rto holding his head to
left

Toradol 60mg IM

62-243-01K

1-Feb-2010

Caspine

@ 6:39 PM

SG 08-1617

ASSESSMENT / DIAGNOSIS/ES:

Acute Cervical Strain

Patient Care Instructions Discuss:

Lifestyle Modification

ate to Return:

If worse:

If not better:

For Follow-Up:

o to ER if:

ff Work / School

estrictions:

te: If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

st: 1/17/08 MD

Referrals, Tests, Treatments

Prescriptions / OTC Meds

PSR Notes:

Naproxen 500 / 20

Fluoride 10/21

Moist Heat

Light Duty

Discussed

DAY 20 7240587105

DAY 21 7240587105

DAY 22 7240587105

DAY 23 7240587105

DAY 24 7240587105

DAY 25 7240587105

DAY 26 7240587105

DAY 27 7240587105

DAY 28 7240587105

DAY 29 7240587105

DAY 30 7240587105

DAY 31 7240587105

DAY 32 7240587105

DAY 33 7240587105

DAY 34 7240587105

DAY 35 7240587105

DAY 36 7240587105

DAY 37 7240587105

DAY 38 7240587105

DAY 39 7240587105

DAY 40 7240587105

DAY 41 7240587105

DAY 42 7240587105

DAY 43 7240587105

DAY 44 7240587105

DAY 45 7240587105

DAY 46 7240587105

DAY 47 7240587105

DAY 48 7240587105

DAY 49 7240587105

DAY 50 7240587105

DAY 51 7240587105

DAY 52 7240587105

DAY 53 7240587105

DAY 54 7240587105

DAY 55 7240587105

DAY 56 7240587105

DAY 57 7240587105

DAY 58 7240587105

DAY 59 7240587105

DAY 60 7240587105

DAY 61 7240587105

DAY 62 7240587105

DAY 63 7240587105

DAY 64 7240587105

DAY 65 7240587105

DAY 66 7240587105

DAY 67 7240587105

DAY 68 7240587105

DAY 69 7240587105

DAY 70 7240587105

DAY 71 7240587105

DAY 72 7240587105

DAY 73 7240587105

DAY 74 7240587105

DAY 75 7240587105

DAY 76 7240587105

DAY 77 7240587105

DAY 78 7240587105

DAY 79 7240587105

DAY 80 7240587105

DAY 81 7240587105

DAY 82 7240587105

DAY 83 7240587105

DAY 84 7240587105

DAY 85 7240587105

DAY 86 7240587105

DAY 87 7240587105

DAY 88 7240587105

DAY 89 7240587105

DAY 90 7240587105

DAY 91 7240587105

DAY 92 7240587105

DAY 93 7240587105

DAY 94 7240587105

DAY 95 7240587105

DAY 96 7240587105

DAY 97 7240587105

DAY 98 7240587105

DAY 99 7240587105

DAY 100 7240587105

DAY 101 7240587105

DAY 102 7240587105

DAY 103 7240587105

DAY 104 7240587105

DAY 105 7240587105

DAY 106 7240587105

DAY 107 7240587105

DAY 108 7240587105

DAY 109 7240587105

DAY 110 7240587105

DAY 111 7240587105

DAY 112 7240587105

DAY 113 7240587105

DAY 114 7240587105

DAY 115 7240587105

DAY 116 7240587105

DAY 117 7240587105

DAY 118 7240587105

DAY 119 7240587105

DAY 120 7240587105

DAY 121 7240587105

DAY 122 7240587105

DAY 123 7240587105

DAY 124 7240587105

DAY 125 7240587105

DAY 126 7240587105

DAY 127 7240587105

DAY 128 7240587105

DAY 129 7240587105

DAY 130 7240587105

DAY 131 7240587105

DAY 132 7240587105

DAY 133 7240587105

DAY 134 7240587105

DAY 135 7240587105

DAY 136 7240587105

DAY 137 7240587105

DAY 138 7240587105

DAY 139 7240587105

DAY 140 7240587105

DAY 141 7240587105

DAY 142 7240587105

DAY 143 7240587105

DAY 144 7240587105

DAY 145 7240587105

DAY 146 7240587105

DAY 147 7240587105

DAY 148 7240587105

DAY 149 7240587105

DAY 150 7240587105

DAY 151 7240587105

DAY 152 7240587105

DAY 153 7240587105

DAY 154 7240587105

DAY 155 7240587105

DAY 156 7240587105

DAY 157 7240587105

DAY 158 7240587105

DAY 159 7240587105

DAY 160 7240587105

DAY 161 7240587105

DAY 162 7240587105

DAY 163 7240587105

DAY 164 7240587105

DAY 165 7240587105

DAY 166 7240587105

DAY 167 7240587105

DAY 168 7240587105

DAY 169 7240587105

DAY 170 7240587105

DAY 171 7240587105

DAY 172 7240587105

DAY 173 7240587105

DAY 174 7240587105

DAY 175 7240587105

DAY 176 7240587105

DAY 177 7240587105

DAY 178 7240587105

DAY 179 7240587105

DAY 180 7240587105

DAY 181 7240587105

DAY 182 7240587105

DAY 183 7240587105

DAY 184 7240587105

DAY 185 7240587105

DOCTORS CARE

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO
258098	09/24/08	01:42pm	DC COLUMBIA EAST,	1048320

NAME & ADDRESS	WEDNESDAY	INSURANCE
HARRISON, ROBERT	DOB: (37 years)	\$386.85
7290 CABIN CREEK RD	GENDER: M	BALANCE
HOPKINS, SC 29061	FCL: 6	ACCOUNT \$386.85
803-776-2327	CELL:	BALANCE
WRK:	RELATION: OTHER	CURRENT CHARGES
INSURED: HARRISON, ROBERT	GRP:	AMOUNT PAID
INS: WC/OWENSTEEL ***ALL***	COPAY: COMP BT	NEW BALANCE
REASON: SEE SHEET		CASH CHECK MO C.C.
NICKNAME: <u>S/u Cervical Strain</u>		

ISTORY: (- or +, or details)	ROS (I or O)	PREVENTIVE (year of last)	Allergies:
Personal Hx	Fever, Chills	Circle recommendations	NKDA
Family Hx	N, V, D-Constip.	Tetanus	Medications:
DM	SOB, CP	Cholesterol	Naproxen
HTN	Headache, Fatigue	Women LMP	Flexeril
MI<50	UTI Sx. ? Compl.	Men PSA	
CVA		Rectal	
CA		Flu Shot	
urg		Pneumovax	
rev. chart rev., no sig chg			

VGT	BP	Pulse	Resp	Temp	Chief Complaint:
	130/98			98.3	DOI 9/17/08

PHYSICAL: (see reverse) Omit if N/A	HPI (4 Items):
General	pt reports
HEENT	Symptoms ~ 95%
Neck	improved but
Nodes	still taking Flexeril
Lungs	Naproxen
CV	Side neck feels
Abd	tight & numbness
Back	stinging & weakness
Ext	UE's
GU	
Neuro	
Skin/Breasts	
Tests/Labs: (in-house)	
CBC	
Strep	
Mono	
U/A	
Labs - sent out	
H-Pylori	
FBS	
U Preg	
Hemo	
Microalbumin	
HbA1c	
KOH IV	
Wet Prep	
EKG	
X-Ray	
Inject / Rx	

ASSESSMENT / DIAGNOSIS/ES:
Cervical neck Strain

Patient Care Instructions Discussed	Referrals, Tests, Treatments	Prescriptions / OTC Meds	PSR Notes:
Lifestyle Modification		Side Effects Discussed	99213
Return to:			- 79
If worse:			
If not better:			
For Follow-Up:			
to ER if:			
Work / School			
Restrictions:			
Outside tests ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.			

Signature	Date
Karen Kame, R.N.	000158
Stranice	
MD, D.O., F.A.F.N.P.	

Work Compensation	Signature	Date
I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records of the treatment I have received or will receive.		
I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.		



RETURN TO WORK FORM

MIDLANDS AREA

☐ AIKEN 850 Aiken Mall Drive Aiken SC 29803 548-1464	☒ COLUMBIA EAST 7685 Commerce Forty Road Columbia SC 29209 783-2661	☐ SEVEN OAKS 6168 St Andrews Rd Columbia SC 29212 772-5030	☐ TRIANGLE CITY 120 Old Charleston Hwy West Columbia SC 29169 791-0734
☐ NORTH AIKEN 1029 York St N.C Aiken SC 29801 548-4119	☐ FOREST ACRES 4416 Forest Drive Suite A Columbia SC 29205 730-9422	☐ SUMTER 2475 Broad St Sumter SC 29150 778-6165	☐ _____
☐ BELTLINE 511 Beltline Blvd Columbia SC 29205 782-4051	☐ LEXINGTON 247 Columbia Ave Lexington SC 29072 349-5533	☐ WATEREE 1080 Highway 1 South Lugoff SC 29078 438-9759	☐ _____
☐ CAYCE 911 Knox Abbott Drive Cayce SC 29033 734-0476	☐ NORTHEAST 110 Arrium Way Columbia SC 29223 788-1153	☐ WEST COLUMBIA 3240 Sunset Blvd West Columbia SC 29168 786-4251	☐ _____

NAME: Robert Harrison
DATE: 9/24/2008
ARRIVAL TIME: 1:45pm
DISCHARGE TIME: _____
COMPANY NAME: _____

WORK STATUS: (Check appropriate boxes)

- ☐ 1. May perform Full Duty work as of _____ without accommodations.
- ☐ 2. Off Duty due to work-related condition.
Estimated return to work date modified duty: _____
Estimated return to work date full duty: _____
- ☒ 3. May work with the following accommodations as of: 9/24/08 Time: _____
☒ No lifting more than 25 lbs
☒ No operation of hazardous or fast-moving machinery; no driving.
☐ Ground level work only, no ladder or heights.
☐ No repeated bending, stooping, squatting, pushing, jerking, twisting or bouncing.
☐ No continuous standing and/or sitting.
☐ Minimum walking, climbing (includes stairs).
☐ Limited use of _____
☐ No overhead lifting.
☐ No high repetitive hand activities for extended periods of time.
☐ No use of _____
- ☐ 4. Has reached Maximum Medical Improvement (MMI).
- ☒ 5. Return for re-evaluation at this office on October 15th, 08 Time: _____
- COMMENTS: _____

PATIENT DISCHARGE INSTRUCTIONS:

- Medications: ☐ as directed ☒ as needed ↓ frequency if possible
- Wound Care or Injury Care: ☒ Diagnosis: Cervical neck strain
- | | | |
|--|---|---|
| ☐ keep dry & clean | ☐ do not remove dressing | ☐ Home exercise instructions given |
| ☐ elevate extremity | ☐ apply ice every _____ | ☐ Follow instruction sheet given |
| ☐ warm soaks | ☒ apply heat every <u>6 hrs</u> | ☐ Bed rest for _____ |
| ☐ wear elastic support/immobilizer/keep taped | | |

REFERRAL: (If a referral is made to Therapy, or another Physician, please complete this section)

To: _____ Date: 9/24 Time: _____
For: _____
Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer.

EMPLOYEE SIGNATURE: [Signature] 000159 Date: _____
PHYSICIAN SIGNATURE: [Signature] -85- Date: 9/24/08

DOCTORS CARE

6:50pm

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
258098	10/01/08	05:58pm	DC COLUMBIA EAST,	1055381

NAME & ADDRESS		WEDNESDAY	INSURANCE
HARRISON, ROBERT		DOB: (37 years)	BALANCE \$465.85
7290 CABIN CREEK RD		GENDER: M	ACCOUNT BALANCE \$465.85
HOPKINS, SC 29061		FCL: 6	CURRENT CHARGES
803-776-2327		CELL:	AMOUNT PAID
WRK:		RELATION: OTHER	NEW BALANCE
INSURED: HARRISON, ROBERT		GRP:	CASH CHECK M.O. C.C.
INS: WC/DWENSTEEL ***ALL***		COPAY: COMP BT	
REASON: RE-EVALUATION			
NICKNAME: FIV			

HISTORY: (- or +, or details) See 9/24/08			ROS (I or O)	PREVENTIVE (year of last)	Allergies:
Personal Hx	Family Hx	Social Hx	Favor, Chills	Circle recommendations	NKA
DM	DM	Alcohol	N, V, D Constip.	Tetanus 06	
HTN	HTN	Tobacco	SOR, CP	Cholesterol	
V	MI<50	Drugs	Headache, Fatigue	Colonoscopy	
A	CVA	Reg. Exer...	UTI Sx. & Compl.	Pneumovax	
urg	CA	Occup		BMD DEXA	
rev. chart rev., no sig chg			Chief Complaint:		
NGT	BP 120/88	Pulse 60	Resp 20	Temp 98.3	

PHYSICAL: (see reverse) Omit if N/A

✓ if nml, O if abnml. & give details

1 General

1 HEENT

1 Neck

1 Nodes

1 Lungs

1 CV

1 Abd

1 Back

1 Ext

1 GU

1 Neuro

1 Skin/Breasts

Tests/Labs: (in-house)

1 CBC

1 Strep

1 Mono

1 U/A

□ Labs - sent out

□ H-Pylori

□ FBS

□ U Preg

□ Home

RPI (4 items):

Feels 100% Body to remain

normal dates

o - Short confide

NT C-SPIN, neck FROM

NT Frig

normal upper ext exam

ASSESSMENT / DIAGNOSIS/ES:

1 Patient Care Instructions Discussed:

1 Lifestyle Modification

Date to Return:

1 If worse:

1 If not better:

1 For Follow-Up:

Go to ER if:

At Work / School

Restrictions:

Note: If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

I, [Signature], M.D., D.O., P.A., F.N.P.

I voluntarily consent to my and all health care treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, nurses and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctor's Care.

I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctor's Care Notice Privacy Practices.

I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

Patient or Authorized Person's Signature:

Date:

Workers Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records or the treatment I have received or will receive.

Patient or Authorized Person's Signature: [Signature] -86- 10/1/08



RETURN TO WORK FORM

MILLAN AREA

☐ AIKEN
1850 Aiken Mall Drive
Aiken, S.C. 29803
648-1454

☐ COLUMBIA EAST
7639 Carmel Ferry Road
Columbia, S.C. 29209
783-2051

☐ SEVEN OAKS
6158 St. Andrews Rd
Columbia, S.C. 29212
772-5030

☐ TRIANGLE CITY
720 Old Charleston Hwy
West Columbia, SC 29169
791-0734

☐ NORTH AIKEN
1029 York St. N.E.
Aiken, S.C. 29801
648-4119

☐ FOREST ACRES
4618 Forest Drive Suite A
Columbia, S.C. 29208
738-6522

☐ SUMTER
2475 Broad St.
Sumter, S.C. 29150
770-6555

☐ _____

☐ BELTLINE
511 Beltline Blvd
Columbia, S.C. 29205
782-4051

☐ LEXINGTON
241 Columbia Ave
Lexington, S.C. 29072
359-5533

☐ WATERLOO
1080 Highway 1 South
Lugoff, S.C. 29078
438-9759

☐ _____

☐ CAYCE
977 Knox Abbott Drive
Cayce, S.C. 29033
784-0476

☐ NORTH EAST
110 Atrium Way
Columbia, S.C. 29223
708-1153

☐ WEST COLUMBIA
3240 Sunset Blvd
West Columbia, SC 29168
790-4271

NAME: Robert Harrison

DATE: 10/1/08

ARRIVAL TIME: 5:52 p.m.

DISCHARGE TIME: 6:50 p.m.

COMPANY NAME: WC/Owen Steel

WORK STATUS: (Check appropriate boxes)

- ☒ 1. May perform Full Duty work as of 10/1/08 without accommodations.
- ☐ 2. Off Duty due to work-related condition.
Estimated return to work date modified duty: _____
Estimated return to work date full duty: _____
Return for re-evaluation at this office on _____ Time: _____
- ☐ 3. May work with the following accommodations as of: _____ Time: _____
- ☐ No lifting more than _____ lbs.
 - ☐ No operation of hazardous or fast-moving machinery; no driving.
 - ☐ Ground level work only, no ladder or heights.
 - ☐ No repeated bending, stooping, squatting, pushing, jerking, twisting or bouncing.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimum walking, climbing (includes stairs).
 - ☐ Limited use of _____
 - ☐ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____
- ☒ 4. Has reached Maximum Medical improvement (MMI).
- ☐ 5. Return for re-evaluation at this office on _____ Time: _____
- COMMENTS: _____

PATIENT DISCHARGE INSTRUCTIONS:

Medications: ☐ as directed ☐ as needed

Wound Care or Injury Care:

☐ keep dry & clean ☐ do not remove dressing

☐ elevate extremity ☐ apply ice every _____

☐ warm soaks ☐ apply heat every _____

☐ wear elastic support/immobilizer/keep taped

☐ Home exercise instructions given

☐ Follow instruction sheet given

☐ Bed rest for _____

☒ Diagnosis: Cervical strain

REFERRAL: (If a referral is made to Therapy, or another Physician, please complete this section)

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer.

EMPLOYEE SIGNATURE: [Signature] Q00161 Date: 10/1/08

PHYSICIAN SIGNATURE: [Signature] Date: 10/1/08

1132

FROM ROOM TIME		CHECKOUT TIME		TICKET NO.
ACCOUNT NUMBER	DATE	TIME		
258098	12/04/08	03:58am	DC COLUMBIA EAST, 1118996	
NAME & ADDRESS			INSURANCE BALANCE \$346.85	
THURSDAY			ACCOUNT BALANCE \$346.85	
HARRISON, ROBERT			CURRENT CHARGES	
7290 CABIN CREEK RD			AMOUNT PAID	
DOB: (37 years)			NEW BALANCE	
GENDER: M			CASH	
CELL:			CHECK	
HOPKINS, SC 29061			M.O.	
803-776-2327			C.C.	
WRK:				
INSURED: HARRISON, ROBERT				
INS: WC/OWENSTEEL ***ALL***				
REASON: SPRAIN MUSCLE OF THE NECK				
NICKNAME:				
RELATION: OTHER				
ID:				
COPAY: COMP BT				

STORY: (- or +, or details) Personal Hx Family Hx Social Hx A ——— DM <u>+</u> Alcohol <u>+</u> N ——— HTN <u>+</u> Tobacco <u>+</u> M ——— MI <u>-</u> Drugs ——— CVA ——— Reg Exor. ——— CA <u>+</u> Occup. <u>builder</u>			ROS (I or O) Fever, Chills N, V, D Constip. SOB, CP Headache, Fatigue UTI Sx. ♀ Compl.		PREVENTIVE (year of last) Circle recommendations Tetanus <u>06</u> Women Men Cholesterol LMP PSA SOB, CP PAP Rectal Colonoscopy PPD Flu Shot — Mamm Pneumovax BMD DEXA		Allergies: <u>NKA</u> Medications: <u>Ø</u>	
iv. chart rev., no sig chg Above Hx reviewed			Chief Complaint: <u>(As above)</u>					
GT <u>93</u>	BP <u>120/80</u>	Pulse <u>60</u>	Resp <u>20</u>	Temp <u>98.1</u>				

PHYSICAL: (see reverse) Omit if N/A
if nml., O if abnml. & give details)

General
HEENT
Neck
Nodes
Lungs
CV
Abd
Back
Ext
GU
Neuro
Skin/Breasts
Tests/Labs: (in-house)

supply & Affrom
TTP over @ trap
Affrom of @ shoulders
upper ext. NV intact
Arm strength 5/5.

☐ Labs - sent out
☐ H-Pylori
☐ FBS
☐ U Preg
☐ Heme

HPI (4 items):
originally seen 9/17/08 for
cervical strain. Released to
mim I 10/1/08. States pain
in neck returned 3-4 p
returned to full duty. NO
direct injury. Works over 20-30
min. straight welding. Pain
same as before in same
location.

☐ Microalbumin ☐ EKG
☐ HbA1c ☒ X-Ray C-spine / no pain
☐ KOH ☐ IV
☐ Wet Prep ☐ Inject / Rx

08-2041 location.
↓ arms.

ASSESSMENT / DIAGNOSIS/ES: Cervical Strain

Patient Care Instructions Discussed:

Lifestyle Modification quick disp naproxen 500mg
to Return: + flexeril 10mg (driving)
If worse: precautions, no driving
If not better: - PT referral
For Follow-Up 1 week
to ER if:
Work / School
Restrictions:

Referrals, Tests, Treatments

Prescriptions OTC Meds
Side Effects Disc'd
Don't take with other NSAIDs
Don't take with alcohol
Don't take with aspirin

PSR Notes:
72040
5377-00
5971-05
69214

Outside tests ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

I, Dr. [Signature], M.D., D.O., P.A., N.P.
I voluntarily consent to my and all health care treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and all health care
involves an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctor's Care.
I consent to the use and disclosure of my the patient's protected health information for purposes of obtaining payment for services rendered to me/ to patient treatment and health care operations consistent with the Doctor's Care Notice
Privacy Practices
I authorize payment of medical benefits to Doctor's Care physicians or the physician for services rendered
I, [Signature], Doctor's Care Authorized Person's Signature Date: 12/4/08
I, [Signature], Worksite Compensation Patient's Signature, I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records
The treatment I have received or will receive.
000162
I, [Signature], Doctor's Care Authorized Person's Signature Date: _____

DOCTORS CARE

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
258098	01/06/09	08:38am	DC COLUMBIA EAST	1148618

IME & ADDRESS

TUESDAY

HARRISON, ROBERT
7290 CABIN CREEK RDDOB:
GENDER: M

(37 years)

HOPKINS, SC 29061
803-776-2327

WRK:

INSURED: HARRISON, ROBERT

INS: WC/OWENSTEEL ***ALL***

REASON: RE-EVAL

CELL:

RELATION: OTHER

ID:

COPAY: COMP BT

INSURANCE

BALANCE \$339.85

ACCOUNT

BALANCE \$339.85

CURRENT
CHARGESAMOUNT
PAID 0NEW
BALANCE

CASH CHECK M.O. C.C.

STORY: (- or +, or details)

Personal Hx	Family Hx	Social Hx
DM	+	Alcohol
HTN	+	Tobacco
MI < 50	+	Drugs
CVA	+	Reg. Exer
CA	+	Occup. W/Car

ROS (I or O)

Fever, Chills
N, V, D Constip.
SOB, CP
Headache, Fatigue
UTI Sx. ? Compl

PREVENTIVE (year of last)

Circle recommendations

Tetanus	Women	Men
Cholesterol	LMP	PSA
Colonoscopy	PAP	Rectal
Flu Shot	Mamm	
Pneumovax	BMD DEXA	

Allergies:

NKDA

Medications:

None

v. chart rev., no sig chg. Above Hx reviewed

ST	BP	Pulsu	Resp	Temp
				98.2

Chief Complaint:

HPI (4 items):

PHYSICAL: (see reverse) Omit if N/A
if nml., O if abnml. & give details)

General

HEENT

Neck

Nodes

Lungs

CV

Abd

Back

Ext

GU

Neuro

Skin/Breasts

sts/Labs: (In-house)

CBC

Strep

Mono

U/A

□ Labs sent out

□ H-Pylori

□ FBS

□ U Preg

□ Heme

□ Microalbumin

□ HbA1c

□ KOH IV

□ Wet Prep

□ EKG

□ X-Ray

□ Inject / Rx

ASSESSMENT / DIAGNOSIS/ES:

Patient Care Instructions Discussed:

Lifestyle Modification

le to Return:

f worse:

f not better:

For Follow-Up:

to ER if:

Work / School

Instructions:

If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

Referrals, Tests, Treatments

Prescriptions / OTC Meds

Side Effects Discussed

PSR Notes:

I, the undersigned, do hereby certify that the above information is true and correct to the best of my knowledge and belief. I am a duly licensed physician and am not aware of any other persons who are not duly licensed who have been involved in the care of the patient. I am aware that the practice of medicine and other health care services is not an exact science and I further state that no guarantee has been or can be made as to the results of the treatments or examinations conducted by Doctor's Care.

I, the undersigned, do hereby authorize the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctor's Care Notice of Privacy Practices.

I, the undersigned, do hereby authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

Doctor/Authorized Person's Signature:

Date:

000163

Workers Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records.

I, the undersigned, do hereby authorize the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctor's Care Notice of Privacy Practices.

Doctor/Authorized Person's Signature:

-89- 1/1/09



RETURN WORK FORM

MIDLANDS AREA

☐ AIKEN
650 Aiken Mall Drive
Aiken, S.C. 29801
643-1464

☒ COLUMBIA EAST
7559 Gamers Ferry Road
Columbia, S.C. 29209
783-2681

☐ SEVEN OAKS
6168 St. Andrews Rd.
Columbia, S.C. 29212
772 5030

☐ TRIANGLE CITY
720 Old Charleston Hwy.
West Columbia, SC 29169
701-0734

☐ NORTH AIKEN
1020 York St. N.E.
Aiken, S.C. 29801
648-4119

☐ FOREST ACRES
4416 Forest Drive Suite A
Columbia, S.C. 29208
738-9322

☐ SUMTER
2475 Broad St.
Sumter, S.C. 29150
778 6555

☐ _____

☐ BELLEVILLE
511 Bellvue Blvd
Columbia, S.C. 29205
782-1051

☐ LEXINGTON
247 Columbia Ave
Lexington, S.C. 29572
359 5533

☐ WATERBURY
1060 Highway 1 South
Lugoff, S.C. 29078
438-8759

☐ _____

☐ CAYCE
977 Knox Abbott Drive
Cayce, S.C. 29033
794-0478

☐ NORTHEAST
110 Atrium Way
Columbia, S.C. 29223
788-1153

☐ WEST COLUMBIA
3240 Sunset Blvd.
West Columbia, SC 29169
788 4251

NAME: Robert Harrison

DATE: 1-6-09

ARRIVAL TIME: 8:05

DISCHARGE TIME: 9:35

COMPANY NAME: WKC Olsen Steel

WORK STATUS: (Check appropriate boxes)

☒ 1. May perform Full Duty work as of 01-06-09 without accommodations.

☐ 2. Off Duty due to work-related condition.

Estimated return to work date modified duty: _____

Estimated return to work date full duty: _____

Return for re-evaluation at this office on _____

Time: _____

☐ 3. May work with the following accommodations as of: _____

☐ No lifting more than _____ lbs.

☐ No operation of hazardous or fast-moving machinery; no driving.

☐ Ground level work only; no ladder or heights.

☐ No repeated bending, stooping, squatting, pushing, jerking, twisting or bouncing.

☐ No continuous standing and/or sitting.

☐ Minimum walking, climbing (includes stairs).

☐ Limited use of _____

☐ No overhead lifting.

☐ No high repetitive hand activities for extended periods of time.

☐ No use of _____

☐ 4. Has reached Maximum Medical improvement (MMI).

☐ 5. Return for re-evaluation at this office on _____

Time: _____

COMMENTS:

To finish the remaining pay

PATIENT DISCHARGE INSTRUCTIONS:

Medications: ☐ as directed ☐ as needed

Wound Care or Injury Care:

☐ keep dry & clean

☐ do not remove dressing

☐ Home exercise instructions given

☐ elevate extremity

☐ apply ice every _____

☐ Follow instruction sheet given

☐ warm soaks

☐ apply heat every _____

☐ Bod rest for _____

☐ wear elastic support/immobilizer/keep taped

☒ Diagnosis: for cervical strain

with

REFERRAL: (If a referral is made to Therapy, or another Physician, please complete this section)

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer.

EMPLOYEE SIGNATURE: Robert Harrison

000164

Date: 1/6/09

PHYSICIAN SIGNATURE: [Signature]

90

Date: 1/6/09

Marty
CNG88E

Florence

Neurosurgery & Spine

Andrew H. Rhea, MD
William B. Naso, MD
James J. Brennan, MD
Christopher G. Paramore, MD
Elizabeth A. Snoderly, DO

ph: 843 673 0122
fx: 843 673 0227
fx: 843 661 6400

INDEPENDENT MEDICAL EVALUATION

Patient: Robert Harrison

Requesting Source: GENEX Services

Marty Mackey, RN, AD - Medical Case Manager

Place of Evaluation: Florence Neurosurgery & Spine Office

1204 East Cheves Street

Florence, South Carolina 29506

Date of Evaluation: November 12, 2010

Time of Evaluation: 11:15 a.m. - 12:15 a.m.

It was explained to the patient before the evaluation that he was undergoing Independent Medical Evaluation as requested by GENEX Services/Gallagher Bassett Services. The purpose of the visit was specifically explained to the patient. The purpose was explained as to review history, medical information, physical examination, and radiographic review for Independent Medical Evaluation only. It was also explained to the patient that no treating physician/patient relationship would be established. The patient confirmed his understanding of the above.

CHIEF COMPLAINT: Neck and left arm pain and sensory alteration.

HISTORY OF PRESENT ILLNESS: This is a 39 y/o male from Hopkins, South Carolina. He was involved in a work-related accident as a welder for Owen Steel September 17, 2008. He describes the accident as having his head in a bent position for quite a while after which he lifted his head and turned towards the right and experienced sudden onset of pain and a locking sensation in his neck. He reported this to his supervisors. He was referred to Doctors Care where he was seen and conservative management was initiated. He underwent two separate sessions of physical therapy. He was returned to limited duty at work. He was also treated with oral medication. Apparently he failed conservative treatment and after a substantial period of time he underwent cervical MRI scan. This study was performed on July 9, 2009. This shows what appeared to be focal left foraminal disc protrusion at C5-6 as well as a disc bulge at C4-5. He was referred to Dr. Jeff Holbrook for further evaluation and treatment. He underwent one cervical epidural steroid injection which failed to give him any lasting relief.

000165

Robert Harrison
Page 2
November 12, 2010

In November, 2009 he underwent an anterior cervical disc excision and fusion at C5-6 by Dr. Holbrook. He states that he received some improvement with this and was progressing fairly satisfactorily. He did require postoperative physical therapy as well as continued medication but was able to return to work after about two months in a sedentary job description which progressed then to light duty. It sounds like he actually returned to full duty by around July of 2010. Incidentally, it should be noted that he was involved in a motorcycle accident on April 4, 2010 at which time he suffered some scalp injuries as well as a fractured left clavicle. He was not hospitalized for this and was treated conservatively.

The patient also reports that in early October of 2010 he suffered another accident at work while he was lifting a spool of wire and experienced the sudden onset of pain in his neck that radiated into the left arm. He subsequently reported to the emergency room at Richland Hospital where he underwent an MRI scan and was then referred to Dr. Sweet for further treatment. Currently, he is undergoing evaluation of neck and left arm symptoms by Dr. Sweet and has undergone a cervical myelogram, actually only about four or five days ago. Currently, he reports pain in his neck and left arm at an intensity level of 7/10 on a pain intensity scale. He also reports numbness in the fingers of the left hand as well as some weakness in the left arm. He states that his symptoms are somewhat similar to his symptoms prior to his first disc operation in November 2009. At this time he is taking Tylox several times a day as well as Diazepam approximately every four hours. He continues at work at light duty.

PAST MEDICAL HISTORY is negative for hypertension, diabetes, asthma, heart disease, MI, or cancer.

PAST SURGICAL HISTORY: He has had a hernia repair in 1988 as well as cervical disc excision and fusion, as mentioned above, in November 2009.

CHRONIC MEDICATIONS include Tylox and Valium on an as-needed basis.

ALLERGIES: He states no known drug allergies.

SOCIAL HISTORY: He is married, has two children, ages 3 and 10. He works as a welder. He is a smoker. He is an occasional drinker. His drinks are limited to two or three drinks on a weekend.

REVIEW OF SYSTEMS: Essentially negative review of systems per health history questionnaire other than his symptoms of neck and right arm pain, numbness, and weakness, as noted above.

FAMILY HISTORY: Positive for colon cancer in his grandfather.

000166

Robert Harrison
Page 3
November 12, 2010

PHYSICAL EXAMINATION: Height is 5' 10" and weight 180 pounds.

Heart rate is 78. Blood pressure is 130/70. Respirations are 12 and regular. Temperature is 98.7.

His scalp and skull are unremarkable except for scar in the left frontal area.

Ears, nose, and throat are clear.

Chest is clear to auscultation and his breath sounds are full.

Heart is regular.

Abdomen is soft and nontender.

Extremities appear atraumatic.

Peripheral pulses are full in both upper and lower extremities.

Joints are otherwise unremarkable except for some mild tenderness over the left clavicle.

MUSCULOSKELETAL EXAM: He has a normal gait.

His manual motor strength testing shows mild weakness in the left deltoid. He does seem to have some mild generalized give-away weakness in both upper extremities but this is bilaterally symmetrical and non-focal in nature.

His sensory exam was carried out to light touch, pin prick, and graphesthesia and was remarkable only for some alteration in the index finger of the left hand.

His reflex exam showed 1+ biceps, 2+ brachial radialis, and 2+ triceps bilaterally.

His knee jerks were +2. His ankle jerks were +2. His toes were down-going. No clonus was noted.

He has markedly limited flexion and extension in his cervical spine. He can only flex about 5 - 10 degrees and extension is about 10 - 15 degrees. Lateral rotation was approximately 45 degrees bilaterally, and lateral bending was about 45 degrees bilaterally which produces some pain for him.

Full arm abduction did result in some mild improvement of his pain. Otherwise, the Spurling's test was mildly positive on the left side.

RADIOGRAPHIC REVIEW: I have reviewed x-rays which were supplied to me. These consist of an MRI scan from 7/9/09 as well as an MRI scan from June 14, 2010. There is also a report of an MRI scan from October 4, 2010, and we also have a disk of a testicular ultrasound from October 26, 2010. The MRI scan from 7/9/09 does show a disc bulge at C5-6 and to a slightly lesser extent at C4-5 but no major disc herniation is present. There is some foraminal stenosis at the C5-6 level, worse on the left.

The MRI scan from June 14, 2010 is a postoperative scan showing fusion at C5-6. There also appears to be a small but definite disc herniation on the left at C4-5.

The report from Palmetto Health regarding MRI scan of the cervical spine on October 4, 2010 shows a broad-based disc bulge at C3-4. The reports states at C4-5 that there is an additional broad-based disc bulge, mildly asymmetric, greater on the left resulting in overall moderate

000167

Robert Harrison
Page 4
November 12, 2010

central canal narrowing and narrowing of the canal to approximately 7 mm AP. Also, it shows generalized disc bulge at C6-7 causing minimal anterior effacement of the thecal sac without significant superimposed central canal narrowing.

IMPRESSION: Left arm radiculopathy which appears to be a recurrent radiculopathy after previous treatment of radiculopathy for C5-6 disc herniation. My review of his MRI scan suggests that he may have nerve root compression at C4-5 on the left causing some of his symptoms. Currently, it sounds like he is under treatment by Dr. Sweet and that further evaluation with cervical myelogram has been carried out. This study is unavailable for review at this time.

DISCUSSION: In response to questions forwarded to me regarding this patient, I would recommend the following answers:

1. His diagnosis is left cervical radiculopathy which currently appears secondary to C4-5 disc herniation.
2. Prognosis for recovery would be guarded at this point pending further evaluation and treatment of his current radiculopathy.
3. Regarding causal relationship, it would appear to me that this patient's current symptomatology seemed to be related to either a motorcycle accident in April of 2010 or a work injury in of October 2010. Review of his MRI scan suggests that this disc herniation may have been present in June of 2010. Certainly, this disc herniation may have been exacerbated by his reported injury in October 2010.

However, I do not believe that his current symptomatology is specifically related to the accident of September 17, 2008. I do believe that his previous radiculopathy and treatment are related to the incident of September 17, 2008. However, he has received appropriate treatment for this and sounds like he was recovering satisfactorily prior to these more recent accidents.

4. With regard to current disability, it does appear that this patient has a significant radiculopathy and I would not recommend return to full duty at this time pending further treatment of his cervical radiculopathy. I would suggest at this point that he would only be able to carry out light duty. In addition, it should be clearly noted that if he is on oral narcotics as well as Diazepam that it may not be safe for him to work under these circumstances.

5. With regard to further treatment for his injuries, I would strongly recommend that he continue treatment with Dr. Sweet for evaluation of his cervical myelogram and appropriate treatment recommendations made, whether those be further conservative management treatments or surgical treatment would be up to Dr. Sweet.

000168

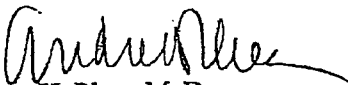
Robert Harrison
Page 5
November 12, 2010

I do believe that he has reached maximum medical improvement from his accident of September 17, 2008. With regard to this specific accident and subsequent treatment, I would suggest that he has a Class II, Grade D impairment of 12% whole person impairment.

Currently, therefore, I would suggest that this patient not be allowed to return to work until his current symptoms are evaluated further and appropriate treatment rendered.

I appreciate the opportunity to see and evaluate this patient. I would be happy to supply information as needed

Sincerely,


Andrew H. Rhea, M. D.

AHR/hla

000169

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0824526

Robert Harrison,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	TRANSCRIPT OF PROCEEDINGS
Owen Steel Company,	)	
Employer,	)	August 1, 2014
	)	
and	)	
	)	
Old Republic General	)	
Insurance Corporation,	)	
Carrier,	)	
	)	
Defendants.	)	

This hearing was held before

Commissioner Gene McCaskill, reported by

Kimberly T. Power, Court Reporter and Notary

Public in and for the State of South Carolina;

said proceedings were held at the South

Carolina Workers' Compensation Commission, 1333

Main Street, Columbia, South Carolina, on

Friday, August 5, 2014, commencing at the hour

of 12:30 p.m.

000170

1 APPEARANCES

2

3 ATTORNEYS FOR THE CLAIMANT

4

LAW OFFICES OF FRANK BARTON

BY: FRANK BARTON, ESQUIRE

5

1611 Augusta Road

West Columbia, South Carolina 29169

6

7

8 ATTORNEYS FOR THE DEFENDANTS

9

MCANGUS, GOUDELOCK & COURIE, LLC

BY: JASON LOCKHART, ESQUIRE

10

1320 Main Street, 10th Floor

Columbia, South Carolina 29201

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

000171

1	CONTENTS	
2		PAGE
3	WITNESS: ROBERT HARRISON	
4	Direct Examination by Mr. Barton	21
	Cross-Examination by Mr. Lockhart	24
5	Redirect Examination by Mr. Barton	56, 60
6	Recross-Examination by Mr. Lockhart	60
7	WITNESS: TERRY HARTWELL	
8	Direct Examination by Mr. Lockhart	61
9	Cross-Examination by Mr. Barton	66
10	Certificate of Reporter	68
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

000172

1 THE COURT: Today's date is
2 August 1, 2014. This is Workers' Compensation
3 Commission File Number 0824526. This is the
4 case of Robert Harrison vs. Owen Steel Company.
5 The carrier is Old Republic General Insurance
6 Corporation. The claimant is represented today
7 by Frank Barton, and the employer/carrier are
8 represented by Jason Lockhart.

9 The date of accident is
10 September 17, 2008. The claimant has an
11 average weekly wage of \$789.70, with a
12 corresponding compensation rate of \$526.49.

13 Are there objections -- and we are
14 here on a remand on issues as set forth by Full
15 Commission order.

16 Are there objections to
17 jurisdiction, venue or APA submissions?

18 MR. BARTON: No, sir, with the
19 caveat opposing counsel mentioned earlier that
20 he would like you to consider the APAs
21 previously filed, I join in that request.
22 There is an APA -- there's a couple things and
23 I'll just mention this very quickly.

24 Their APA submission No. 17 from
25 Dr. Andrew Rhea, at the end he gives an

000173

1 impairment rating of 12 percent, but it doesn't
2 say what it's for. I mean, it's discussing a
3 number of different accidents, and this was
4 after the impairment ratings given by
5 Dr. Holbrook and Dr. Johnson. In his report he
6 says, "In response to questions forwarded to me
7 regarding this patient, I would recommend the
8 following answers." I don't have the
9 questions, so I don't know what they are. And
10 I would just like to point out, I don't believe
11 it's relevant. I'm not going to object to him
12 submitting it or move that it be stricken, but
13 it's got a 12 percent whole person impairment.
14 It doesn't say what that is supposed to be for.
15 And I believe in their pre-trial brief they
16 admit that there's a 25 percent whole person
17 impairment rating from Dr. Holbrook.

18 Also I learned recently that they
19 intend to submit a video from a P.I. I've
20 looked at it. It shows a truck. I don't know
21 that it's of my client. Then it shows my
22 client riding a motorcycle. We admit he rides
23 a motorcycle. I don't know if he's got anybody
24 here to validate that or not. So I'm not going
25 to object to it. I just don't agree that it's

000174

1 relevant for anything. We'll stipulate he
2 rides a motorcycle.

3 Now, as far as APAs, that's it on
4 the APAs unless you've got some questions about
5 it.

6 THE COURT: You want to speak to
7 those two things specifically right now, Jason?

8 MR. LOCKHART: Well, Your Honor, I
9 guess I'm not hearing an objection.

10 THE COURT: He's not objecting.

11 MR. LOCKHART: They go to relevancy
12 which ultimately is your -- is your
13 neighborhood in this situation. So I would
14 just ask you to consider them as part of our
15 evidence in this case.

16 THE COURT: All right. The
17 Commission file becomes a part of the record
18 with the exception of self-serving declarations
19 and unstipulated medical reports.

20 All right. Mr. Barton, if you
21 would, please, sir, place your client's
22 position on the record.

23 MR. BARTON: Yes, sir. Also in
24 regard to the APA submissions from the prior
25 hearing, we spoke earlier and we would request

000175

1 that the Commission consider the transcript of
2 hearing for the accident of October of 2010
3 which we submitted last time at the last
4 hearing which clearly shows that that
5 settlement agreement was solely for the October
6 accident, October 2010 accident, which occurred
7 after he had reached MMI in this accident and
8 after two doctors gave him a 25 percent whole
9 person impairment rating, that being Holbrook
10 and Johnson.

11 As we discussed earlier, this
12 accident happened on September 17th of 2008.
13 As a result of that accident -- and it's
14 already -- we've already had the hearing. It's
15 been remanded. They've already determined he
16 suffered an accidental injury on that date. So
17 I'm not going to go into all that.

18 As a result of that accident, the
19 carrier's doctor, Thomas Holbrook, did an
20 anterior cervical discectomy at C5-C6. The
21 operation notes are at Page 2 and 6 of our
22 submissions. There's an impairment rating
23 given by Dr. Holbrook of 25 percent back on
24 July 21st of 2010. That is at Page 15 of our
25 submissions.

1 Your Honor, I'm going to -- I'm
2 going to take a little bit of time doing this
3 because the testimony is going to be fairly
4 brief. Most of the decision is going to be
5 based on the medical records that were
6 submitted.

7 All right. Both Dr. Don Johnson and
8 Dr. Holbrook gave the claimant a 25 percent
9 whole person impairment rating as a result of
10 his surgery in this accident. Now, on Page
11 427, Section 15-13 of the AMA guidelines for
12 rating impairments, it provides a method of
13 converting whole person impairments to spine
14 impairments. And for a cervical spine injury,
15 you divide the impairment rating by .8, which
16 it says 80 percent. It's .8. If you divide
17 the .25 whole person rating by .8 which
18 represents cervical spine, I believe you get
19 .3125 or 31.25 percent impairment of the spine.
20 And I would submit to you that that's what
21 we're looking for in this case. As we said
22 earlier --

23 THE COURT: Give me those numbers
24 again. I'm slow at typing numbers. I want to
25 make sure I got the numbers that you said.

1 MR. BARTON: All right. Both
2 doctors -- their doctor and --

3 THE COURT: I got the narrative. I
4 just need the numbers.

5 MR. LOCKHART: Okay. Twenty-five
6 percent whole person impairment. You divide
7 that by .8 which represents the cervical spine
8 calculation according to the AMA. When you do
9 that, you get .3125 which amounts to 31.25
10 percent impairment of the spine.

11 THE COURT: Okay. Thank you.

12 MR. BARTON: And that's what we're
13 asking for. Those impairment ratings were
14 given before he suffered an additional injury
15 to his neck. And, honestly, Don Johnson in his
16 report from September of 2010 predicted that if
17 the claimant returned to the type of work he
18 was doing -- which he was doing some of it. He
19 didn't go back fully to that type of work, I
20 don't believe -- he said he was going to injure
21 his neck again. Low and behold, it happened.
22 That's a separate accident.

23 Now, some mention was made earlier
24 about -- about credit for prior impairments or
25 prior payment of impairments. The law is clear

000178

1 that if you have -- if you have an injury and
2 you get paid for it, then you have a subsequent
3 injury, they're entitled to credit. It's got
4 to be the same employer. But if you have an
5 injury and then you have a subsequent injury
6 and you pay for the subsequent injury, you
7 don't go back and get credit for the first one.
8 It just doesn't work that way. If they had
9 wanted to address all that, they could have
10 very easily asked for a hearing on both claims
11 at one time. They didn't do that.

12 There are medical records and
13 there's maybe discussion about other accidents.
14 There was a motorcycle accident in April of
15 2010 which would have been before the
16 impairment rating from the doctors. There's
17 absolutely no indication whatsoever, no
18 testimony in what I've seen from what the
19 defendants are submitting, that that accident
20 in any way, shape, or form injured his neck.

21 There's also hardware in the neck.
22 They are responsible for lifetime treatment of
23 the neck injury.

24 Now, I believe laches has been
25 made -- an argument of laches might be made.

1 There is no -- I don't see -- if it's there, I
2 invite opposing counsel to tell me where it is.
3 I don't believe laches is mentioned in a Form
4 51. And you can amend your -- you can amend
5 your Form 51 in your pre-hearing brief, Form
6 58, there's a specific place for it, but that
7 doesn't mention laches. So I don't think
8 laches is available to them because they didn't
9 plead it as an affirmative defense to start
10 with. And there's a case of Jervy vs. Martint
11 Environmental, Inc. which did go up on writ of
12 certiorari, but this portion of the -- this
13 portion of the case was not reversed. There
14 was a very -- like a one-page opinion on it
15 saying, yeah, they're right on this, they're
16 wrong on this and that was it. But this part
17 of the opinion was not changed.

18 And it's kind of a -- kind of a
19 screwy case, but it says workers' compensation
20 claimant's affirmative defenses of waiver and
21 laches. Affirmative defenses. Now, in that
22 case the claimant was claiming that because
23 they waited like over 450 days before they
24 started to deny compensability that they
25 weren't entitled to do it based on waiver and

000180

1 laches. But this case specifically refers to
2 it as an affirmative defense. And in all the
3 case law it comes up -- laches comes up in -- a
4 lot of times in real estate type cases. In the
5 typical case that laches is used in -- and if
6 you are well aware of laches and want me to
7 hush, I will. I can just say it's --

8 THE COURT: Whatever you want in the
9 record.

10 MR. BARTON: I'll make it as quick
11 as I can. First, they didn't plead it, so I
12 don't think they're entitled to use it.
13 Second, for them to be able to use laches, they
14 got -- they have to show negligent delay in
15 hearing the case. Time itself -- a delay in
16 and of itself does not mean laches applies.
17 And, finally, they've got to show material
18 prejudice that for some reason somehow they
19 suffered material prejudice because this case
20 wasn't heard before -- really before the last
21 time it was heard. He's talking about six
22 years, but it was heard about a year ago.

23 The typical case it comes up in is a
24 real estate case in a situation such as let's
25 suppose your neighbor is building a house with

1 the corner going over the boundary and the
2 neighbor, you know -- the person that's
3 building, they're building over the boundary.
4 The person that owns the other property sees
5 them doing it and doesn't do anything to stop
6 them. Let's them do it. You let them finish
7 that and then you come in and start complaining
8 about it, no, that's laches. They've changed
9 their position because you didn't do something
10 when you should have done it.

11 Now, what's really funny is in this
12 case, first, there's no laches argument because
13 they had the impairment ratings a long time
14 ago. They've been involved with him since that
15 time because of the October accident. So
16 they've been fully aware of the situation. It
17 used to not be this way. I don't remember when
18 the Form 21 was changed, but you can request a
19 hearing at any time on a Form 21 now. They
20 could have requested one any time they wanted
21 to. So I just don't think laches applies.

22 I think that's pretty much it in a
23 nutshell. The testimony of the claimant is
24 going to be very brief because we're relying on
25 the medicals more than anything else and the

1 fact that there is a compensable injury is
2 already established.

3 THE COURT: All right. Thank you,
4 sir. Mr. Lockhart.

5 MR. LOCKHART: Your Honor, may it
6 please the Commission. I will try to address
7 these issues raised by the claimant sort of in
8 reverse chronological order. Let's deal with
9 the laches issue first. First of all, the Full
10 Commission order on remand instructs the
11 Hearing Commissioner, which in this case would
12 be you, to address the issue of laches
13 specifically. This order was not appealed to
14 the Circuit Court, so it's the law of the case.
15 So despite what Mr. Barton has led you to
16 believe today about whether or not laches can
17 even be addressed by you, the Full Commission
18 says that it can and it should and it has to
19 be. So as far as whether or not the issue can
20 even be before you, quite frankly I believe
21 that the Full Commission has spoken on that.

22 I find it a bit disingenuous for the
23 claimant to now maintain that because my client
24 had the impairment rating in 2010, that they
25 should have somehow taken a proactive step to

1 request a hearing. You will see in the
2 Commission file that Mr. Harrison had a lawyer
3 in January of 2010. Matter of fact, he had one
4 I believe already in '09. That was an issue
5 that came up at the previous hearing on the
6 statute of limitations. So somehow for my
7 client to be at fault because Mr. Harrison's
8 lawyer didn't pursue his claim after he reached
9 MMI seems a bit bizarre to me.

10 And the issue of laches deals with
11 whether or not a party has timely prosecuted a
12 claim, and in this case a claim for benefits.
13 And there's case law in our state, and this
14 deals with workers' compensation cases, that
15 says -- a case called Hucks vs. Green's Fuel
16 and it talks about the lack of diligence on the
17 part of the attorney for the claimant being
18 attributable to and binding upon him. I mean,
19 again, we're not disputing that Mr. Harrison
20 didn't receive a 25 percent impairment rating
21 from Dr. Holbrook, but he had a lawyer and it
22 was that lawyer's responsibility to go out and
23 prosecute that claim.

24 Now, as far as how the failure to
25 prosecute the claim has somehow impacted my

000184

1 client from a material standpoint, we're going
2 to talk about this more in just a moment. But
3 as I said to you in the pre-trial, Mr. Harrison
4 has had a variety of injuries and accidents
5 since being put at maximum medical improvement
6 that involve his neck and his upper
7 extremities, the same parts of his body that he
8 admits are being impacted by his 2008 injury
9 which is the subject of the hearing here today.

10 With regards to the issue of credit,
11 42-9-150 and 160 and 170 deal with the issue of
12 payment of permanent disability benefits by the
13 same employer and carrier to the same claimant.
14 And in this particular case what you will see
15 from our submissions is that after a 2010 work
16 accident, my client settled a case with
17 Mr. Harrison and paid him 28 percent to the
18 back. So they have already paid him the
19 equivalent of close to 90 weeks of
20 compensation. They've also paid a period of
21 temporary total to him for this particular
22 accident.

23 And so they have to be entitled to a
24 credit, Your Honor, because as you know with
25 the exception of paraplegia, quadraplegia, or

1 brain damage cases, there's a 500 week cap on
2 what an employer can pay to one claimant. And
3 so this notion that we somehow don't get a
4 credit for what we already paid to him even
5 though the accident occurred subsequent to this
6 one is not a position that's supported by the
7 statute or by the case law.

8 One of the other instructions given
9 to you by the Full Commission, Your Honor, was
10 to address intervening accidents or subsequent
11 accidents that Mr. Harrison was involved in.
12 As I pointed out to you in the pre-hearing
13 conference and we're going to point this out
14 during testimony, he was involved in an
15 automobile accident in April of 2010. He had
16 another work-related accident in October of
17 2010. He suffered an injury at his home in
18 February of 2012. He had another motor vehicle
19 accident in July of 2013 and another motor
20 vehicle accident as recently as March of 2014.

21 THE COURT: Auto July '13 and what
22 was after that?

23 MR. LOCKHART: Another automobile
24 accident in March of 2014. 42-9-30 and the
25 case law interpreting it says to the Commission

1 that it cannot engaged in surmise, conjecture
2 or speculation. And for an award of permanency
3 to be made six years after the date of
4 accident, four years -- nearly six years after
5 the date of accident, rather, four years after
6 MMI and in light of all these subsequent
7 injuries that have occurred would require, with
8 all due respect, Your Honor, some level of
9 speculation or surmise and conjecture that we
10 maintain is prohibited by the Act, specifically
11 by Section 42-9-30.

12 That's our position, Your Honor.

13 THE COURT: All right. Mr. Barton.

14 MR. BARTON: Very quickly in
15 response. The case was remanded for you to
16 determine laches, intervening cause, and
17 permanency. Okay. If opposing counsel is
18 right, that means you have to consider laches
19 and that sort of thing and you have to consider
20 intervening cause that you're ordered to do
21 that, then that's like saying you're ordered to
22 consider permanency like you're ordered to
23 award permanency. That's not what the order
24 is. You're supposed to look at them and see if
25 they're applicable. They still, you know --

1 they still have to show that they've
2 affirmatively alleged laches so that it works
3 in this case.

4 And so as far as that is concerned,
5 there is one case -- and I've got to step back
6 and get my glasses. There is one case that I'm
7 aware of in South Carolina where laches
8 defeated a workers' compensation claim, and
9 that is Richey vs. Dickinson. And in that case
10 claimant was injured. There was a hearing
11 scheduled. The hearing was continued for some
12 reason, and I believe it was continued because
13 the claimant's attorney couldn't find him.

14 Eleven years later they requested
15 another hearing. At that point -- and I don't
16 understand how this happened. This was back
17 in -- this was 2004. So this would have been
18 back in the '90s. The Commission's file had
19 been destroyed, the insurance company's file
20 had been destroyed, and the defense attorney's
21 file had been destroyed. So they were
22 prejudiced because they didn't have anything
23 that they had back then. That's the type of
24 thing that has to happen so laches applies.

25 And in Muir vs. Bard, which is

1 another important case involving laches, in
2 that case the hearing -- there was a delay in
3 having the hearing. The delay was almost
4 exactly like we had in this case insofar as the
5 last hearing was concerned. In that case there
6 was a delay approximately right at five years.
7 Same thing we have in this case.

8 So from what I've heard opposing
9 counsel say, he doesn't have any proof
10 whatsoever that they were -- that they were
11 prejudiced from any delay in hearing this case.

12 I don't feel disingenuous about
13 anything I've said either. So I'll just
14 mention that. So we're ready when you are.

15 THE COURT: Anything else,
16 Mr. Lockhart?

17 MR. LOCKHART: Not right now, Your
18 Honor.

19 THE COURT: All right. Mr. Barton,
20 do you want to call your witness?

21 MR. BARTON: Yes, sir.
22 Mr. Harrison, come on to the stand.

23 THE COURT: Two requests for you,
24 sir. First is speak up. There's no microphone
25 and we all need to hear you. Please make sure

1 you speak up. The other is if you're asked a
2 yes or no question, please give us a verbal yes
3 or no answer. Shaking or nodding your head
4 slows her down. Uh-huh, unh-unh are too easily
5 misunderstood. So if the response needs to be
6 yes or no, please give us a yes or no verbal
7 response. Okay?

8 THE WITNESS: Yes, sir.

9 (ROBERT LEWIS HARRISON, being duly
10 sworn to tell the whole truth, testified as
11 follows:)

12 THE COURT: Please state your name
13 for the record.

14 THE WITNESS: Robert Lewis Harrison.

15 THE COURT: All right. Mr. Barton,
16 your witness.

17 DIRECT EXAMINATION

18 BY MR. BARTON:

19 Q. Mr. Harrison, who are you currently
20 employed with?

21 A. Owen Steel, Incorporated.

22 Q. How long have you been employed by
23 Owen Steel?

24 A. Seventeen years.

25 Q. Were you employed by Owen Steel back

1 on September 17th of 2008?

2 A. Yes, I was.

3 Q. Did you have a workers' compensation
4 -- well, did you have an injury on the job on
5 that day?

6 A. Yes, I did.

7 Q. Very, very briefly tell the
8 Commissioner what your job duties were back
9 then.

10 A. I was a gantry welder which involves
11 two machines that has four heads that you work
12 off a computer screen and it's sub arch
13 welding. We use it for our big pieces to weld
14 continuous welds non-stop.

15 Q. Was that a physically demanding job?

16 A. Yes, it is.

17 Q. How did you hurt your neck back
18 then?

19 A. We were working on welding I think
20 it was 70 girders which required you from start
21 to finish to be in a bent over position for
22 about approximately 30, 45, minutes.

23 Q. Did you subsequently seek medical
24 treatment from Thomas Holbrook?

25 A. Yes, I did.

000191

1 Q. Who paid for that treatment?

2 A. Workers' compensation.

3 Q. All right. And did Dr. Holbrook
4 perform an operation on you?

5 A. Yes, he did.

6 MR. BARTON: Your Honor, that's in
7 the APAs that I've already submitted.

8 BY MR. BARTON:

9 Q. Now, at some point did Dr. Holbrook
10 release you?

11 A. Yes, he did.

12 Q. Did he give you an impairment rating
13 when he released you?

14 A. Yes, he did.

15 MR. BARTON: Your Honor, that's in
16 the APAs we submitted also.

17 BY MR. BARTON:

18 Q. Do you have any injuries or physical
19 problems now that you relate to this accident
20 of September 17th of 2008?

21 A. Yes, I do.

22 Q. What are they?

23 A. I still have pain in my neck and
24 some shooting pain going down through my arm,
25 numbing in my fingers and tingling.

1 Q. Are you working for Owen Steel now?

2 A. Yes, I am.

3 Q. What type of work are you doing for
4 them?

5 A. I'm a shop foreman.

6 Q. Is the work you're doing now as
7 strenuous as what you were doing back in
8 September of 2008?

9 A. No, it's not.

10 Q. Are you making more or less money
11 now than you were back in September of 2008?

12 A. I'm making more.

13 Q. Are you basically in a supervisory
14 position now?

15 A. Yes, sir.

16 MR. BARTON: Your Honor, I have
17 nothing further.

18 THE COURT: All right.

19 Mr. Lockhart.

20 CROSS-EXAMINATION

21 BY MR. LOCKHART:

22 Q. Mr. Harrison, good afternoon, sir.

23 A. Good afternoon.

24 Q. Were you involved in an automobile
25 accident in either February 2014 or March of

1 2014?

2 A. Yes, I was.

3 Q. And where did that automobile
4 accident occur?

5 A. In the intersection of Air Base Road
6 and Lower Richland Boulevard.

7 Q. Did you injure your back in this
8 accident?

9 A. Yes, sir, lower back.

10 Q. Did you treat with South Hampton
11 Family Practice?

12 A. Yes, I did.

13 Q. And is that your family physician?

14 A. Yes, it is.

15 MR. LOCKHART: Your Honor, I am
16 looking at Defendants' APA Page 50.

17 BY MR. LOCKHART:

18 Q. Mr. Harrison, I'm looking at a copy
19 of your medical records from South Hampton
20 Family Practice. This is a medical record
21 dated March 14 -- I'm sorry, March 11th of 2014
22 in which you indicate to your physicians that
23 you were injured in a motor vehicle accident on
24 March 8, 2014 at approximately 8:00 p.m. Does
25 that sound correct to you?

1 A. That's correct.

2 Q. Okay. Did you provide your
3 physicians during this examination with any
4 complaints of neck pain or problems?

5 A. No, I did not.

6 MR. LOCKHART: Your Honor, may I
7 approach the witness?

8 THE COURT: Certainly.

9 BY MR. LOCKHART:

10 Q. Mr. Harrison, I'm going to show you
11 a copy of this note and direct you to the
12 section labeled, "History of Present Illness."
13 If you would, read the second line beginning
14 with the word "patient."

15 A. "Patient was restrained driver.
16 T-boned. Air bag did not deploy. Having pain
17 at the top of his neck of his right -- the top
18 of his neck of his right buttocks."

19 Q. From the top of his neck to the top
20 of his right buttocks.

21 A. To the right. Yeah. Yes, sir.

22 Q. So let me ask you again. When you
23 saw South Hampton Family Practice following
24 your motor vehicle accident, did you provide
25 complaints of neck pain?

000195

1 A. No, I did not. Shoulder pains down
2 to the right buttocks.

3 Q. Well, this record indicates that you
4 complained of neck pain.

5 A. I'm just telling you what I told
6 him, sir.

7 Q. Okay. Is there litigation pending
8 related to your motor vehicle accident?

9 A. Yes, it is.

10 Q. Has it been resolved?

11 A. No, it hasn't.

12 Q. Were you also involved in an
13 automobile accident in July of 2013?

14 A. Yes, sir.

15 Q. Could you tell the Court about that
16 automobile accident?

17 A. July 2013, I was going down Calvin
18 Creek Road. Female ran a stop sign. She was
19 texting and she bumped my vehicle knocking me
20 off the road.

21 Q. Your vehicle, was it a motorcycle or
22 an automobile?

23 A. It was my SUV.

24 Q. SUV. Okay. And did you run off the
25 road?

1 A. Yes, I did.

2 Q. Were you injured in that automobile
3 accident?

4 A. No, I was not.

5 Q. Were you involved in an automobile
6 accident in April of 2010?

7 A. Yes, I was.

8 Q. And in that automobile accident were
9 you driving a motorcycle or were you driving an
10 automobile?

11 A. Motorcycle.

12 Q. Where did that accident occur?

13 A. On Patterson Road.

14 Q. Tell us about that accident.

15 A. I was coming from my grandmother's
16 house, passing by the school, passing this
17 apartment complex. The female was about to
18 pull out her apartment complex, but she stopped
19 to talk to her girlfriend. As soon as I got up
20 there, she pulled straight out in front of me.
21 I hit my brakes. My bike slid to the side and
22 I let the bike go.

23 Q. Then you and the bike separated from
24 one another?

25 A. Yes, we did.

000197

1 Q. Did you strike the ground?

2 A. Yes, I did.

3 Q. Did you strike the ground with
4 force?

5 A. Yes, I did.

6 Q. And where did your body go and where
7 did the bike go?

8 A. I slid to the side of the road. The
9 bike went straight down the road.

10 Q. And you slid approximately how far?

11 A. I couldn't tell you.

12 Q. Were your injuries serious enough
13 that you actually received treatment from
14 emergency personnel on the scene of the
15 accident?

16 A. Yes. I had to go to the emergency
17 room.

18 Q. And were you taken to Richland
19 Memorial Hospital for medical treatment?

20 A. Yes, I was.

21 MR. LOCKHART: Your Honor, I'm
22 looking at Page 63 and 64 of the Defendants'
23 APA submissions.

24 BY MR. LOCKHART:

25 Q. Did you suffer a fractured clavicle

1 as a result of that automobile accident?

2 A. Yes, I did.

3 Q. Following your discharge from
4 Richland Memorial, did you actually even seek
5 treatment with some other physicians for that
6 accident?

7 A. Yes, I did.

8 Q. Did you see Dr. Green B. Neal?

9 A. Yes, I did.

10 Q. And how long did you treat with
11 Dr. Neal?

12 A. Up to about a month or so, maybe two
13 months.

14 Q. Did you also treat with an
15 orthopedic physician?

16 A. Yes, I did.

17 Q. Ultimately did that accident give
18 rise to some litigation?

19 A. Yes, it did.

20 Q. And did that case actually end up
21 being settled?

22 A. Yes.

23 Q. And did that case settle for
24 approximately \$32,000?

25 A. It did.

000139

1 Q. And of that you received about
2 \$20,000?

3 A. Yes, sir.

4 Q. Now, let's talk about Dr. Holbrook
5 for just a moment. You told your lawyer a few
6 moments ago that he performed surgery on you
7 following your September 2008 work accident; is
8 that correct?

9 A. Yes.

10 Q. And is it your recollection that he
11 released you from his care in July of 2010?

12 A. Yes.

13 MR. LOCKHART: Your Honor, I'm
14 looking at Claimant's APA Page 15.

15 BY MR. LOCKHART:

16 Q. When you were released from the care
17 of Dr. Holbrook in July of 2010, what type of
18 problems or complaints did you provide to him
19 during that examination?

20 A. I told him I still had stiffness and
21 neck pain in the neck, pains shooting down my
22 left arm and tingling in my fingertips.

23 Q. Mr. Harrison, would you be surprised
24 that Dr. Holbrook in his note indicates that
25 you were having no radicular arm pain?

1 A. I would be surprised that he said
2 that.

3 Q. Is this another occasion where
4 you've said something to a physician and their
5 medical records say something else?

6 THE COURT: What page are you
7 looking at?

8 MR. LOCKHART: Claimant's 15.

9 THE WITNESS: I walked in his
10 office. He asked how I was doing. My normal
11 way of greeting people is if they ask, I'm fine
12 and you. He asked me am I still having
13 problems or anything like that. I told him I
14 was still having pain in my neck, pain shooting
15 down my left arm, and tingling in my
16 fingertips.

17 BY MR. LOCKHART:

18 Q. Did you go back and see Dr. Holbrook
19 again after an incident involving your daughter
20 in 2012?

21 A. Yes, sir.

22 Q. What type of complaints did you
23 provide to Dr. Holbrook when you saw him again
24 in 2012?

25 A. Pain in my right shoulder.

1 Q. Did you provide him with any
2 complaints at all regarding your neck?

3 A. No, I did not.

4 MR. LOCKHART: Your Honor, I am
5 looking at a medical record that should be in
6 the Commission file. It is not in either
7 Mr. Barton's brief or mine, but it's a part of
8 the file from our previous hearing before
9 Commissioner Wilkerson. It is a March 26, 2012
10 note from Dr. Holbrook.

11 BY MR. LOCKHART:

12 Q. Mr. Harrison, I'm going to read you
13 a portion of his report from this particular
14 occasion and tell me if this sounds like the
15 visit that you recall. This is from March 26th
16 of 2012. He says, "Robert Harrison returns to
17 the office for follow-up of cervical
18 radiculopathy. He had previously undergone
19 anterior cervical discectomy and fusion at C5-6
20 for radiculopathy on the left. He now
21 complains of neck and right arm pain radiating
22 down the right arm into the hand with some
23 intermittent numbness and tingling in the right
24 arm and the first three fingers on the right.
25 He says this began about a month ago after he

1 picked up his daughter who had fallen off the
2 porch 2/26/12." Does that sound correct to
3 you?

4 A. Not the beginning part when he said
5 I was complaining of neck pain.

6 Q. So is it your contention that while
7 his note reflects complaint of neck pain, you
8 did not provide him with those complaints?

9 A. I did not. I provided him with pain
10 in the right shoulder, pain shooting down the
11 arm, and the tingling in the three fingers. I
12 provided that. Yes, I did.

13 Q. Did you injure your neck in this
14 event involving your daughter?

15 A. No, I did not.

16 Q. Let me read you a little bit more of
17 what his report says. It says, "On examination
18 there is some tenderness to palpation over the
19 cervical paraspinous muscles with a moderate
20 decrease in range of motion of the cervical
21 spine due to exacerbation of his neck pain."
22 Dr. Holbrook recommended that you undergo
23 treatment in the form of medications and he
24 also recommended physical therapy and a
25 cervical epidural steroid injection. Did you

1 have that treatment?

2 A. No, I did not.

3 Q. Aren't the problems that
4 Dr. Holbrook noted in his report similar to the
5 problems that you're complaining about here
6 today?

7 A. In the section you just mentioned,
8 no, because I complained about right shoulder
9 pain.

10 Q. But isn't it true that you're
11 complaining about neck pain here today,
12 correct?

13 A. Yes, from my initial injury.

14 Q. Well, his note --

15 A. Which has been going on since 2008.

16 Q. I understand. But his note also
17 says you complained to him about having neck
18 pain.

19 A. I did not complain to him. He might
20 have got those from the doctor who referred me
21 to him -- well, referred me back to him.

22 Q. Did you ever undergo the treatment
23 that Dr. Holbrook recommended in the March 26,
24 2012 report?

25 A. No, I did not.

000204

1 Q. You actually went and saw an
2 orthopedic physician after your incident
3 involving your daughter, correct?

4 A. I sure did.

5 Q. And you underwent an MRI, I believe?

6 A. Yes.

7 Q. And that MRI revealed that you had
8 some sort of tear in your shoulder?

9 A. A four centimeter tear.

10 Q. Did you treat with the orthopedist
11 at all after undergoing the MRI?

12 A. He told me the best thing for me to
13 do is get some rest and take some
14 inflammatories.

15 Q. Okay. When you injured your -- when
16 you were involved in this incident with your
17 daughter, did you also treat with urgent care
18 as well?

19 A. That was the first place I went.

20 Q. What type of complaints did you
21 provide to the physicians at urgent care when
22 you were examined by urgent care?

23 A. Pain to my right shoulder, pain
24 shooting down my right arm, tingling in my
25 fingertips.

1 Q. Did you provide them with any
2 complaints of neck or back problems?

3 A. No, I did not.

4 MR. LOCKHART: All right. Your
5 Honor, I am looking at another medical record
6 that is a part of the Commission file from our
7 previous hearing. This is a record from a
8 facility called Doctors Express Columbia. It's
9 dated 3/15/12.

10 BY MR. LOCKHART:

11 Q. Mr. Harrison, I'm going to read you
12 a copy of this record and tell me if this
13 sounds like the examination that you underwent.
14 Again, a visit on March 15th of 2012 with
15 Doctors Express Columbia on Forest Drive. Is
16 that where you went for medical treatment?

17 A. That's correct.

18 Q. In their note they state as follows,
19 "The patient presents with a chief complaint of
20 constant" --

21 MR. BARTON: Your Honor, I'm going
22 to object at this point. I think I've let him
23 go long enough. He's pitting one witness
24 against the other. He can ask him the
25 questions about what he told them, but this is

1 basically hearsay. He's saying what the
2 doctor's records say. The records speak for
3 themselves. I gave him some leeway, but that's
4 enough. The records are there. He can refer
5 you to any record he wants you to read. We
6 don't have to sit here and listen to him read
7 it and ask him to verify the truth.

8 MR. LOCKHART: If your client was
9 not testifying inconsistently --

10 MR. BARTON: Your Honor, I'm
11 addressing you. I'm not addressing opposing
12 counsel.

13 THE COURT: Jason, wait.

14 MR. BARTON: I'm objecting that this
15 is hearsay. It is also pitting one witness --
16 it's the doctor's report. I got no problem
17 with him asking what he reported. The records
18 will speak for themselves. There's no reason
19 for him to read them into the record. You've
20 already got them. That's the basis for my
21 objection.

22 MR. LOCKHART: I have never heard a
23 lawyer take the position that a medical record
24 is hearsay. The APA exists in order for us to
25 put medical evidence into the record without

1 having to have physicians appear, and this is
2 cross-examination where I have medical records
3 that say one thing that contradicts
4 Mr. Harrison's testimony and I have every right
5 to cross-examine him. Every right. And I'm
6 sorry that Mr. Barton doesn't like the fact
7 that his client's testimony is inconsistent
8 with his medical records, but I have the right
9 to cross-examine him.

10 MR. BARTON: I've got another
11 objection that these are after this accident
12 and after he reached MMI, but that's another
13 issue. Your Honor, almost every time I come
14 into one of these hearings, we've got a
15 claimant who wants to testify what the doctor
16 said which is in the doctor's report. There's
17 always an objection, hearsay, and it's always
18 sustained. So I'm surprised he's surprised
19 that somebody would object to this being
20 hearsay. Happens almost every hearing.

21 THE COURT: Anything else?

22 MR. LOCKHART: No, sir. What would
23 you like us to do? I can have Mr. Harrison
24 read the record or I can read it.

25 THE COURT: I'm going to overrule

1 the objection.

2 MR. LOCKHART: Thank you, Your
3 Honor.

4 BY MR. LOCKHART:

5 Q. Mr. Harrison, why don't we do this.
6 Why don't I have you read the record. If you
7 would read beginning under History of Present
8 Illness with the words "The patient." If you
9 could read those sentences. There's two lines
10 there. Let me know when you're done.

11 A. Okay. "The patient presents with a
12 chief complaint of constant, but worse at
13 times, neck pain of the neck and back since
14 Wednesday, February 29, 2012. The patient
15 describes severity as moderate context.
16 Patient complaining of neck pain and needing
17 more pain meds until the next appointment."
18 Finished.

19 Q. Thank you, sir. Did you provide
20 your physicians at Doctor's Care -- I'm sorry,
21 Doctors Express Columbia with complaints of
22 neck pain and problems on March 15, 2012?

23 A. I gave complaints of shoulder pains.

24 Q. Is it your testimony here today that
25 the medical record that you just reviewed is

000209

1 inconsistent with the information you provided
2 to your physicians?

3 A. About the neck pain is not right.
4 It's inconsistent.

5 Q. You were released by Dr. Holbrook in
6 July of 2010 to return to work; is that
7 correct?

8 A. Yes, sir.

9 Q. Okay. When you were released to
10 return to work by Dr. Holbrook, what position
11 at Owen Steel did you return to performing?

12 A. Light duty.

13 Q. How long did you work on light duty?

14 A. Approximately a year.

15 Q. Okay. After that one year period of
16 light duty, what type of position did you
17 return to then?

18 A. Welder.

19 Q. Tell the Commissioner if you would
20 what the job duties and responsibilities were
21 as a welder. And this would be, again, we're
22 at the end -- I guess we're in 2011 at this
23 point. Does that sound about right?

24 A. Yes. Once I'm put back on the
25 floor. Yes, sir.

000210

1 Q. Tell the Commissioner, if you would,
2 what your job duties and responsibilities were
3 as a welder.

4 A. As a welder, we fabricate steel
5 columns, beams, plate girders, what have you.
6 My job is to go in and weld it. I might have
7 to be in an awkward position to weld a certain
8 piece because we have different detail that
9 goes different places such as stiffener plates,
10 base plates.

11 When welding base plates, it might
12 have a bevel on it which requires a full pen
13 weld. Depending on the depth of the bevel, you
14 might be there all night welding on it. And
15 when you're welding on it, you're bent over
16 like this with your head down with your hard
17 hat and your shield on. (Witness indicates.)

18 Q. Was the position that you returned
19 to as a welder in 2011 a physically demanding
20 job?

21 A. Of 2012.

22 Q. I'm sorry. I thought you said you
23 went back to being a welder in 2011?

24 A. Yes.

25 Q. Was it a physically demanding job?

1 A. Yes, it was.

2 Q. Did it require you to engage in
3 activities that placed stress on your body?

4 A. Yes.

5 Q. How long did you work as a welder,
6 this position, again, that you returned to in
7 2011?

8 A. Approximately about eight months.

9 Q. What was the next position that you
10 held?

11 A. We started the gantry back up and I
12 started welding back on the gantry.

13 Q. Okay. And as a gantry welder, just
14 tell the Court if you will what your job duties
15 and responsibilities were.

16 A. As a gantry welder?

17 Q. Yes, sir.

18 A. That's, like I said, that's where
19 our big pieces go. We weld bevels, continuous
20 welds, plate girders, box columns, you know.
21 Things of heavy weight.

22 Q. Was the gantry welding position a
23 physically demanding job?

24 A. It is.

25 Q. And how long did you work as a

1 gantry welder?

2 A. For the next year or so off and on.

3 Q. What was the next position that you
4 held?

5 A. Shop foreman.

6 Q. And is that the position that you
7 hold now?

8 A. Yes, it is.

9 Q. And how long have you been a shop
10 foreman?

11 A. Since 2012.

12 Q. Is Mr. Terry Hartwell your
13 supervisor?

14 A. He is.

15 Q. Has he been your supervisor for the
16 past year?

17 A. Yes, he has.

18 Q. What's your rate of pay at the
19 present time?

20 A. \$16.40.

21 Q. And how many hours a week do you
22 work?

23 A. I work -- at the present time we're
24 working six days a week and I'm doing
25 approximately 69 to 71 hours a week.

1 Q. And how long have you been working
2 six days a week working approximately 69 to 71
3 hours a week?

4 A. That has just started up within the
5 last two weeks.

6 Q. The job that you're currently in as
7 a shop foreman, are you a working supervisor?
8 In other words, are there occasions where you
9 actually have to perform the task that you are
10 supervising other people to perform?

11 A. Yes.

12 Q. And does that include welding?

13 A. That includes welding, turning
14 beams, cleaning pieces up. Whatever the job
15 requires.

16 Q. When you have to engage in those
17 activities as a working foreman, for example,
18 is that a physically demanding job when you
19 have to do those types of tasks?

20 A. Yes, it is.

21 Q. And the welding that you're talking
22 about, is this hand welding?

23 A. Hand welding or it might be back on
24 the gantry.

25 Q. All right. And the hand welding

1 position is the position you were actually
2 performing when you were injured originally,
3 correct, when you had your '08 accident?

4 A. That was gantry.

5 Q. Gantry. Okay. So you are doing
6 some of the same job tasks at the present time
7 that you did back when you got injured?

8 A. Yes.

9 Q. How many folks do you supervise?

10 A. Approximately right now we have
11 about 13, maybe 14 people.

12 Q. You mentioned that you still have
13 some problems with your neck; is that correct?

14 A. Yes.

15 Q. What do you do to alleviate those
16 problems when you have them?

17 A. I take aspirin.

18 Q. And how frequently do you take
19 aspirin?

20 A. Approximately about twice a week.

21 Q. Are you taking any over-the-counter
22 medications at all for your neck pain or
23 problems?

24 A. Just regular over-the-counter?

25 Q. Yes, sir. Other than aspirin. Like

000214

1 Tylenol, Advil, Aleve, anything like that?

2 A. Just probably now and then if I can
3 get my hands on Excedrin.

4 Q. How about prescription medications,
5 are you taking any prescription medications for
6 your neck pain and problems?

7 A. None.

8 Q. Have you provided any complaints to
9 your supervisor within the last 30 days
10 regarding neck pain or problems?

11 A. No, I haven't.

12 Q. Have you asked that your job be
13 modified in any way at all in light of your
14 neck pain and problems?

15 A. No, I haven't.

16 Q. When you are away from work, what do
17 you generally like to do?

18 A. Fishing, going to the drag strip,
19 hanging out with my bike club.

20 Q. Let's talk about fishing for a
21 moment. How frequently do you go fishing?

22 A. Twice a month if I can get out
23 there, but I haven't been lately.

24 Q. Is this on the lake?

25 A. Yes.

000215

1 Q. Lake Murray or Santee I believe you
2 told me in your deposition?

3 A. Yes.

4 Q. And do you have a boat?

5 A. I sure do.

6 Q. And is it on a trailer?

7 A. Yes, it is.

8 Q. So do you have any difficulty
9 getting your boat in and out of the water?

10 A. No, sir. I have a drive-on trailer.

11 Q. Okay. Do you have any physical
12 difficulty fishing at all in light of your neck
13 pain or problems?

14 A. No, I do not, sir.

15 Q. Now, your bike club. When you say
16 bike, you mean a motorcycle?

17 A. Motorcycle.

18 Q. What type of motorcycle do you have?

19 A. I have a Yamaha R1 and Fazer 1000.

20 Q. And, Mr. Harrison, I apologize. I
21 don't know anything about motorcycles. Am I --

22 A. Sport bike.

23 Q. Do you have what we -- I'm thinking
24 of a Harley Davidson?

25 A. No.

1 Q. These are the kind that are smaller,
2 a little more aerodynamic looking, I guess for
3 a better term?

4 A. Yes.

5 Q. And when you ride on those
6 motorcycles, I assume at times you ride upright
7 where your torso is sort of at a 90 degree
8 angle; is that correct?

9 A. Yes.

10 Q. And are there other occasions when
11 you ride bikes like the ones you have where you
12 lean over to make your body, I guess, a little
13 more aerodynamic relative to the bike itself?

14 A. Only time I get low is when I'm
15 going to pass a vehicle or something and I need
16 to get over and pick up a little speed to get
17 on around him.

18 Q. Does that require you to bend your
19 neck?

20 A. No, sir. If I bend like that, I'm
21 not going to be able to see the street.

22 Q. Does it require -- well, tell me, do
23 you have to bend your neck?

24 A. Yes.

25 Q. Show us how you bend your neck when

1 you are, as you say, getting low on your bike.

2 A. Can I stand up and do it?

3 Q. Sure. Absolutely.

4 A. If I'm sitting on my bike and I got
5 to get low, I'll go just like this. (Witness
6 indicates.)

7 Q. You're in a crouched position?

8 A. I'm sitting down.

9 Q. Yes, sir.

10 A. Yes, I'm sitting down.

11 Q. And how frequently do you ride your
12 motorcycle?

13 A. If I ride it to work, might be two
14 or three times a month. Only during the summer
15 months, the warmer months, I ride.

16 Q. Let me ask you this question: Let's
17 say on a weekend, do you generally -- if you're
18 off on a weekend or a Saturday or a Sunday,
19 would you typically be on the bike either one
20 or both of those days?

21 A. No, sir. I might go two or three
22 weeks without riding.

23 Q. Okay. When was the last time you
24 rode your bike?

25 A. Sunday.

1 Q. And where did you go?

2 A. Went to a club meeting and we all
3 rode down to Wet Willie's.

4 Q. Okay. So how far of a ride was that
5 for you?

6 A. I couldn't guesstimate the miles. I
7 guess from Lower Richland Boulevard all the way
8 to Gervais.

9 Q. Mr. Harrison, let me ask you a
10 question: Were you recently involved in a
11 physical altercation at work with a gentleman
12 who tried to damage one of your motorcycles?

13 A. Yes, I was.

14 Q. When did that happen?

15 A. I can't remember the date. I know
16 it was on a Wednesday.

17 Q. Has it been within the last one to
18 two months?

19 A. Yes, it has.

20 Q. Okay. Tell us what happened.

21 A. I had a worker that called and he
22 was terminated. Said he didn't like the job he
23 was at. He wanted his job back and I told him
24 he was terminated. Did I terminate him? No.
25 At lunch I went to go get my lunch, came back.

1 I was sitting in the back office and three
2 employees came and said, "Hey, your bike -- he
3 pushed your bike down. He pushed your bike
4 down." I thought they were playing with me.
5 Go ahead. They said, "No, he pushed your bike
6 down."

7 As soon as I got up to go look, I
8 walked out the door and this guy done cleared
9 two security gates. And I go out the door to
10 look at my motorcycle and he jumps at me from
11 there and he assaults me. He attacks me. And
12 I was forced, yes, to defend myself.

13 Q. Did you throw him to the ground?

14 A. No. I hit him and he fell to the
15 ground. I didn't throw him.

16 Q. Did y'all get on the ground with one
17 another and wrestle for a better term?

18 A. I got on top of him and subdued him.
19 And while I was doing that, I told the other
20 employees go get the supervisor and somebody
21 call the police.

22 Q. How long did this initial
23 altercation between the two of you last?

24 A. The physical part about five -- I
25 guess at the most five minutes. Me sitting on

1 top of him until the police came, that was
2 about 15 minutes.

3 Q. Now, when you all first came into
4 contact with each other when y'all were having
5 the altercation, did anyone arrive and separate
6 you all or attempt to separate you?

7 A. Yes.

8 Q. Did Mr. Hartwell come and try to
9 separate you all?

10 A. Yes, he did.

11 Q. After separating you all initially,
12 did the altercation resume again?

13 A. Yes, it did.

14 Q. So another round I guess for a
15 better term?

16 A. I wouldn't even call it a round.

17 Q. All right. And did you suffer any
18 cuts or bruises or scratches on your face?

19 A. He scratched me on my chest.

20 Q. Did you feel like you were
21 successful in subduing him?

22 A. I held him there until the police
23 came.

24 Q. And how big was he?

25 A. He was probably six-one.

000221

1 Q. And how tall are you?

2 A. I've five-ten.

3 Q. Is he about the same build, same
4 weight as you?

5 A. He's smaller than me.

6 Q. Mr. Harrison, I just have a few more
7 questions for you and then we will be done in
8 the next few moments.

9 A. Sure.

10 Q. So today I've asked you a lot of
11 questions. I've heard you testify that you had
12 a work accident in September of 2008 which is
13 the subject of your claim here today, correct?

14 A. Correct.

15 Q. You had a motor vehicle accident in
16 April of 2010, correct?

17 A. Correct.

18 Q. You had another work accident in
19 October of 2010, correct?

20 A. Correct.

21 Q. You had an incident at home with
22 your daughter in February of 2012, correct?

23 A. Correct.

24 Q. You had a motor vehicle accident in
25 July of 2013?

1 A. Correct.

2 Q. And you had another one in March of
3 2014?

4 A. Correct.

5 Q. How can you distinguish between the
6 problems you're having now since all these
7 other incidents have occurred and the problems
8 that you maintain began as a result of your
9 September 2008 work accident?

10 A. Well, the pains were there after the
11 surgery. So, you know, once I noticed the
12 pains, how could I forget the pains? You know,
13 if it was coming from 2008 or after the
14 surgery, like I said, you know, the same pain
15 was there. How would I know that another
16 accident caused it if it was already there?

17 Q. You would agree with me, though,
18 that there are medical records -- and I know
19 you disagree with them, but there are medical
20 records that indicate that you complained about
21 neck pain after some of the subsequent
22 accidents and incidents we've talked about here
23 today?

24 A. That's what that medical record
25 says.

000223

1 MR. LOCKHART: Your Honor, I don't
2 have any further questions.

3 THE COURT: Hold on just a minute,
4 Frank. Let's go off the record.

5 (Off the record.)

6 THE COURT: Let's go back on the
7 record. Mr. Barton.

8 MR. BARTON: I'm referring to their
9 APA submission Page 63.

10 REDIRECT EXAMINATION

11 BY MR. BARTON:

12 Q. Mr. Harrison, let's make this clear.
13 Your motorcycle accident occurred on April 4th
14 of 2010, correct?

15 A. Yes, sir.

16 Q. Of all the accidents that you were
17 asked about, this is the only one that occurred
18 before Dr. Holbrook and Dr. Johnson gave you
19 your impairment rating, correct?

20 A. Correct.

21 Q. All right. Now, this is the
22 emergency room report from that day and I want
23 you to read what I've got highlighted.

24 MR. BARTON: Judge, this is where
25 its got history of present illness.

000224

1 BY MR. BARTON:

2 Q. What does that say?

3 A. "He denies any neck pain at this
4 time."

5 Q. All right. Did you injure your neck
6 in the motorcycle accident of April of 2010?

7 A. No, I did not.

8 MR. BARTON: All right. Your Honor,
9 I'm now referring to our APA submission Page 20
10 which is Dr. Johnson's report.

11 BY MR. BARTON:

12 Q. Now, Dr. Johnson was the other
13 doctor that gave you an impairment rating,
14 correct?

15 A. Yes.

16 Q. All right. Can you read --

17 MR. BARTON: Your Honor, this is at
18 the very end of Dr. Johnson's report, the last
19 couple of sentences.

20 BY MR. BARTON:

21 Q. Can you read those to the
22 Commissioner very quickly?

23 A. "I think he can safely close his
24 case, but he needs to have a change of vocation
25 or he will be looking at future neck surgery.

1 I don't think he needs any particular long-term
2 follow-up. If he changes vocation, he will not
3 be a chronic pain patient."

4 Q. Did you change your vocation?

5 A. No, I didn't.

6 Q. Were you still working at Owen Steel
7 in October of 2010 when you injured your neck
8 again?

9 A. Yes, I was.

10 Q. So what Dr. Johnson said was
11 correct, wasn't it?

12 A. Yes.

13 Q. All right. We've talked about the
14 April 2010 accident. The other accident was
15 October of 2010 which was at Owen Steel again?

16 A. Yes.

17 Q. Did that accident make your neck
18 better?

19 A. No, it did not.

20 Q. Okay. You had an accident in
21 February of 2012. Did your daughter fall?

22 A. Yes, she did.

23 Q. Were you lifting her when you felt
24 pain?

25 A. As she was falling off the porch, I

1 reached to try to grab her and I grabbed her
2 arm and she snatched me down with her.

3 Q. Okay. Now, did that accident make
4 your neck better from this accident in
5 September of 2008?

6 A. No, sir.

7 Q. They referred to an accident in July
8 of 2013. Again, that was after the permanent
9 impairment ratings from Dr. Holbrook and
10 Dr. Johnson, correct?

11 A. Yes.

12 Q. Did that make your neck better?

13 A. No, sir.

14 Q. And in March of 2014, I think that's
15 the last one referred to by opposing counsel,
16 did that make your neck better than it was when
17 you saw Dr. Holbrook and Dr. Johnson?

18 A. No, sir.

19 MR. BARTON: Nothing further, Your
20 Honor.

21 THE COURT: Mr. Lockhart.

22 MR. LOCKHART: Your Honor, just one
23 statement and one question. With regards to
24 the February 2012 incident, I would just direct
25 your attention to Defendants' APA Page 47.

1 RECROSS-EXAMINATION

2 BY MR. LOCKHART:

3 Q. Mr. Harrison, let me ask you one
4 question. When you had this motorcycle wreck
5 in April of 2010, the one Mr. Barton just asked
6 you about, were you out on workers'
7 compensation receiving temporary total when
8 that accident occurred?

9 A. April, I believe I -- I believe I
10 might have been.

11 MR. LOCKHART: Your Honor, I don't
12 have any further questions.

13 THE COURT: Mr. Barton.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. BARTON:

16 Q. Did you go back to work as soon as
17 they released you to go back to work?

18 A. I sure did.

19 MR. BARTON: Nothing further.

20 THE COURT: Mr. Lockhart?

21 MR. LOCKHART: Nothing further from
22 this witness, Your Honor.

23 THE COURT: All right. Thank you,
24 sir. You may step down. Other witnesses,
25 Mr. Barton?

1 MR. BARTON: No, sir, that's it.

2 The claimant rest.

3 THE COURT: Mr. Lockhart.

4 MR. LOCKHART: Your Honor, the
5 defendants would call Mr. Terry Hartwell.

6 THE COURT: Mr. Hartwell, you were
7 present for the speak up and answer yes or no.
8 So we won't go there again.

9 (TERRY O'NEALL HARTWELL, being duly
10 sworn to tell the whole truth, testified as
11 follows:)

12 THE COURT: Would you state and
13 spell your full name for the record, please?

14 THE WITNESS: Terry O'Neall
15 Hartwell. T-E-R-R-Y, O-N-E-A-L-L,
16 H-A-R-T-W-E-L-L.

17 THE COURT: All right. Thank you
18 very much. Mr. Lockhart, your witness.

19 DIRECT EXAMINATION

20 BY MR. LOCKHART:

21 Q. Mr. Hartwell, where are you
22 currently employed, sir?

23 A. Owen Steel.

24 Q. And how long have you been with Owen
25 Steel?

1 A. Maybe ten years.

2 Q. What is your current position with
3 Owen Steel?

4 A. I'm a supervisor, night shift.

5 Q. Are you a PM, a night shift
6 supervisor?

7 A. Night shift.

8 Q. And how long have you been in that
9 position?

10 A. About a year and a half.

11 Q. And in your capacity as night shift
12 supervisor, do you supervise Robert Harrison?

13 A. Yes.

14 Q. And what is Mr. Harrison's job at
15 Owen Steel?

16 A. To work the floor, make sure
17 everybody is doing their job.

18 Q. You heard his testimony earlier. He
19 called himself a lead foreman or a lead man.
20 Is that what his job title is?

21 A. Yes.

22 Q. And you heard my questioning of
23 Mr. Harrison. Is he a working foreman? In
24 other words, are there times when he has to
25 perform some of the tasks that he is

1 supervising other folks to perform?

2 A. Yes.

3 Q. Does that include hand welding?

4 A. Yes..

5 Q. Does that include gantry welding?

6 A. Yes.

7 Q. Are there other physical aspects of
8 his job that he may have to perform from time
9 to time?

10 A. Turning pieces.

11 Q. And when you say "pieces," are we
12 talking pieces of steel?

13 A. Yes.

14 Q. That range in size?

15 A. Yeah. From a couple pounds to a
16 couple tons.

17 Q. In the course of an average workday,
18 how often do you see Mr. Harrison?

19 A. All night.

20 Q. All night?

21 A. Yeah, every night.

22 Q. And you all work eight, ten, 12 hour
23 shifts? What are your shifts?

24 A. Twelve.

25 Q. Based on your observations of

000231

1 Mr. Harrison, does he appear to be physically
2 capable of performing his job duties and
3 responsibilities?

4 A. Yes.

5 Q. Has Mr. Harrison ever requested of
6 you any changes or modifications to his job in
7 light of neck pain or problems?

8 A. No, sir.

9 Q. At the conclusion of my questioning
10 of Mr. Harrison, I asked him about an incident
11 that occurred fairly recently at the plant
12 involving he and a former employee. Were you
13 at work when that incident occurred?

14 A. Yes.

15 Q. Did you observe the incident?

16 A. The second part.

17 Q. The second --

18 MR. BARTON: Your Honor, I've got an
19 objection. I'm going to object on the basis of
20 relevancy. Unless this man is a doctor that
21 can testify that this somehow affected his
22 neck, I'm not sure there's any relevance to
23 this testimony at all or to the incident that
24 they went through. He didn't even ask my
25 client if he hurt his neck in that incident, I

1 don't believe. If he did, the answer was no.
2 I'll let him go through it, but it's totally
3 irrelevant.

4 THE COURT: Continue, Mr. Lockhart.

5 BY MR. LOCKHART:

6 Q. Mr. Hartwell, can you tell the Court
7 what you saw as it pertains to this incident
8 between Mr. Harrison and this other gentleman?

9 A. When I went outside, I think they
10 was just getting up. I got between them and I
11 said dude to Rob. I hold Rob and then the
12 other fellow come at Rob. So I tried to stop
13 him and he kept on coming, so I moved out the
14 way, just let them go.

15 Q. Did their altercation resume?

16 A. Yeah.

17 Q. What did you see them doing as far
18 as their interaction with one another was
19 concerned?

20 A. A little tussle and both of them hit
21 the ground and land on top.

22 Q. Did you hear Mr. Harrison's
23 description of this altercation?

24 A. Yeah.

25 Q. Does that sound like a fairly

1 accurate depiction of what happened?

2 A. Yeah, pretty close.

3 Q. Was Mr. Harrison successful in
4 subduing this guy ultimately?

5 A. Yeah.

6 MR. LOCKHART: Your Honor, I don't
7 have any further questions.

8 THE COURT: All right. Mr. Barton.

9 CROSS-EXAMINATION

10 BY MR. BARTON:

11 Q. Mr. Hartwell, were you currently
12 Mr. Harrison's supervisor?

13 A. Yes, sir.

14 Q. How long have you known
15 Mr. Harrison?

16 A. All the ten years I've been there.

17 Q. How long?

18 A. All the ten years.

19 Q. Ten years. During that time have
20 you known him to be a good employee?

21 A. Yes.

22 Q. Have you known him to be a truthful
23 employee?

24 A. Yes.

25 Q. Was he written up for the

000234

1 altercation that you just described?

2 A. No, sir.

3 Q. Why not?

4 A. The guy came on -- he came on
5 private property -- I mean, came on company
6 property.

7 Q. You told him he had a right to
8 defend himself, didn't you?

9 A. Yes.

10 MR. BARTON: Nothing further.

11 THE COURT: Anything else, Mr.
12 Lockhart?

13 MR. LOCKHART: Your Honor, I don't
14 have any further questions. Thank you.

15 THE COURT: You may step down.
16 Other witnesses, Mr. Lockhart?

17 MR. LOCKHART: Nothing from the
18 defendants, Your Honor.

19 THE COURT: All right. Then that
20 concludes this hearing.

21 (The hearing concluded at 1:35 p.m.)

22

23

24

25

000235

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

ROBERT HARRISON,
EMPLOYEE, CLAIMANT,
APPELLANT

v.

OWEN STEEL COMPANY,
EMPLOYER,

and

OLD REPUBLIC GENERAL INSURANCE CO.,
INSURER,
RESPONDENTS

WCC FILE NO. 0824526

Appellate Panel Review held in Columbia,
South Carolina on February 18, 2014, per notices
timely and properly served upon all parties.

APPEARANCES: Claimant Represented by Frank A. Barton, Esquire and the Mullis Law
Firm, Columbia, South Carolina.

Defendant represented by Jason W. Lockhart, McGangus, Goudelock &
Courie, LLC, Columbia, South Carolina.

STATEMENT OF THE CASE

Claimant sought benefits related to an injury to his back resulting from an accident arising out of and in the course of his employment on September 17, 2008. The parties were heard by Commissioner Avery B. Wilkerson, Jr. on August 8, 2013, in Columbia, South Carolina. On November 7, 2013, Commissioner Wilkerson issued his Order with the following specific Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is Seven Hundred Eighty Nine Dollars (\$789.70) and 70/100 with a corresponding compensation rate of Five Hundred Twenty Six Dollars (\$526.49) and 49/100.
3. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation to Claimant on December 7, 2009. (See Form 18 dated May 21, 2013).
4. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant reached maximum medical improvement on July 21, 2010. (See Claimant's APA, p. 15).
5. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant did not initially file a Form 50, Request for Hearing, until May 8, 2013. (See Claimant's Form 50 filed May 8, 2013).

6. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident. (See Claimant's Form 50 filed May 8, 2013).

7. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to the Claimant. (See Claimant's Form 50 filed May 8, 2013).

8. Based on the entirety of the evidence, including Claimant's testimony, Claimant is currently earning greater wages with the Defendants than he was earning in 2008, 2010, and 2012 based on the Claimant's different jobs with the Defendants. (Hr'g Tr. 27:23 – 28:2).

9. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with Defendants, earning a greater wage with Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with Defendants than he was working in 2008 or 2010. (Hr'g Tr. 26:9-11, 27:23 – 28:2).

CONCLUSIONS OF LAW

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

1. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. S.C. Code Ann. § 42-1-100 states "[t]he term '*compensation*' means the money allowance payable to an employee or to his dependents as provided for in this Title and includes funeral benefits provided in this Title."
4. S.C. Code Ann. § 42-15-40 states "[t]he right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident."
5. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation, as defined by S.C. Code Ann. § 42-1-100, to Claimant on December 7, 2009. See Hucks v. Green's Fuel of S.C., 247 S.C. 457, 148 S.E.2d 149 (The filing of a report by the employer and carrier did not constitute the filing of a claim for compensation within the statute of limitations).
6. Where an employer paid an employee compensation for a period time after an accident, the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on the date the employer made its last compensation payment to the employee. Hopkins v. Floyd's Wholesale, 295 S.C. 154, 367 S.E.2d 447, aff'd 299 S.C. 127, 382 S.E.2d 907.

7. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on December 7, 2009 and would have expired on December 7, 2011.
8. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant did not file a claim for compensation until the filing of a Form 50, Request for Hearing, by Claimant's attorney on May 8, 2013 which was outside the 2-year statute of limitations. See Hucks, 247 S.C. 457, 148 S.E.2d 149 (Lack of diligence on the part of the attorney for the claimant is attributable to and binding upon claimant).
10. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident.
11. Assuming that workers' compensation claimant relied on employer's alleged assurances that her claim would be handled without a formal finding, limitations period for filing her claim was tolled only during period of her reliance, that is, until date of last payment of benefits to her. Rogers v. Spartanburg Regional Medical Center, 328 S.C. 415, 491 S.E.2d 708 (Ct. App. 1997).
12. Pursuant to S.C. Code Ann. § 42-15-40, Hopkins, and Rogers, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to Claimant.

13. Pursuant to S.C. Code Ann. § 42-9-30, and based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with the Defendants, earning a greater wage with the Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with the Defendants than he was working in 2008 or 2010."

Within the statutory period for review, counsel for Claimant filed an application for review setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument before the Appellate Panel on February 18, 2014.

DISCUSSION

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and have since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1989), review the award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After considering all of the evidence in the record and the arguments presented, the Appellate Panel, by unanimous vote, reverses the Order of the Hearing Commissioner with regard to the Statute of Limitations. The case is remanded to the Jurisdictional Commissioner

for findings with regard to issues of intervening accidents, laches, and permanency, which were not determined by the Appellate Panel.

FINDINGS OF FACT

1. The Claimant sustained an injury to his back arising out of and in the course of his employment on September 17, 2008;
2. The claim for benefits related to the September 17, 2008, work accident was properly and timely filed with the Commission on September 14, 2009;

CONCLUSIONS OF LAW

1. Pursuant to §42-1-60, the Claimant sustained an injury to his back arising out of and in the course of his employment on September 17, 2008;
2. That the claim for benefits related to the September 17, 2008, work accident was timely filed by claim letter dated September 14, 2009;
3. That the September 14, 2009, letter meets the dictates of S.C. Code Ann. Section 42-15-40, pursuant to Regulation 67-206.

ORDER

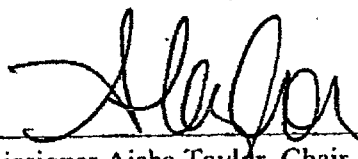
IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above captioned matter on November 7, 2013 is hereby **REVERSED**.

IT IS FURTHER ORDERED that the case is remanded to the Jurisdictional Commissioner for findings with regard to issues of intervening accidents, laches, and permanency which were not determined by the Appellate Panel.

AND IT IS SO ORDERED.

South Carolina Workers' Compensation Commission

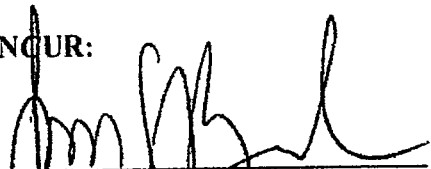
By: _____

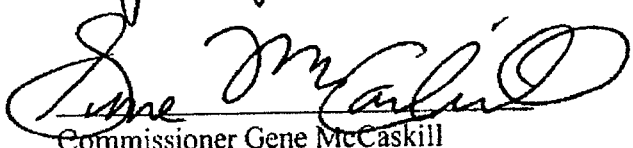

Commissioner Aisha Taylor, Chair

South Carolina Workers' Compensation Commission

REVERSAL

CONCUR:


Commissioner Susan S. Barden, Chair


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

By Kim Falls on May 12, 2014

000243

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0824526

ROBERT L. HARRISON,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

OLD REPUBLIC INSURANCE COMPANY
c/o GALLAGHER BASSETT SERVICES,
INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on July 17, 2013.

APPEARANCES:

Claimant appeared and represented by Frank Barton, Esquire of Mullis Law Firm of Columbia, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

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

COMMISSIONER:

Commissioner Avery B. Wilkerson, Jr.

FILED:

November 7, 2013

000244

STIPULATIONS

1. Jurisdiction is proper with the South Carolina Workers' Compensation Commission.
2. Venue is proper in Columbia, South Carolina.
3. Claimant's average weekly wage is \$789.70 with a corresponding compensation rate of \$546.29.
4. No objections to the APA submissions.

APA SUBMISSIONS

CLAIMANT'S APA SUBMISSIONS

APA#	DOCTOR/EXHIBITS	DATES	PAGES
1.	Palmetto Imaging	7/9/09	1
2.	Dr. Thomas Holbrook	8/31/09-7/21/10	2-15
3.	Palmetto Imaging	6/14/10	16-17
4.	Dr. Thomas Holbrook	7/21/10	18
5.	Dr. Don Johnson -Southeastern Spine	9/29/10	19-20
6.	Doctors Express	3/2/12-3/14/12	21-25
7.	Palmetto Imaging	3/9/12	26-27
8.	Dr. Thomas Holbrook	3/26/12	29-32
9.	Palmetto Imaging	3/9/12	33-35
10.	WCC letter; Mullis letter; Letter of Rep; Letter from Def. Atty	12/13/11-2/8/12	36-39

DEFENDANTS' APA SUBMISSIONS

APA#	DOCTOR/EXHIBITS	DATES	PAGES
11.	Documentation from SCWCC	4/26/13	40
12.	Written Statement from Robert L. Harrison	3/15/12	41
13.	Doctor's Express Columbia	2/29/12-7/20/12	42-51
14.	Doctor's Care	9/17/08-1/6/09	52-59
15.	Florence Neurosurgery & Spine	11/12/10	60-64
16.	Palmetto Health Richland	4/4/10	65-68

STATEMENT OF THE CASE

The hearing was scheduled pursuant to a Form 50 filed by Claimant's attorney on April 24, 2013. Claimant's attorney filed a Form 50 seeking permanent partial disability benefits for Claimant's September 17, 2008 work-related accident. More specifically, Claimant's attorney maintained that Claimant had not received an award of permanent partial disability benefits despite having sustained an admitted injury to the back for which Claimant ultimately underwent surgery, which was performed by Dr. Holbrook, resulting in Claimant receiving an impairment rating of 25% to the whole person.

In response, Defendants maintained that, while the Employer/Carrier admitted that Claimant was involved in a work-related accident on September 17, 2008, Claimant did not file a claim for compensation, with regards to the September 17, 2008 work-related accident, within the statute of limitations. In addition, Defendants took the position that, even should the undersigned Commissioner determine that Claimant did file a claim for compensation within the statute of limitations, any award of permanent partial disability benefits would be speculative, particularly in light of Claimant having previously received permanent partial disability benefits as a result of Claimant's October 4, 2010 work-related accident.

EVIDENCE OF THE CASE

Claimant was the only witness to testify on his behalf. Claimant testified that he sustained an injury to the back on September 17, 2008 while in the course and scope of Claimant's employment with Employer as a gantry welder. (Hr'g Tr. 24:22-24). Claimant indicated that he sought and received medical treatment with Dr. Holbrook. (Hr'g Tr. 25:3-4). Dr. Holbrook initially provided Claimant with injections in his neck. (Hr'g Tr. 25:6). Eventually, Dr. Holbrook performed a cervical fusion surgery on Claimant in November 2009. (Hr'g Tr.

25:7). Claimant underwent an FCE that indicated he could lift fifty pounds "off-and-on" and up to seventy pounds "every now and then." (Hr'g Tr. 35:20-24).

Claimant indicated that he was released at maximum medical improvement by Dr. Holbrook in February 2010. (Hr'g Tr. 25:14-16). Claimant was released completely from Dr. Holbrook's care in July 2010. (Hr'g Tr. 33:20-22). Following his release, Claimant returned to work for Employer as a welder in the tool room. (Hr'g Tr. 28:5-11). As a welder, Claimant stated that he would have to lift up to forty pounds. (Hr'g Tr. 29:20-22). Claimant last worked as a welder in August 2012. (Hr'g Tr. 28:16-18). Claimant is currently employed as a lead man on the nightshift. (Hr'g Tr. 26:1-2). Claimant testified that he currently experiences pain and stiffness in the neck and upper extremity, but that he is currently employed with Employer earning wages greater than the wages that Claimant was earning on the date of his September 2008 work-related accident. (Hr'g Tr. 26:9-11). More specifically, Claimant stated that he is currently employed with Employer as a lead man, and is earning approximately \$16.40 per hour while working approximately 44 hours per week. (Hr'g Tr. 27:23 – 28:2).

On cross-examination, Claimant testified that he sustained a work-related injury to the same part of his body in 2010 that he injured in September 2008. (Hr'g Tr. 30:19-21). Specifically, Claimant stated that he reinjured his neck in either September or October 2010. (Hr'g Tr. 30:18). In addition, Claimant stated that he re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (Hr'g Tr. 34:12-15, 35:7). Claimant indicated that, following his February 2012 re-injury, he returned to Dr. Holbrook for additional medical treatment. (Hr'g Tr. 34:9-11). Claimant stated that he specifically injured his shoulder with pain radiating into his arm in February 2012. (Hr'g Tr. 35:2-4). Claimant testified that he could distinguish between the problems, which he

developed as a result of his September 2008 work-related accident, and the problems that he developed following his October 2010 work-related accident and his February 2012 re-injury at home. (Hr'g Tr. 37:20). Claimant stated that, despite having sustained an injury in September 2008, he returned to work with Employer and has worked in various capacities, all of which require Claimant to engage in rather physically demanding job duties and responsibilities. Claimant also testified that he was in a motorcycle accident in which he suffered injuries to his left collarbone. (Hr'g Tr. 47:2-3). Claimant admitted that he complained of left arm and shoulder problems after his work accidents in 2008 and 2010. (Hr'g Tr. 47:5-8).

FINDINGS OF FACT

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

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is Seven Hundred Eighty Nine Dollars (\$789.70) and 70/100 with a corresponding compensation rate of Five Hundred Twenty Six Dollars (\$526.49) and 49/100.
3. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation to Claimant on December 7, 2009. (See Form 18 dated May 21, 2013).
4. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant reached maximum medical improvement on July 21, 2010. (See Claimant's APA, p. 15).

5. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant did not initially file a Form 50, Request for Hearing, until May 8, 2013. (See Claimant's Form 50 filed May 8, 2013).
6. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident. (See Claimant's Form 50 filed May 8, 2013).
7. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to the Claimant. (See Claimant's Form 50 filed May 8, 2013).
8. Based on the entirety of the evidence, including Claimant's testimony, Claimant is currently earning greater wages with the Defendants than he was earning in 2008, 2010, and 2012 based on the Claimant's different jobs with the Defendants. (Hr'g Tr. 27:23 – 28:2).
9. Based on the entirety of the evidence including the medical records submitted documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with Defendants, earning a greater wage with Defendants

than he was earning on the date of accident, and is currently working in a less physically demanding position with Defendants than he was working in 2008 or 2010. (Hr'g Tr. 26:9-11, 27:23 – 28:2).

CONCLUSIONS OF LAW

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

1. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. S.C. Code Ann. § 42-1-100 states "[t]he term '*compensation*' means the money allowance payable to an employee or to his dependents as provided for in this Title and includes funeral benefits provided in this Title."
4. S.C. Code Ann. § 42-15-40 states "[t]he right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident."
5. Based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, as well as the Form 18 in the Commission file, I find that Defendants last paid compensation, as defined by S.C. Code Ann. § 42-1-100, to Claimant on December 7, 2009. See Hucks v. Green's Fuel of S.C., 247 S.C. 457, 148 S.E.2d 149 (The filing of a report by the employer and carrier did not constitute the filing of a claim for compensation within the statute of limitations).
6. Where an employer paid an employee compensation for a period time after an accident,

the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on the date the employer made its last compensation payment to the employee. Hopkins v. Floyd's Wholesale, 295 S.C. 154, 367 S.E.2d 447, affirmed 299 S.C. 127, 382 S.E.2d 907.

7. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, the 2-year statute of limitations period under S.C. Code Ann. § 42-15-40 began to run on December 7, 2009 and would have expired on December 7, 2011.
8. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant did not file a claim for compensation until the filing of a Form 50, Request for Hearing, by Claimant's attorney on May 8, 2013 which was outside the 2-year statute of limitations. See Hucks, 247 S.C. 457, 148 S.E.2d 149 (Lack of diligence on the part of the attorney for the claimant is attributable to and binding upon claimant).
10. Pursuant to S.C. Code Ann. § 42-15-40 and Hopkins, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident.
11. Assuming that workers' compensation claimant relied on employer's alleged assurances that her claim would be handled without a formal finding, limitations period for filing her claim was tolled only during period of her reliance, that is, until date of last payment of benefits to her. Rogers v. Spartanburg Regional Medical Center, 328 S.C. 415, 491 S.E.2d 708 (Ct. App. 1997).

12. Pursuant to S.C. Code Ann. § 42-15-40, Hopkins, and Rogers, Claimant's claim for benefits are barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to Claimant.
13. Pursuant to S.C. Code Ann. § 42-9-30, and based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, I find that, even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving additional permanent partial disability where the Claimant is currently working full time with the Defendants, earning a greater wage with the Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with the Defendants than he was working in 2008 or 2010.

ORDER

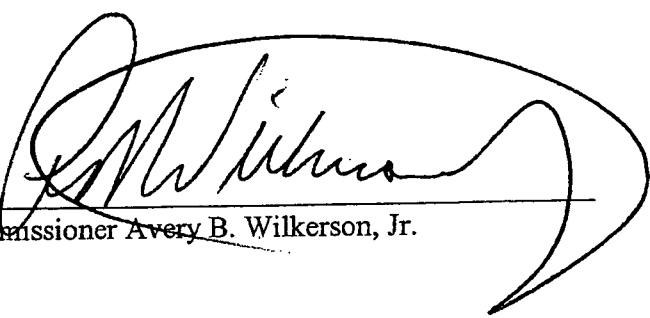
IT IS HEREBY ORDERED that Claimant has failed to meet his burden of proving that he filed a claim for compensation in accordance with S.C. Code Ann. § 42-15-40.

IT IS FURTHER ORDERED that even if the claim for compensation was not barred by the statute of limitations, Claimant has not satisfied his burden of proving entitlement to additional permanent partial disability benefits pursuant to S.C. Code Ann. § 42-9-30.

IT IS FURTHER ORDERED that Claimant's claim for all benefits available under the Act is **DENIED**.

IT IS HEREBY ORDERED

AND IT IS SO ORDERED.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify 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).
November 7, 2013 .

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson



Claimant's Name: Robert Harrison Employer's Name: Owens Steel
Address: 7290 Cabin Creek Rd. Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Carrier: Old Republic Ins. Co
Preparer's Name: Connie Soles Preparer's Phone #: (803) 799-9577

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 526.49 2. AWW: \$789.7 Date of Injury: April 21, 200
3. Type of injury and body part(s): See 1 in Addendum
4. Facts in controversy: See 2 in Addendum
5. Legal issues involved: none other than above.
6. Unusual aspects: See 3 in Addendum
7. Witnesses (designate if expert):* See 4 in Addendum
8. Exhibits: See 5 in Addendum
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See 6 in Addendum
10. Name, address, and specialty, if any, of the treating physician: See 7 in Addendum
11. Impairment rating(s); body part(s); physician and date of opinion: See 8 in Addendum
12. I am amending my Form 50/51 in the following manner: See 9 in Addendum

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

Signature: Shank A. Bauto

Email: Csoles@mullskawfirm.

Date of hearing: 07/09/13

Time needed for hearing: 1 hour

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

Addendum 1/4
ROBERT L. HARRISON WCC# 0824526

1. while welding, claimant stood up to cut off the machine and his back and neck locked up resulting in injury to his back, neck/cervical spine, right shoulder, left shoulder and any and all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result there from. Claimant has surgery with hardware as a result of this accident. Claimant has a change of condition for the worse and was treated by Doctors Express and after MRI's done was referred back to Dr. Holbrook due to changes in his cervical spine. Dr. Holbrook recommended some outpatient physical therapy, cervical epidural injection and medication; anti-inflammatory medication, Mobic and muscle relaxer, Flexeril due to radicular type pain on the right. Claimant reported this to his employer and requested treatment but was not authorized.
2. Claimant is entitled to permanency, lifetime medical care, and any and all other benefits applicable under the Act. Claimant rated 25% to the whole person due to cervical spine injury resulting in surgery at C5-C6 with fusion and instrumentation and harvesting of autograft. Claimant is requesting permanent partial disability and lifetime medical care. Claimant also request additional treatment outlined by Dr. Holbrook.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.

3. Claimant's case has not been resolved. He was awarded 25% whole person and is requesting additional treatment recommended by the authorized treating physician and also has a change in his condition as outlined by the authorized treating physician.
4. Claimant, Thomas Harrison, Lisa Harrison, Mary Harrison, Hamp Sumter, Gerome Wilson, Kiley Marco Williams, and other lay witnesses may be named as well as any witnesses listed by the Defendant/Carrier.

Reports and/or updated reports of Dr. Thomas Holbrook to be submitted and/or Dr. Holbrook to testify at the hearing and/or his deposition to be taken and submitted immediately upon receipt.

Reports and/or updated reports of Dr. Don Johnson to be submitted and/or Dr. Johnson to testify at the hearing and/or his deposition to be taken and submitted immediately upon receipt.

5. Medical Reports. Guides to the Evaluation of Permanent Impairment. We also reserve the right to submit evidence in response to evidence submitted by the Defendant/Carrier. Also see #7 above.
6. See attached "Notice of Witnesses and Written Report(s)/Physicians Or Other Evidence To Be Introduced On Behalf of Claimant". Also, any and all medicals previously submitted

FAB fab

000255

Addendum 2/4
ROBERT L. HARRISON WCC# 0824526

pursuant to R.67-612. Also see #7 above.

7. Doctors Express Columbia, Dr. Thomas Holbrook, Dr. Don Johnson, Palmetto Imaging.
8. See Below:
 - a)..."MRI of cervical spine: impression: disc bulge and uncovertebral arthropathy at C3-4 and C4-5. Disc bulge with left foraminal protrusion at C5-6..."by Dr. Robin Daum-Kowalski, MD with Palmetto Imaging on 7/9/09 (page 1).
 - b)..."date of operation: 11/10/09. pre-operative diagnosis: CERVICAL DISK HERNIATION C5-C6. post-operative diagnosis: cervical disk herniation C5-C6. Surgical procedure: anterior cervical discectomy with fusion and instrumentation, C5-C6. Harvesting of autograft. Autograft was harvested from the C5 vertebral body..."by Dr. Thomas Holbrook on 11/10/09 (pages 5 - 6).
 - c)..."He has completed a FCE and has permanent restrictions of no lifting greater than 50 pounds and has a 25% impairment to the whole person..."by Dr. Thomas Holbrook on 7/21/10 (page 15).
 - d)..."MRI of cervical spine: Impression: S/P ACDF with hardware at C5-6 with the abnormality which was present improved with no cord compression at this level at this time and anatomical alignment at the operative site. Left foraminal narrowing has been relieved. Moderate right foraminal narrowing remains unchanged.

At C3-4 there is a mild/moderate broad based disc osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord as well as a mild/moderate bilateral foraminal narrowing.

At C4-5 there is also mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord and mild/moderate bilateral foraminal narrowing.

At C6-7 there is a mild broad-based disc-osteophyte complex with moderate left and mild right foraminal narrowing..."by Dr. Robert L. Waldron II, MD on 6/14/10 (page 16 - 17).

e)..."Has reached MMI with permanent disability rating of 25% to the whole person..."by Dr. Thomas Holbrook on 7/21/10 (page 18).

d)..."After surgery on 11/10/09 he went through physical therapy, worked as hard as he could. He was sent back to the work place on a full time basis where he has been continuing to work as a welder. He has continued problems since back to work place. His welding involves and requires that he bend over with his head in a flexed position for 30 to 40 minutes at a time on a continuous basis. His specific job requires "horizontal welds". He has had recurrence of his neck and radiating left arm pain. Currently his pain is 75% neck, 25% arm. His pain is made worse by almost all activity, improved by lying on his side or sitting.

Reviewed cervical MRI of 6/14/10. Significantly has degenerative changes at the two

000256

Fab fab

Addendum 3/4
ROBERT L. HARRISON WCC# 0824526

levels above his fusion, specifically 3 -4 and 4-5. He has a disc osteophyte with some flattening of the left side of the spinal cord at both levels. Impression: recurring neck, radiating left arm pain. S/P anterior cervical fusion C5-C6. Severe degenerative disc disease with disc osteophytes and stenosis left sided spinal cord C3-4, 4-5.

The patient may be able to do the heavy lifting but his job does not allow the second restriction of the FCE which specifically is avoidance of poor body mechanics. My definition as a welder using a welding shield and hard hat, he has to have his head flexed forward in an awkward poor body mechanic posture on a continuous basis to do his job. I am also specifically concerned about the significant pathology of the disc above the fused level specifically 3-4 and 4-5. I think it is likely if he continues this type of work that he will have further neck surgery to extend his fusion.

I would place him at MMI with a 25% whole person impairment rating with permanent restrictions. I do not believe he can return to welding for the reasons above. I would ask that he not do prolonged flexion or extension of his head and neck. No work from shoulder level to above and he should avoid repetitive bending. I think he needs to have a change of vocation or HE WILL BE LOOKING AT FUTURE NECK SURGERY...By Dr. Don Johnson on 9/29/10 (page 19 - 20).

e)..."neck pain going down back and right arm. Numbing and tingling in thumb, index and middle finger. Current meds are prednisone and oxycodone. 11/10 had cervical fusion. Has sharp, tingling, numbness, throbbing and shooting pain that interferes with work, sleep, daily routine, sitting, bending etc..."by Columbia Neurosurgical Associates on 3/26/13 (pages 29 -31).

f)..."returns to the office for follow-up of cervical radiculopathy. He had previously undergone anterior cervical discectomy and fusion at C5-6 for radiculopathy on the left. He now complains of neck and right arm pain radiating down the right arm into the hand and some intermittent numbness and tingling in the right arm in the first 3 fingers on the right. He says this began about a month ago after he picked up his daughter who had fallen off the porch 2/26/12. He was seen at Doctors Care and was thought to possibly have right shoulder injury and was seen by orthopaedics who cleared this.

MRI scanning of his cervical spine from 3/9/12 shows satisfactory postoperative changes at C5-6. There is some posterior disc protrusion at C3-4 eccentric to the left and some neural foraminal narrowing bilaterally at C4-5 more so on the right.

On exam, there is some tenderness to palpation over the cervical paraspinal muscles with a moderate decrease in ROM of the cervical spine due to exacerbation of his neck pain. Sensation is intact to pinprick in the upper extremities. There is no focal motor deficit in the upper extremities. DTRs are trace at the biceps and triceps.

This gentleman is now experiencing radicular type pain on the right whereas before he had undergone surgery for radicular symptoms on the left. At this time I have written him a prescription for the anti-inflammatory, Mobic, and the muscle relaxer, Flexeril. I would also recommend some outpatient physical therapy and a cervical epidural steroid injection. I believe that he would respond satisfactorily to some further conservative measure..."by

000257

fab fab

Addendum 4/4
ROBERT L. HARRISON WCC# 0824526

Dr. Thomas Holbrook on 3/26/12 (pages 32 - 32).

g)...”MRI of the cervical spine This MRI was compared to recent prior MRI from 6/14/10. Findings: C3-4 there is marked loss of disc height and signal with anterior and posterior bulging of the disc and uncovertebral arthropathy with compression of the thecal sac, impression upon the cord and severe bilateral neural foraminal stenosis. At C4-5 there is similar appearing marked loss of disc height and signal with anterior and posterior bulging of the disc with compression of the thecal sac and severe neural foraminal stenosis bilaterally.

Evidence of discectomy and fusion at C5-6 with no residual disc and no stenosis.

At C6-7 there is bulging of the disc, either eccentric towards the right or associated with right foraminal protrusion. There is neural foraminal stenosis is right greater than left.

This is increased from the patient’s prior MRI.

Impression: discectomy and fusion C5-6.

Eccentric disc bulge versus disc bulge and protrusion C6-7.

Marked degenerative disc disease with stenosis at C3-4 and C4-5...”by Palmetto Imaging on 3/9/12 (pages 34 - 35).

9. Amended to note we are requesting permanent partial disability, life time medical treatment and additional care as outlined by Dr. Thomas Holbrook due to a change in his condition.

000258

fab fab



Claimant's Name: Robert Harrison Employer's Name: Owens Steel
Address: 7290 Cabin Creek Rd. Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Carrier: Old Republic Ins. Co
Preparer's Name: Connie Soles Preparer's Phone #: (803) 799-9577

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 489.81 2. AWW: \$734.72 Date of Injury: October 4, 20
3. Type of injury and body part(s): See 1 in Addendum
4. Facts in controversy: See 2 in Addendum
5. Legal issues involved: none other than above.
6. Unusual aspects: None other than above.
7. Witnesses (designate if expert):* See 3 in Addendum
8. Exhibits: See 4 in Addendum
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See 5 in Addendum
10. Name, address, and specialty, if any, of the treating physician: See 6 in Addendum
11. Impairment rating(s); body part(s); physician and date of opinion: See 7 in Addendum
12. I am amending my Form 50/51 in the following manner: See 8 in Addendum

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

Signature: Frank Bato

Email: Csoles@mullislaw.com

Date of hearing: 07/09/13

Time needed for hearing: 1 hour

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

Addendum 1/6
ROBERT HARRISON WCC# 1013900

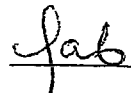
1. After returning to work at light duty, Claimant was standing on a steel beam approximately 4 feet high, picked up a 50 lb. spool of wire to put it on the machine over his head and had pain shoot from the top of his neck to the middle of his back resulting in injury to his back, neck/cervical spine with pain radiating into his mid back, arms and any/all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result there from. Claimant returned to the doctor prior to one year from his disbursement due to severe pain and a change in condition and was seen by Dr. Thomas Holbrook who recommended additional medical care, treatment due to a change in his condition. Claimant reported this to his employer however treatment was not authorized.
2. Claimant is requesting additional medical care and treatment as outlined by the authorized treating physician, Dr. Thomas Holbrook, lifetime medical treatment, and any and all other benefits applicable under the Act. Claimant rated 15% by Dr. Sweet (award 28% back on Form 16) due to reinjury of the cervical spine. Claimant request additional treatment outlined by Dr. Holbrook due to a change in his condition. Claimant is not requesting additional permanency at this time unless by the time of the hearing that any and all treating physicians have released him and indicate he is at maximum medical improvement.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.

3. Claimant, Thomas Harrison, Lisa Harrison, Mary Harrison, Hamp Sumter, Gerome Wilson, Kiley Marco Williams, and other lay witnesses may be named as well as any witnesses listed by the Defendant/Carrier.

Reports and/or updated reports of Dr. Thomas Holbrook to be submitted and/or Dr. Holbrook to testify at the hearing and/or his deposition to be taken and submitted immediately upon receipt.

4. Medical Reports. Guides to the Evaluation of Permanent Impairment. We also reserve the right to submit evidence in response to evidence submitted by the Defendant/Carrier. Also see #7 above.
5. See attached "Notice of Witnesses and Written Report(s)/Physicians Or Other Evidence To Be Introduced On Behalf of Claimant". Also, any and all medicals previously submitted pursuant to R.67-612. Also see #7 above.
6. Doctors Express Columbia, Dr. Thomas Holbrook, Dr. Don Johnson, Palmetto Imaging.
7. a) "...Diagnosis Radiculopathy , cervical. Prescriptions acetaminophen-oxycodone (Tylox 500 mg-5 mg oral capsule); 1 cap by mouth every 6 hours, 3 days, for pain,....Follow up with: Raymond Sweet, USC Department of Neurosurgery; 3MP Suite 310, Columbia, SC 29203." By Dr. Cale Davis on 10/4/2010, p. 1;

 FAB

000260

Addendum 2/6
ROBERT HARRISON WCC# 1013900

b) "...04 October 2010 22:45 MR CERVICAL SPINE WITHOUT CONTRAST: 10/04/10 at 10:20 PM..." By Dr. Cale Davis Richland ER on 10/4/2010, p. 6;

c) "...Impression: 1) Prior anterior cervical fusion from C5 to C6 with no evidence of acute fracture or subluxation. 2) Developmental narrowing of the spinal canal in the AP dimension with short pedicles. There are superimposed disk bulges which are most notable at C3-4 and C4-5 where there is superimposed additional mild to moderate central canal narrowing. Some bilateral neural foraminal narrowing is also noted at C3-4 and C4-5, appearing relatively moderate in degree." By April S. Quarles @ Palmetto Health Richland on 10/4/2010, p. 7;

d) "...Date of visitation: 10/4/2010 C5-C6 disk herniation, which was repaired back in 11/2009. The patient reports that this evening he was at work where he is a welder. He reports that he lifted a 5-pound roll of wire. This was over his head. When he turned his neck, he felt an immediate onset of sharp pain, which radiated down to his upper back and down his left arm. He reported noting increased weakness in the left arm [] has been in the past. He does report some baseline weakness there. He also reports new onset numbness on the left. He denies any other trauma, any other falls. Reports that after this occurred he lay down on the ground where EMS found him and subsequently transported him here. He denies any lower extremity numbness, tingling or weakness." By Dr. Stephen L. Shelton on 10/4/2010, p. 9;

e) "Clinical impression: 1. Neck pain. 2. History of herniation, C5-C6. 3. Tobacco abuse." By Dr. Stephen L. Shelton on 10/4/2010, p. 11;

f) "The MRI was read as having C3-C4 and C4-C5 bulges with more central canal narrowing superimposed on development, total diffuse central canal stenosis, with other minimal bulges, but no cord edema or fractures seen...He will certainly need outpatient follow-up....the number for neurosurgery....Clinical Impression: 1. Neck Pain. 2. Disk herniations at C3-C4 and C4-C5. Disposition: The patient will be discharged home with instructions to follow up with Neurosurgery and his primary doctor." By Dr. Stephen L. Shelton on 10/4/2010, p. 13;

g) "...10-15-10...May work with the following accommodations as of 10/14/10. No lifting more than 5 lbs. No operation of hazardous or fast-moving machinery, no driving. Ground level work only, no ladders or heights. No repetitive bending, stooping, squatting, pushing jerking, twisting or bouncing...Limited use of neck. No overhead lifting. No high repetitive hand activities for extended periods of time...Return for re-evaluation at this office on Oct. 22nd, 2010....L neck injury, as directed." by Doctors Care on 10/15/10, p. 16;

FAB FAB

000261

Addendum 3/6
ROBERT HARRISON WCC# 1013900

h) "...3. May work with the following accommodations as of /5/19/10. CANNOT READ THAT CONNIE. No lifting more than 5-10 lbs....Ground level work only, no ladders or heights. No repeat bending stooping, squatting, pushing, jerking, twisting or bouncing....no overhead lifting....Return for re-evaluation at this office on 11-2-10. F/u Re-injury neck and s/p C6 imp w/pain. Connie, can't read that phrase." by Doctors Care on 10/19/10, p. 17;

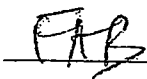
i) "...right-handed black male who has been evaluated for neck pain going into the back of the neck, some left arm pain which has settled down....He had an ACF in November of 2009, by Dr. Holbrook and returned to work. He does heavy lifting, 50 to 60 pounds a day. He is currently on light duty not lifting more than 10 pounds. He states he does a lot better with that and currently having only some achy neck pain without arm pain...I do not think really should be done at this point. He feels that he can do a lot better if he is kept on-term light-duty....He has not had a functional capacity evaluation; my plan would suggest that he have one done and that long-term work restrictions should include not lifting over 15 to 20 pounds on a regular basis..."by Dr. Raymond C. Sweet on 11/18/10 (page 18 – 19).

j)..."ruptured cervical spine. 15% medical impairment total body regarding injury of 10/4/10 and is able to work with the following restrictions of NOT TO LIFT OVER 30 LBS AND WILL NEED FUTURE MEDICAL CARE AND TREATMENT RELATED TO HIS WORK RELATED INJURY BASED ON A RESONABLE DEGREE OF MEDICAL CERTAINTY (MORE LIKELY THAN NOT) AND THAT MEDICAL CARE AND TREATMENT INCLUDING MEDICATION IS AS FOLLOWS: CHANGE MEDICATIONS AND MD FOLLOW-UP 3 – 4 TIMES A YEAR..."by Dr. Raymond Sweet on 11/23/10 (page 20).

k)..."Letter from Case Manager to Dr. Sweet indicating: The position in the tool room is not a permanent position according to the employer and Mr. Harrison will need to return to his position as a welder in order to continue is employment with Owen Steel..."by Marty Mackey, RN, AD on 12/12/10 (page 21 – 25).

l)..."MRI of cervical spine: impression: disc bulge and uncovertebral arthropathy at C3-4 and C4-5. Disc bulge with left foraminal protrusion at C5-6..."by Dr. Robin Daum-Kowalski, MD with Palmetto Imaging on 7/9/09 (page 26).

m)..."date of operation: 11/10/09. pre-operative diagnosis: CERVICAL DISK HERNIATION C5-C6. post-operative diagnosis: cervical disk herniation C5-C6. Surgical procedure: anterior cervical disectomy with fusion and instrumentation, C5-C6. Harvesting of autograft. Autograft was harvested from the C5 vertebral body..."by Dr. Thomas Holbrook on 11/10/09 (pages 30 – 31).

 FAB

000262

Addendum 4/6
ROBERT HARRISON WCC# 1013900

n)..."He has completed a FCE and has permanent restrictions of no lifting greater than 50 pounds and has a 25% impairment to the whole person...by Dr. Thomas Holbrook on 7/21/10 (page 40).

o)..."MRI of cervical spine: Impression: S/P ACDF with hardware at C5-6 with the abnormality which was present improved with no cord compression at this level at t his time and anatomical alignment at the operative site. Left foraminal narrowing has been relieved. Moderate right forminal narrowing remains unchanged.

At C3-4 there is a mild/moderate broad based disc osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord as well as a mild/moderate bilateral foraminal narrowing.

At C4-5 there is also mild/moderate broad-based disc-osteophyte complex eccentrically greater in the left paracentral region with mild displacement and flattening of the left hemicord and mild/moderate bilateral foraminal narrowing.

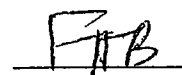
At c6-7 there is a mild broad-based disc-osteophyte complex with moderate left and mild right foraminal narrowing..."by Dr. Robert L. Waldron II, MD on 6/14/10 (page 41 - 42).

p)..."Has reached MMI with permanent disability rating of 25% to the whole person..."by Dr. Thomas Holbrook on 7/21/10 (page 43).

q)..."After surgery on 11/10/09 he went through physical therapy, worked as hard as he could. He was sent back to the work place on a full time basis where he has been continuing to work as a welder. He has continued problems since back to work place. His welding involves and requires that he bend over with his head in a flexed position for 30 to 40 minutes at a time on a continuous basis. His specific job requires "horizontal welds". He has had recurrence of his neck and radiating left arm pain. Currently his pain is 75% neck, 25% arm. His pain is made worse by almost all activity, improved by lying on his side or sitting.

Reviewed cervical MRI of 6/14/10. Significantly has degenerative changes at the two levels above his fusion, specifically 3 -4 and 4-5. He has a disc osteophyte with some flattening of the left side of the spinal cord at both levels. Impression: recurring neck, radiating left arm pain. S/P anterior cervical fusion C5-C6. Severe degenerative disc disease with disc osteophytes and stenosis left sided spinal cord C3-4, 4-5.

The patient may be able to do the heavy lifting but his job does not allow the second restriction of the FCE which specifically is avoidance of poor body mechanics. My

 FAB

000263

Addendum 5/6
ROBERT HARRISON WCC# 1013900

definition as a welder using a welding shield and hard hat, he has to have his head flexed forward in an awkward poor body mechanic posture on a continuous basis to do his job. I am also specifically concerned about the significant pathology of the disc above the fused level specifically 3-4 and 4-5. I think it is likely if he continues this type of work that he will have further neck surgery to extend his fusion.

I would place him at MMI with a 25% whole person impairment rating with permanent restrictions. I do not believe he can return to welding for the reasons above. I would ask that he not do prolonged flexion or extension of his head and neck. No work from shoulder level to above and he should avoid repetitive bending. I think he needs to have a change of vocation or HE WILL BE LOOKING AT FUTURE NECK SURGERY...By Dr. Don Johnson on 9/29/10 (page 33 – 45).

r)...”Supervisor’s Incident Investigation Report: incident date: 10/4/10. Neck injury (vertebrate bulge 2 & 3). Employee was trying to load wire spool on the welder. Had Cooper holding the welding machine so he could load up, tried lifting once, tried again and that’s when injury occurred...”by Terry Hartwell on 10/4/10 (page 46).

s)...”Letter to Adjuster, Tara Potter 11/15/10 and 3/10/11 requesting TTD benefits for 10/4/10 through 10/17/10 and 11/2/10, 11/18/10 through 11/10/10...”page 47, 48.

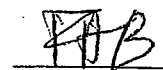
t)...”document of detailed voice message left to adjuster, Tara Potter regarding TTD benefits due and request for payment...”on 2/24/11 (page 49).

u)...”form 20 showing aww of 789.70...”by Tara Potter page 50.

v)...”neck pain going down back and right arm. Numbing and tingling in thumb, index and middle finger. Current meds are prednisone and oxycodone. 11/10 had cervical fusion. Has sharp, tingling, numbness, throbbing and shooting pain that interferes with work, sleep, daily routine, sitting, bending etc...”by Columbia Neurosurgical Associates on 3/26/13 (pages 51 - 53).

w)...”returns to the office for follow-up of cervical radiculopathy. He had previously undergone anterior cervical discectomy and fusion at C5-6 for radiculopathy on the left. He now complains of neck and right arm pain radiating down the right arm into the hand and some intermittent numbness and tingling in the right arm in the first 3 fingers on the right. He says this began about a month ago after he picked up his daughter how had fallen off the porch 2/26/12. He was seen at Doctors Care and was thought to possible have right shoulder injury and was seen by orthopaedics who cleared this.

MRI scanning of his cervical spine from 3/9/12 shows satisfactory postoperative changes at

 FAB

000264

Addendum 6/6
ROBERT HARRISON WCC# 1013900

C5-6. There is some posterior disc protrusion at C3-4 eccentric to the left and some neural foraminal narrowing bilaterally at C4-5 more so on the right.

On exam, there is some tenderness to palpation over the cervical paraspinous muscles with a moderate decrease in ROM of the cervical spine due to exacerbation of his neck pain. Sensation is intact to pinprick in the upper extremities. There is no focal motor deficit in the upper extremities. DTRs are trace at the biceps and triceps.

This gentleman is now experiencing radicular type pain on the right whereas before he had undergone surgery for radicular symptoms on the left. At this time I have written him a prescription for the anti-inflammatory, Mobic, and the muscle relaxer, Flexeril. I would also recommend some outpatient physical therapy and a cervical epidural steroid injection. I believe that he would respond satisfactorily to some further conservative measure..."by Dr. Thomas Holbrook on 3/26/12 (pages 54 - 54).

x)..."MRI of the cervical spine This MRI was compared to recent prior MRI from 6/14/10. Findings: C3-4 there is marked loss of disc height and signal with anterior and posterior bulging of the disc and uncovertebral arthropathy with compression of the thecal sac, impression upon the cord and severe bilateral neural foraminal stenosis. At C4-5 there is similar appearing marked loss of disc height and signal with anterior and posterior bulging of the disc with compression of the thecal sac and severe neural foraminal stenosis bilaterally.

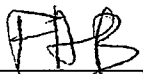
Evidence of discectomy and fusion at C5-6 with no residual disc and no stenosis. At C6-7 there is bulging of the disc, either eccentric towards the right or associated with right foraminal protrusion. There is neural foraminal stenosis is right greater than left. This is increased from the patient's prior MRI.

Impression: discectomy and fusion C5-6.

Eccentric disc bulge versus disc bulge and protrusion C6-7.

Marked degenerative disc disease with stenosis at C3-4 and C4-5..."by Palmetto Imaging on 3/9/12 (pages 55 - 56).

8. Injuries relate to 10/4/10 accident with treatment by Dr. Sweet. Claimant returned to Dr. Thomas Holbrook due to a change in his condition and treatment recommended was reported to the Employer but not authorized by the Defendant/Carrier.

 FAB

000265

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1013900

Robert L. Harrison,
Employee/Claimant,

v.

Owens Steel Co., Inc.,

and

Old Republic Insurance Co.,

Employer/Insurer(s),
Defendants.

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/ PHYSICIANS
AND/OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and JASON W. LOCKHART,
ESQUIRE, FOR EMPLOYER/INSURER

YOU ARE HEREBY NOTIFIED THAT THE Claimant, pursuant to the provisions of the South
Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended)
herewith submit(s) the following report(s)/physician or other evidence on behalf of the Claimant, to wit:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1	Palmetto Health Richland		10/4/10 – 10/5/10	1 - 15
2	Doctors Care		10/15/10 – 10/19/10	16 – 17
3	Dr. Raymond Sweet		11/18/10 – 11/23/10	18 – 20
4	letter to Dr. Sweet from case manager w/attachments		12/12/10 – 12/12/10	21 – 25
5	Palmetto Imaging		7/9/09 – 7/9/09	26 – 26
6	Dr. Thomas Holbrook		8/31/09 – 7/21/10	27 – 40
7	Palmetto Imaging		6/14/10 – 6/14/10	41 – 42
8	Dr. Thomas Holbrook		7/21/10 – 7/21/10	43 – 43
9	Dr. Don Johnson	Southeastern Spine	9/29/10 – 9/29/10	44 – 45

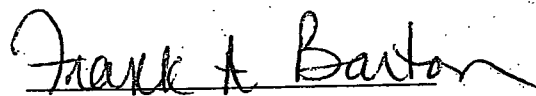
000266

10	Supervisors Incident Report	10/4/10 – 10/4/10	46 – 46
11	letters to carrier and document of phone message	11/15/10 – 3/10/11	47 – 49
12	Form 20, Form 15S regarding earnings supporting higher C/R		51 - 51
13	Doctors Express	3/2/12 – 3/14/12	52 - 56
14	Palmetto Imaging	3/9/12 – 3/9/12	57 – 58
15	Dr. Thomas Holbrook Columbia Neurosurgical Assoc.	3/26/12 – 3/26/12	60-63
16	Palmetto Imaging	3/9/12 – 3/9/12	64-66

(17) Exhibits - letter from WCC 12-73-11 - various letters to WCC 12-30-11 letters from Def Atty 69-70

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physician/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.



Frank A. Barton
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577

June 24, 2013

Columbia, South Carolina

000267

Physician's Discharge Summary

Name: ROBERT HARRISON

DOB: 07/23/71

MRN: R000039055

Visit Date: 10/04/10 20:46:00

FIN/Acct. Number: R1027702300

Current Date: 10/04/10 23:47:47

Address: 7290 CABIN CREEK RD HOPKINS SC 29061

Phone: (803)776-2327

Primary Care Provider:

Name: **Phone:**

Palmetto Health would like to thank you for allowing us to assist you with your healthcare needs. The following includes patient education materials and information regarding your injury/illness.

I understand that the emergency care which I received is not intended to be complete and definitive medical care and treatment. I acknowledge that I have been instructed to contact the above physician immediately for continued and complete medical diagnosis, care and treatment. EKG's, X-rays, and lab studies will be reviewed by appropriate specialists and I will be notified of significant discrepancies. I also understand that my signature authorizes this Medical Center to release all or and part of my medical record (including, if applicable, information pertaining to AIDS and/or HIV testing, mental health records, and drug and/or alcohol treatment) to the referred physician listed above.

2

Name: ROBERT HARRISON MRN: R000039055

Follow-Up Instructions

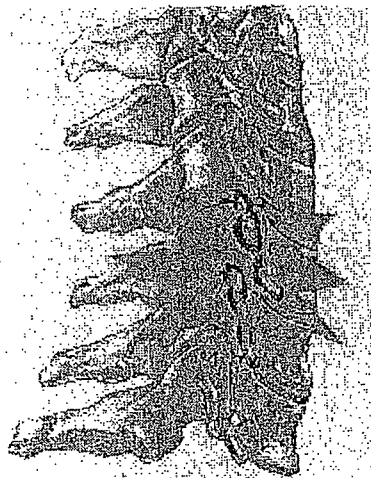
ROBERT HARRISON has been given the following patient education materials:

Diagnosis

116466en

PINCHED NERVE, Neck [Cervical Radiculopathy]

A pinched nerve in the neck (also called "Cervical Radiculopathy") is caused by irritation or pressure on the nerve that goes from the spinal cord to the arm. This may be caused by a bulging spinal disk (a "spinal disk" is the cushion between each spinal bone) or narrowing of the spinal joint due to arthritis.



This can cause numbness, tingling, deep aching or electrical shooting pain from the side of the neck all the way down to the fingers on one side.

A pinched nerve may begin after a sudden turning/bending force (such as in a car accident) or after a simple awkward movement. In either case, muscle spasm is commonly present and contributes to the pain.

HOME CARE:

- 1) Rest and relax the muscles. Use a comfortable pillow that supports the head and keeps the spine in a neutral position. The position of the head should not be tilted forward or backward. A rolled up towel may help for a custom fit.
- 2) Some persons find relief with heat (hot shower, hot bath or heating pad) and massage, while others prefer cold packs (crushed or cubed ice in a plastic bag, wrapped in a towel). Try both and use the method that feels best for 20 minutes several times a day.
- 3) You may use acetaminophen (Tylenol) or ibuprofen (Motrin, Advil) to control pain, unless another medicine was prescribed. [NOTE : If you have chronic liver or kidney disease or ever had a stomach ulcer or GI bleeding, talk with your doctor before using these medicines.]

Name: ROBERT HARRISON
MRN: R000039055

2 of 5

Oct/04/10 23:47:47

000269

3

Name: ROBERT HARRISON MRN: R000039055

FOLLOW UP with your physician or this facility if your symptoms do not show signs of improvement after one week. Further testing may be needed.

[NOTE: If x-rays were taken, they will be reviewed by a radiologist. You will be notified of any new findings that may affect your care.]

GET PROMPT MEDICAL ATTENTION if any of the following occur:

- Pain becomes worse and not controlled by prescribed pain medicine
- Weakness in the arm
- Increasing numbness in the arm
- Trouble breathing or swallowing

© 2000-2009 The StayWell Company, 780 Township Line Road, Yardley, PA 19067. All rights reserved. This information is not intended as a substitute for professional medical care. Always follow your healthcare professional's instructions.

Prescriptions

ROBERT HARRISON has been given the following prescriptions:
[acetaminophen-oxycodone (Tylox 500 mg-5 mg oral capsule)]

Palmetto Health Richland

Emergency Department, 5 Richland Medical Park Drive
Columbia, SC 29203 (803) 434-1663

Device: RFD05MPPD5P001

Patient Name: HARRISON, ROBERT LEWIS

Birthdate: 07/23/1971

Age: 39 Years

Sex: Male

MIRN: R000039055

Allergies: NKA

Pharmacist please note - Allergy list may be incomplete

Patient Address: 7290 CABIN CREEK RD Home Phone: (803) 776-2327
HODKINS, SC 29061 Work Phone: (803) 251-7504

Prescription Details

Date Issued: 10/04/2010

Rx: Tylox 500-mg/5-mg oral capsule

Start Date: 10/04/2010

SIG: 1 cap PO q6hr(s) for 3 days PRN for pain

Dispense/Supply: 12 (twelve) cap

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

Prescribed by: **Cale M Davis, MD**

DEA#: FD1049335

NPI#: 1578725388

Security features: (S) bordered and spelled quantities; microprint signature line visible at 5x or greater.
Magnification that must show **THIS IS AN ORIGINAL PRESCRIPTION** and this description of features.

WARNING: This document contains the following industry recognized tamper resistant security features.

Copy Void Pantograph

When copying is attempted on many copiers and scanners the message "COPY" appears in the

TROYmark™

Diagonal repeating "watermark" consisting of variable data from the document

Micro Print

Area of very small print which must be read under magnification found wherever the MP symbol appears

Security Features Warning Box

Warning Box describing the security features contained within this document

000271

S

MR Cervical Spine W/O Contrast HARRISON, ROBERT LEWIS - R000039055

* Final Report *

Result type: MR Cervical Spine W/O Contrast
Result date: 04 October 2010 22:45
Result status: Auth (Verified)
Performed by: Quarles, April S on 04 October 2010 22:45
Verified by: Vadaparampil MD, John A on 05 October 2010 05:19
Encounter info: R1027702300, Richland, ERR-Emergency Room, 10/04/10 - 10/04/10

*** Final Report ***

Reason For Exam

neck pain, h/o herniation

Finding:

MR CERVICAL SPINE WITHOUT CONTRAST: 10/04/10 at 10:20 PM.

CLINICAL HISTORY: 39-year-old male with neck pain. He experience pain after lifting weights over his head. He has previous anterior cervical fusion done in 2009.

TECHNIQUE: Sagittal T2, T1 and T2 fat saturated images are obtained as well as axial T2 and gradient echo images through the cervical spine. No contrast is given.

COMPARISON: No prior MRI is available for comparison.

FINDINGS: There is some susceptibility artifact due to anterior cervical fusion hardware extending From C5 to C6. No significant prevertebral edema or fluid is seen. The disks show some mild loss of signal diffusely, though overall the disk heights appear grossly preserved. No geographic marrow lesion or acute fracture is appreciated. No acute subluxation is seen. The cervical and upper thoracic cord shows homogenous signal throughout, with no abnormal areas of increased T2 signal present.

There is developmental narrowing of the spinal canal in the AP dimension diffusely extending from approximately C2 through the visualized upper thoracic spine. For the most part, the osseous spinal canal measures approximately 1.0 cm in AP dimension, disregarding areas of superimposed disk bulge and more focal central canal narrowing. At C3-4, there is a broad base disk bulge, which is asymmetrically greater on the left, narrowing the spinal canal to approximately 8 mm AP centrally and

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 1 of 3
(Continued)

000272

60

* Final Report *

causing more moderate left central canal narrowing. At C4-5, there is an additional broad base disk bulge, which is mildly asymmetrically greater on the left, resulting in overall moderate central canal narrowing and narrowing of the canal to approximately 7 mm AP. Additional mild generalized disk bulge is present at C6-7, though this causes only minimal anterior effacement of the thecal sac without significant superimposed central canal narrowing. At T3-4, minimal disk bulge is also seen on sagittal images, causing only minimal anterior effacement of the thecal sac without significant central canal narrowing.

There is multi level uncovertebral joint hypertrophy, resulting in at least moderate bilateral neural foraminal stenosis at C3-4 and C4-5 and more mild stenosis elsewhere. There are normal flow voids within the visualized vertebral arteries. No paraspinous hematoma is seen.

IMPRESSION:

1) PRIOR ANTERIOR CERVICAL FUSION FROM C5 TO C6, WITH NO EVIDENCE OF ACUTE FRACTURE OR SUBLUXATION.

2) DEVELOPMENTAL NARROWING OF THE SPINAL CANAL IN THE AP DIMENSION WITH SHORT PEDICLES. THERE ARE SUPERIMPOSED DISK BULGES, WHICH ARE MOST NOTABLE AT C3-4 AND C4-5 WHERE THERE IS SUPERIMPOSED ADDITIONAL MILD TO MODERATE CENTRAL CANAL NARROWING. SOME BILATERAL NEURAL FORAMINAL NARROWING IS ALSO NOTED AT C3-4 AND C4-5, APPEARING RELATIVELY MODERATE IN DEGREE.

3) NORMAL CORD SIGNAL.

Signature Line

*** Final ***

Trans On: 10/04/2010 23:2by: DLT

Read by: Vadaparampil MD, John A

Released By: Vadaparampil MD, John A

Released on: 10/05/2010 05:19

Technologist: Quarles, April S

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 2 of 3
(Continued)

000273

7

Result type: Emergency Dept
Result date: 04 October 2010 23:04
Result status: Auth (Verified)
Result title: Emergency Dept
Performed by: Mullis MD, Baron T on 04 October 2010 23:04
Verified by: Shelton MD, Stephen L on 06 October 2010 21:28
Encounter info: R1027702300, Richland, ERR-Emergency Room, 10/04/10 - 10/04/10

Emergency Dept

PATIENT: HARRISON, ROBERT DICT: Baron T Mullis, MD-R
MR #: 000039055 DOB: 07/23/1971
ADMITTED: 10/04/2010 PT.LOC: PD5
ACCOUNT #: 1027702300

DATE OF VISITATION: 10/04/2010

ACCOUNT NUMBER: 1027702300

ATTENDING PHYSICIAN: Stephen L. Shelton, MD

CHIEF COMPLAINT: Back pain.

MODE OF ARRIVAL: EMS.

HISTORY OF PRESENT ILLNESS: This is a 39-year-old black male with a past history significant for C5-C6 disk herniation, which was repaired back in 11/2009. The patient reports that this evening he was at work where he is a welder. He reports that he lifted a 50-pound roll of wire. This was over his head. When he turned his neck, he felt an immediate onset of sharp pain, which radiated down to his upper back and down his left arm. He reported noting increased weakness in the left arm [] has been in the past. He does report some baseline weakness there. He also reports new onset of numbness on the left. He denies any other trauma, any other falls. Reports that after this occurred he lay down on the ground where EMS found him and subsequently transported him here. He denies any lower extremity numbness, tingling, or weakness.

PRIMARY CARE PHYSICIAN: He currently has no primary care physician.

NEUROSURGEON: He reports his neurosurgeon was at Providence.

REVIEW OF SYSTEMS: As noted above in the HPI, it was negative for headache,

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 1 of 4
(Continued)

000274

9

visual changes, bowel or bladder incontinence, chest pain, shortness of breath. All other systems reviewed and found to be negative.

PAST MEDICAL HISTORY: C5-C6 hernia, status post repair in 11/2009.

FAMILY HISTORY: Positive for hypertension.

SOCIAL HISTORY: The patient smokes cigarettes and drinks alcohol. Denies illicit drug use.

MEDICATIONS: None.

ALLERGIES: No known allergies.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature 97.1, pulse 85, respiratory rate 22, blood pressure 142/93, pulse ox 96 percent on room air normal.

GENERAL: The patient is a well-developed, well-nourished white male. He does appear to be in pain. He is in a C-collar.

HEENT: Head normocephalic, atraumatic. Eyes: Pupils equal, round, and react to light. Extraocular muscles intact. Nose: No discharge. Throat: Normal-appearing oropharynx.

NECK: Supple without lymphadenopathy.

RESPIRATORY: Lungs clear to auscultation bilaterally. No wheezes, rales, or rhonchi.

CARDIOVASCULAR: Regular rate and rhythm. No murmurs, gallops, or gallops.

GI: Bowel sounds present in all 4 quadrants. Nontender to palpation. No palpable organomegaly.

NEUROLOGIC: The patient is awake and alert. Moving all extremities equally symmetrically. He has equal strength in upper and lower extremities, 5/5 upper and lower. He does have decreased sensation over the left hand, more so over the thumb and the median side but also has some over the fifth finger []. He does not have any numbness of the forearm, upper arm, or shoulder. He has no other deficits.

MUSCULOSKELETAL: Full range of motion. No obvious deformities.

SKIN: No rash. No bruising.

MEDICAL DECISION MAKING: This is a 39-year-old male who presents today with a history of disk herniation C5-C6, status post repair, with acute onset of sharp pain that occurred this evening when he was turning his head. He has no other trauma. My concern in this patient is for recurrence of herniation. He does not have any motor deficits. He does have some sensory deficits on the left. Discussed with the family the options at this time, whether pursue an MRI here or wait for the patient to follow up with his neurosurgeon as an

outpatient. They have indicated they would like to pursue an MRI here. I will treat the patient's pain and wait for the MRI.

LABORATORY: MRI of the neck is pending.

EMERGENCY DEPARTMENT COURSE: The patient was brought to pod 5 and remained so. I evaluated the patient. The patient received 5 mg of morphine en route by EMS. I gave him another 5 mg of morphine while here. He reported some nausea, so he was given a total of 8 mg of Zofran while in the ED. His course has been otherwise unremarkable. I discussed the patient's case with Dr. Cale Davis, who will be taking over the patient's care at this time.

CLINICAL IMPRESSION:

1. Neck pain.
2. History of herniation, C5-C6.
3. Tobacco abuse.

DISPOSITION: The patient will be turned over to Dr. Cale Davis at this time.

My attending physician, Dr. Steve Shelton, was present and available throughout the rest of the patient's ED visit.

D: 10/04/2010 22:33 T: 10/04/2010 23:04 TID: cr
Job #: 88590 Doc #: 10127853
cc: Baron T Mullis, MD-R
Stephen L. Shelton, MD

Signature Line

Electronically Signed & Verified on 10/06/2010 00:24
by Mullis MD, Baron T

Electronically Signed & Verified on 10/06/10 21:28
by Shelton MD, Stephen L

Completed Action List:

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 3 of 4
(Continued)

000276

Emergency Dept

HARRISON, ROBERT LEWIS - R000039055

- * Perform by Mullis MD, Baron T on 04 October 2010 23:04
- * Sign by Mullis MD, Baron T on 06 October 2010 00:24 Requested on 05 October 2010 10:19
- * Sign by Shelton MD, Stephen L on 06 October 2010 21:28 Requested by Mullis MD, Baron T on 06 October 2010 00:24
- * VERIFY by Shelton MD, Stephen L on 06 October 2010 21:28

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 4 of 4
(End of Report)

000277

12

Result type: Emergency Dept
Result date: 05 October 2010 00:01
Result status: Auth (Verified)
Result title: Emergency Dept
Performed by: Davis MD, Cale M on 05 October 2010 00:01
Verified by: Shelton MD, Stephen L on 06 October 2010 21:29
Encounter info: R1027702300, Richland, ERR-Emergency Room, 10/04/10 - 10/04/10

Emergency Dept

PATIENT: HARRISON, ROBERT DICT: Cale Davis, MD-R
MR #: 000039055 DOB: 07/23/1971
ADMITTED: 10/04/2010 PT.LOC: PD5
ACCOUNT #: 1027702300

DATE OF VISITATION: 10/04/2010

ACCOUNT NUMBER: 1027702300

ATTENDING PHYSICIAN: Stephen L. Shelton, MD

ADDENDUM:

EMERGENCY DEPARTMENT COURSE: The patient remained stable through the remainder of the emergency department course. The MRI was read as having C3-C4 and C4-C5 bulges with more central canal narrowing superimposed on development, total diffuse central canal stenosis, with other minimal bulges, but no cord edema or fractures seen. With the information obtained from the MRI, I feel that this patient is stable for discharge. He will certainly need outpatient followup. We will be given him the number for Neurosurgery to obtain the followup visit. I have also given a prescription for pain medication and have him see both his primary doctor, as well as the neurosurgeon. He is stable at this time, though, and ready to be discharged home.

CLINICAL IMPRESSION:

1. Neck pain.
2. Disk herniations at C3-C4 and C4-C5.

DISPOSITION:

1. The patient will be discharged home with instructions to follow up with Neurosurgery and his primary doctor.

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 1 of 2
(Continued)

000278

13

2. Instructed to return to the emergency department immediately for any worsening symptoms or any other concerns.
3. Instructed to take Tylox as prescribed.

My attending was present and available for the evaluation of this patient.

D: 10/04/2010 23:46 T: 10/05/2010 03:01 TID: kv
Job #: 88625 Doc #: 10127857
cc: Cale Davis, MD-R

Signature Line

Electronically Signed & Verified on 10/05/2010 19:29
by Davis MD, Cale M

Electronically Signed & Verified on 10/06/10 21:29
by Shelton MD, Stephen L

Completed Action List:

- * Perform by Davis MD, Cale M on 05 October 2010 00:01
- * Sign by Davis MD, Cale M on 05 October 2010 19:29 Requested on 05 October 2010 12:41
- * Sign by Shelton MD, Stephen L on 06 October 2010 21:29 Requested by Davis MD, Cale M on 05 October 2010 19:29
- * VERIFY by Shelton MD, Stephen L on 06 October 2010 21:29

Printed by: Coleman, Lakeisha K
Printed on: 10/08/10 16:13

Page 2 of 2
(End of Report)

000279

14

EMERGENCY DEPARTMENT RECORD



UNIT RECORD 000039055	DATE 10/04/2010	TIME 20:46	BIRTH DATE 07/23/1971	AGE 39Y	MOTHER'S MAIDEN NAME BOYLE	SEX M	MARITAL STATUS M	RACE 81	PATIENT TYPE EQR	PATIENT NO. 1027702300
NAME, ADDRESS HARRISON, ROBERT LEWIS 7290 CABIN CREEK RD HOPKINS SC 29061			SOCIAL SECURITY NUMBER 248311939		FINANCIAL DATA		ACCIDENT DATE AND TIME			
RESPONSIBLE PARTY HARRISON, ROBERT LEWIS 7290 CABIN CREEK RD HOPKINS SC 29061			PHONE (803)776-2327		REFERRING PHYSICIAN		ADMITTING PHYSICIAN 999 EMS, EMS			
RELATIONSHIP Self			DATE OF LAST VISIT 04/28/2010		MODE OF ARRIVAL:		VALUABLES: ☐ YES ☐ NO WHERE?			
PHONE (803)776-2327			BELONGINGS: ☐ HOME ☐ WITH PATIENT ☐ OTHER							
CHIEF COMPLAINT NECK, BACK PAIN					LAST TETANUS:			TIME TO TREATMENT: 0100		
VITAL SIGNS	TEMP.	☐ ORAL ☐ RECTAL	PULSE	BLOOD PRESS.	PULSE OX	LMP:	NURSE'S SIGNATURE			
VITAL SIGNS	TEMP.	☐ ORAL ☐ RECTAL	PULSE	BLOOD PRESS.	PULSE OX	WEIGHT:	TIME OUT:			
HISTORY: neck & back pain were relieved + good 9 weeks in @ home						ALLERGIES: NSA		TIME		LABS AND X-RAY
ROS: ① Chest, lungs						REST OF ROS:				
FH: HTN						SH: ① HTN, ETC				
PMH / MEDS: CS/66 list refer number										
PHYSICAL: Pain in neck										
CLINICAL IMPRESSION: ① Neck pain										
TREATMENT: ② CS/66 history - 2/12 refer										
☐ Activate Trauma Care Set DISPOSITION/SPECIAL PATIENT INSTRUCTIONS										
PRESENT AND REVIEWED WITH RESIDENT [Signature] CONDITION OF DISCHARGE ☐ SAME ☒ IMPROVED ☐ OTHER ADMIT ROOM: 7506 TIME SEEN BY MD: 7:50 RESIDENT SIGNATURE: [Signature] MEETS PRUDENT LAYPERSON: ☐ YES ☐ NO ATTENDING SIGNATURE: [Signature]										



USC DEPARTMENT OF NEUROSURGERY
Three Richland Medical Park, Suite 310, Columbia, SC 29203
PHONE 803-434-8323, FAX 803-434-8326
FOLLOWUP VISIT

PATIENT: Robert Harrison
VISIT DATE: 11/18/10

Chart #: 65447
DOB: 07/23/71

CHIEF COMPLAINT: A 39-year-old, right-handed black male who has been evaluated for neck pain going into the back of the neck, some left arm pain which has settled down.

HISTORY OF PRESENT ILLNESS: He had an ACF in November of 2009 by Dr. Holbrook and returned to work. He does heavy lifting, 50 to 60 pounds a day.

He is currently on light duty not lifting more than 10 pounds. He states he does a lot better with that and currently having only some achy neck pain without arm pain. He was sent for a myelogram/postmyelogram CT by me when I saw him on the last visit of 11/02/10.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/SOCIAL HISTORY/FAMILY MEDICAL HISTORY: No change. Allergies: None.

EXAMINATION TODAY: Vital Signs: Blood pressure 140/96, pulse 76, respirations 16. Neurologically unchanged. Slightly decreased range of motion of the neck, a well-healed ACF scar, good grips, a negative Hoffmann's, slightly decreased pin in the left hand, non-anatomical.

PERTINENT X-RAY DATA: I reviewed the myelogram/postmyelogram CT. Not a completely solid fusion at C5-6 but it is unlikely that there is any movement. I do not see that the screws have come back or loosened in the area. There is no spinal cord compression or nerve root compression.

IMPRESSION: I feel that he is probably mainly complaining of chronic achy low neck pain. I talked about the risks, benefits and alternatives of posterior fusion with the patient which I do not think really should be done at this point. He feels that he can do a lot better if he is kept long-term light-duty.

PLAN: He has not had a functional capacity evaluation; my plan would suggest that he have one done and that long-term work restrictions should include not lifting over 15 to

OFFICE NOTE

Raymond C. Sweet, M.D., F.A.C.S.

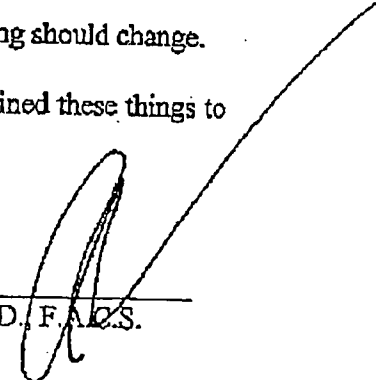
000281

18

PATIENT: Robert Harrison
VISIT DATE: 11/18/10
PAGE TWO

20 pounds on a regular basis. I will not see him again unless something should change.

ADDENDUM: I spoke with his caseworker today as well and explained these things to her.



Raymond C. Sweet, M.D., F.A.C.S.

RCS/TrUSA0369-313959.2

cc: Marty McKay, Nurse Case Manager

OFFICE NOTE

Raymond C. Sweet, M.D., F.A.C.S.

000282

19

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



Physician's Statement

Claimant's Name: Robert Harrison
Physician's Name: Raymond Sweet
Practice/Clinic: USC Dept. of Neurosurgery
Preparer's Name: _____
Phone: (____) _____

Employer's Name: Owen Steel
Insurance Carrier: Gallagher Bassett Services
SCWCC File No: 002979-019578-WC-01

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 10-4-10

Date of first office visit: 11-2-10

Date of last visit: 11-18-10

Diagnosis or nature of injury or illness: _____

Body part(s) injured: _____

Body part(s) affected: _____

Date of Maximum Medical Improvement: 11/2/10

Based on the AMA Guidelines, the claimant has sustained a 15 % medical impairment to total body part(s) and a _____ % medical impairment to _____ injured body other affected body part(s).

☐ The claimant is able to return to work without restriction.

☒ The claimant is able to return to work with the following restrictions:

Not to lift over 30 lbs

☐ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☐ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☒ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

chronic medications and MR

Follow-up 3-4x/yr

Treating Physician

Date

11/23/10

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine
Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 11/2/09

Robert Harrison returns to the office for follow-up of cervical radiculopathy. He has undergone a cervical epidural steroid injection and states overall his pain is no better. He continues to complain of neck pain which radiates down behind the left shoulder blade down the left arm which is no better. He still has some slight weakness in the left biceps and triceps with some decreased effort complaining of exacerbation of his pain. Sensation is intact to pinprick. DTRs are hypoactive at the triceps, trace at the biceps.

This gentleman has undergone a satisfactory trial of conservative management without improvement in his left-sided radicular symptoms. His MRI scan has demonstrated evidence for a disc herniation on the left at C5-6 with nerve root compression. Therefore, I have recommended surgery. I discussed with him the surgical procedure for an anterior cervical discectomy with fusion and instrumentation at C5-6 as well as the indications and risks for surgery. I believe that the patient understands and would like to go ahead and schedule this to be done. I have renewed his prescription for Soma and Ultram in the meantime.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/MH

CNAWT: 4050

000284

21



88908

PROVIDENCE HOSPITALS

A Ministry of the Sisters of Charity Health System

2435 Forest Drive • Columbia, SC 29204

OPERATIVE REPORT

PATIENT: HARRISON, ROBERT
DOCTOR: Thomas Holbrook, MD
REFERRING:
PRIMARY CARE: DOCTOR NO
ADMISSION DATE: 11/10/2009
DISCHARGE DATE:

ACCOUNT: E00113447916
MR: Z000108838
SOCIAL SECURITY: XXX-XX-1939
AGE: 38 PATIENT TYPE: SDC
ROOM: BED:
NURSING STATION:

DATE OF OPERATION: 11/10/2009

PREOPERATIVE DIAGNOSIS: Cervical disk herniation C5-C6.

POSTOP DIAGNOSIS: Cervical disk herniation C5-C6.

SURGICAL PROCEDURE:

1. Anterior cervical disectomy with fusion and instrumentation, C5-C6.
2. Harvesting of autograft.

SURGEON: Thomas Holbrook, MD.

ASSISTANT: Russell McMurray.

DESCRIPTION OF PROCEDURE: The patient was brought to the operating room after induction of satisfactory general anesthesia. The anterior neck was sterilely prepped and draped in the usual sterile manner. Transverse incision was made in the right neck and carried down the platysma, which was divided along the length of its fibers. Using blunt dissection, a plane was fashioned between the anterior strap muscles down to expose the anterior cervical spine. The level was confirmed with fluoroscopy. The longus colli muscle was freed up bilaterally. Self-retaining retractors were used for exposure and vertebral spreading. The system was put into place. The microscope was brought in for microdissection of the anterior annulus and C5-C6 was incised with a 15 knife blade. Degenerative disk material was removed with pituitary rongeur down to the posterior annulus. A rent was demonstrated to the left of the midline. Fragments of degenerative disk material were retrieved from the epidural space with a nerve hook and removed. The posterior annulus and ligament were further divided along the length of the disk space, exposing the dura. Additional fragments of herniated disk material and hypertrophied posterior annulus were removed. The epidural space was then inspected with a nerve hook and demonstrated to be free. The nerve roots were freed bilaterally from the end plates. A 6 millimeter implant was

OPERATIVE REPORT

000285

30



PROVIDENCE HOSPITALS

A Ministry of the Sisters of Charity Health System
2435 Forest Drive • Columbia, SC 29204

OPERATIVE REPORT

PATIENT:	HARRISON, ROBERT	ACCOUNT:	E00113447916		
DOCTOR:	Thomas Holbrook, MD	MR:	Z000108838		
REFERRING:		SOCIAL SECURITY:	XXX-XX-1939		
PRIMARY CARE:	DOCTOR NO	AGE:	38	PATIENT TYPE:	SDC
ADMISSION DATE:	11/10/2009	ROOM:		BED:	
DISCHARGE DATE:		NURSING STATION:			

templated. Autograft was harvested from the C5 vertebral body and placed into the implant, which was then tamped into place for a secure fit. A 25 millimeter venture plate was then selected and affixed to the body of C5 and C6 with two 15 millimeters screws and each placed under fluoroscopic guidance and locked into the plate. Fluoroscopy confirmed satisfactory appearance of the construct. The wound was irrigated. The platysma was closed with a running 4-0 Vicryl, subcutaneous tissue with interrupted 4-0 Vicryl and the skin with 4-0 Vicryl subcuticular stitch. The wound was dressed.

DD: Tue Nov 10 10:32:59 2009
DT: Tue Nov 10 12:14:06 2009
18063503 /21291

Signed: _____
Thomas Holbrook, MD

CC:

000286

OPERATIVE REPORT

31

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

www.columbianeurosurgical.com

Spine & Neurological Surgery

Thomas J. Holbrook, Jr., MD Scott B. Boyd, MD
William M. Rambo, Jr., MD Brett C. Gunter, MD
Randall G. Drye, MD Karl A. Lozanne, MD

720 Rabon Road
Columbia, SC 29203
(803) 462-0423 - (F) 462-0432

Pain Medicine
Steven B. Storick, MD
Eva J. Rawl, MD

132 Sunset Court
W. Columbia, SC 29169
(803) 794-3700 - (F) 794-0322

OFFICE VISIT

Patient: Robert L. Harrison
Chart: 88908
Date: 12/7/09

Robert Harrison returns to the office for follow-up after having undergone anterior cervical discectomy and fusion at C5-6 for herniated disc on the left. He has had significant improvement in his preoperative pain, but still has some soreness in the neck occasionally with some radiation into the left upper arm.

Plain x-rays show a satisfactory appearance of the construct at C5-6.

On examination, his anterior neck wound is well healed. Sensation is intact to pinprick. He still tends to give some decreased effort on testing proximal muscles in the left arm due to exacerbation of his neck pain.

Mr. Harrison is doing satisfactorily at this time making progress. He will continue with his Soma and Ultram, he says he still has a good supply of these. We will start some outpatient physical therapy. We will plan to see him back for follow-up after he has completed his therapy.

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Thomas J. Holbrook, Jr., MD, FACS

TJH/KB

CNAWT: 4050

000287

32



Robert L. Harrison

Claimant's Name
7290 Cabin Creek Road
Hopkins, South Carolina 29061
Address City State Zip
(803) 776-2327

Home Phone #

Work Phone #

Jason W. Lockhart

Preparer's Name

Owen Steel Company, Inc.

Employer's Name
727 Mauney Drive
Columbia, South Carolina 29201

Address City State Zip
Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc.

Insurance Carrier
(803) 227-2283

Phone Number

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$526.49 2. AWW: \$789.70 Date of Injury April 21, 2008 or September 17, 2008
3. Type of injury and body part(s): The Claimant allegedly sustained a compensable injury to the back, neck, right shoulder, left shoulder, mental condition, nervous condition, psyche, and/or all other areas of the body directly/indirectly affected while in the course and scope of his employment with the Defendants.
4. Facts in controversy: Whether the Claimant can satisfy his burden of proving that he sustained a compensable injury to the back, neck, right shoulder, left shoulder, mental condition, nervous condition, psyche, and/or all other areas of the body directly/indirectly affected while in the course and scope of his employment; Whether the Claimant's current problems with his back, neck, right shoulder, left shoulder, mental condition, nervous condition, psyche, and/or all other areas of the body directly/indirectly affected are causally connected to his alleged April 21, 2008 or September 17, 2008 work-related accident; Whether the Claimant's claim for a compensation arising out of alleged injuries to the back, neck, right shoulder, left shoulder, nervous condition, mental condition, psyche, and/or all other areas of the body directly/indirectly affected will be barred on the basis that the Claimant did not file a claim for a compensation within two years after the alleged accident; Whether the Claimant's alleged change of condition claim should be barred on the basis that there has been no payment of compensation, arising out of the Claimant's alleged April 21, 2008 or September 17, 2008 work-related accident upon which the Claimant could pursue a claim for a change of condition; Whether the Employer/Carrier are responsible for any additional medical treatment, temporary total disability benefits, and/or permanent partial disability benefits.
5. Legal issues involved: Section 42-1-160; Section 42-9-30; Section 42-9-35; Section 42-9-260; Section 42-15-40; Section 42-15-60; Section 42-17-90; Regulation 67-614.
6. Unusual aspects: The Employer/Carrier maintain that the Claimant has erroneously listed a date of accident of September 17, 2008 that does not correspond to WCC File No: 0804580. More specifically, WCC File No: 0804580 was established arising out of the Claimant's work-related accident, which occurred on April 21, 2008. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to, and otherwise oppose evidence presented by the Claimant.
7. Witnesses (designate if expert)* Terry Hartwell, William Perrine, Myron Samuels, the Claimant's current direct supervisor, and/or other representatives of the Employer.
8. Exhibits: Deposition of Claimant; Documentation from SCWCC (dated 4/26/13)(consisting of 1 page); Written Statement from Robert L. Harrison (dated 3/15/12)(consisting of 1 page); Portions of the Claimant's personnel file and/or wage information may be submitted at the hearing in response to the Claimant's testimony.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) Doctor's Express Columbia (dated 2/29/12-7/20/12)(consisting of 10 pages); Doctor's Care (dated 9/17/08-1/6/09)(consisting of 8 pages); Florence Neurosurgery & Spine (dated 11/12/10)(consisting of 5 pages); Palmetto Health Richland (dated 4/4/10)(consisting of 4 pages). The Defendants rely upon certain portions of the medical evidence submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.

000288

RECEIVED

JUL 01 2013

10. Name, address, and specialty, if any, of the treating physician: Thomas J. Holbrook, Jr., M.D., Columbia Neurosurgical Associates, P.A., 720 Rabon Road, Columbia, SC 29203.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Holbrook determined that the Claimant reached maximum medical improvement on July 21, 2010, and assigned a 25% impairment rating to the whole person.
12. I am amending my Form 50/51 in the following manner: Not applicable.

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

SIGNATURE _____

Email: jlockhart@mgclaw.com

DATE OF HEARING: July 9, 2013

Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF

000289

RECEIVED

JUL 01 2013

SCHBSIF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0804580

ROBERT L. HARRISON,

Employee,

Claimant,

vs.

OWEN STEEL COMPANY, INC.,

Employer,

AND

OLD REPUBLIC INSURANCE COMPANY
C/O GALLAGHER BASSETT SERVICES,
INC.,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
FRANK A. BARTON, ESQUIRE and PAMELA R. MULLIS, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR/EXHIBITS	DATES	PAGES
11.	Documentation from SCWCC	4/26/13	40
12.	Written Statement from Robert L. Harrison	3/15/12	41
13.	Doctor's Express Columbia	2/29/12-7/20/12	42-51
14.	Doctor's Care	9/17/08-1/6/09	52-59
15.	Florence Neurosurgery & Spine	11/12/10	60-64
16.	Palmetto Health Richland	4/4/10	65-68

RECEIVED

000290

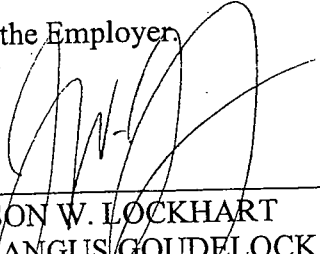
JUL 01 2013

SCHBSIF

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Terry Hartwell, William Perrine, Myron Samuels, the Claimant's current direct supervisor, and/or other representatives of the Employer.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
June 27, 2013

000291

RECEIVED

JUL 01 2013

SCHBSIF

~~RECEIVED~~ MORIS 2012

On Feb 26th 2012 I bent over to pick up my 4 year old daughter who had fallen off the front porch. While picking her up I felt a sharp pinch between my neck and my right shoulder. The pain lasted that night until the next morning. On Feb 28th 2012 as I was running the gantry around 1:30-2:00 am I started feeling the same pain in my right shoulder. As I continued to work the pain started going down my right arm and my thumb, index and middle fingers went numb and also had a tingling feeling in the tips. I told my supervisor about my situation and told him that I was going to the doctor that day.

Rakel L. Llanera

RECEIVED

000292

JUL 01 2013

SCHSIF

Filters Used:

1 Tagged Record

Note Report

Summary Format

Date Printed: 3/14/2012

Time Printed: 11:25AM

Printed By: CSOLES

font: 3/13/2012 Time 3:41PM - 3:41PM Duration: 0.00 (hours) Code

Desc TALKED TO CLIENT SEE BELOW

Staff Connie D Soles

Client HARRISON, ROBERT

CaseRef

CaseNo

Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

STATES HE WAS IN THE BACK YARD AND WAS LIFTING HIS DAUGHTER.....AGE 5....WT APPROX. 30 LBS....TO 35 LBS..

'STATES AFTERWARDS APPROX. 2 OR 3 DAYS LATER NOTICED SORENESS AND WENT TO DR. REYNOLDS AT DRS EXPRESS ON FORREST DRIVE..

...THEY ORDERED ANOTHER MRI AND TO HIS CERVICAL AND SAID THEY WOULD RATHER HE SEE DR. HOLBROOK AND HAVE SCHEDULED HIM TO SEE HIM ON 3/26/12 AT 1:45...

MRI WAS DONE AT PALMETTO IMAGING.....

=====ONE WAS DONE ON NECK AND ONE ON SHOULDER....

000293

RECEIVED

JUL 01 2013

Client Name: Palmetto Health Richland
Client Address: 5 Richland Medical Park
Columbia, SC 29203
Admitting Physician: Moats MD, Leslie M
Attending Physician: Moats MD, Leslie M

Patient Name: HARRISON, ROBERT LEWIS
Patient Address: 7290 CABIN CREEK RD
HOPKINS, SC 29061
Age: 38 years
Date of Birth:

MRN: R000039055
FIN: R1009400312
Financial Class: Blue Cross PPC

Admit Date: 4/4/2010
Admit Time: 3:20:00 PM
Discharge Date: 4/4/2010
Discharge Time: 8:07:00 PM

EMERGENCY DEPARTMENT DOCUMENTATION

Performing Physician: Heritage MD, Erin
Performed Date/Time: 4/4/2010 8:24:00 PM
Authenticated By: Moats MD, Leslie M
Authenticated Date/Time: 4/9/2010 6:32:11 PM

Emergency Dept

PATIENT: HARRISON, ROBERT
MR #: 000039055
ADMITTED: 04/04/2010
ACCOUNT #: 1009400312

DICT: Erin Heritage, MD-R
DOB: 07/23/1971
PT.LOC: PD5

DATE OF VISITATION: 04/04/2010

ACCOUNT NUMBER: 1009400312

ATTENDING PHYSICIAN: Leslie M. Moats, MD

MODE OF ARRIVAL: EMS.

CHIEF COMPLAINT: Motorcycle crash.

HISTORY OF PRESENT ILLNESS: This is a 38-year-old male with no significant past medical history who presents to the emergency department today complaining of abrasions and pain in his left shoulder. The patient states that he was riding on his motorcycle and trying to come to a stop when somebody pulled in front of him, and he ran into the vehicle. He states that he had no loss of consciousness. He denies any pain in his head, any altered mental status or dizziness. He does have pain in his abrasions and pain in his left shoulder. He denies any neck pain at this time. He denies any chest pain, shortness of breath, or abdominal pain and also reports that he has not had anything to eat or drink.

REVIEW OF SYSTEMS: He has abrasions with pain. He has no extremity pain. No vomiting, diarrhea. No recent cough or congestion. Rest of the systems was reviewed and was negative.

FAMILY HISTORY: Denies hypertension or diabetes.

PAST MEDICAL HISTORY: Neck surgery. Otherwise negative.

MEDICATIONS: Pain medication that he does not remember for his neck.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: The patient lives with his wife and 2 children. He smokes cigarettes, drinks alcohol occasionally, and denies other drug use.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature is 97.7 orally. Pulse is 70, respirations 20, blood pressure 139/96, and pulse ox 98% on room air, normal.

GENERAL APPEARANCE: This is a well-developed, well-nourished 38-year-old

Patient Name: HARRISON, ROBERT LEWIS
MRN: R000039055

Page 1 of 41

Print Date/Time 10/28/2010 3:41 PM

RECEIVED

JUL 01 2013

Client Name: Palmetto Health Richland
Client Address: 5 Richland Medical Park
Columbia, SC 29203

Admitting Physician: Moats MD, Leslie M
Attending Physician: Moats MD, Leslie M

Patient Name: HARRISON, ROBERT LEWIS
Patient Address: 7290 CABIN CREEK RD
HOPKINS, SC 29061

Age: 38 years
Date of Birth:

MRN: R000039055
FIN: R1009400312
Financial Class: Blue Cross PPC

Admit Date: 4/4/2010
Admit Time: 3:20:00 PM
Discharge Date: 4/4/2010
Discharge Time: 8:07:00 PM

EMERGENCY DEPARTMENT DOCUMENTATION

Performing Physician: Heritage MD, Erin
Performed Date/Time: 4/4/2010 8:24:00 PM
Authenticated By: Moats MD, Leslie M
Authenticated Date/Time: 4/9/2010 6:32:11 PM

male. He is awake, alert and oriented x3. He is in no acute distress, very pleasant and cooperative.
NEUROLOGIC: Cranial nerves are intact. Sensation is intact by touch. The reflexes are symmetric bilaterally. He has no focal neurological deficits.
HEENT: Eyes: The pupils are equal and reactive to light. Extraocular movements are intact. The sclerae are anicteric, and the conjunctivae are pink. ENT: The oropharynx is clear. Mucous membranes are moist. Midface is stable. Tympanic membranes are clear bilaterally.
NECK: Nontender to palpation. He has pain in his clavicle when he moves his neck, but otherwise no midline tenderness to palpation. No step-offs or deformities.
RESPIRATORY: Lungs clear to auscultation bilaterally. There is no accessory muscle use. No tenderness to palpation of the chest wall. No crepitus.
CARDIOVASCULAR: Heart sounds are normal. Distal pulses are palpable in all 4 extremities.
GASTROINTESTINAL: Abdomen is soft, nontender, nondistended. Bowel sounds are present and normal.
MUSCULOSKELETAL: The patient has pain in his left clavicle with gross deformity in this area. He has no tenderness to palpation over the glenohumeral joint or the rest of the left upper extremity. He is neurovascularly intact to the left upper extremity. Otherwise, he has no signs of musculoskeletal injuries.
SKIN: The patient has multiple abrasions including left side of his head, his right arm, his palm as well as his knees. None of these are lacerations, and there fairly clean without debris.

MEDICAL DECISION MAKING: Upon presentation this is a patient who presents to the emergency department today complaining of a motorcycle crash with multiple abrasions and left clavicle pain. At this time, an x-ray of the left clavicle was obtained for evaluation, as the patient has no other signs of injury. The patient obviously has abrasions. He has not had any head injury is acting appropriately, and, therefore, no CT scan was obtained of his head or neck, but I do suspect that he does have a clavicle fracture.

LABORATORY DATA: The x-ray showed a fracture of the left clavicle.

EMERGENCY DEPARTMENT COURSE: The patient was seen and evaluated upon arrival to the emergency department. Following his initial evaluation, an IV was placed, and the patient was given morphine for his pain. He was then given a dose of Zofran, as he developed nausea following his morphine. The patient's wounds were cleaned thoroughly and dressed with nonstick dressings. He was not given a tetanus shot, because his last tetanus was 4 years ago. I did consult Orthopedics to have them review the film, as far as the clavicle was concerned. At this time, they would like him to follow up with Premier Orthopedic. He should call tomorrow to set up an appointment within the next 1-2 weeks. At this time, the patient was slowly set up. He did have some further nausea. Therefore, he did not want his Tylox, and he was slowly

Patient Name: HARRISON, ROBERT LEWIS
MRN: R000039055

Page 2 of 41

000295

Print Date/Time 10/28/2010

RECEIVED
3:41 PM

JUL 01 2013

Client Name: Palmetto Health Richland
Client Address: 5 Richland Medical Park
Columbia, SC 29203

Admitting Physician: Moats MD, Leslie M
Attending Physician: Moats MD, Leslie M

Patient Name: HARRISON, ROBERT LEWIS
Patient Address: 7290 CABIN CREEK RD
HOPKINS, SC 29061

Age: 38 years
Date of Birth:

MRN: R000039055
FIN: R1009400312
Financial Class: Blue Cross PPC

Admit Date: 4/4/2010
Admit Time: 3:20:00 PM
Discharge Date: 4/4/2010
Discharge Time: 8:07:00 PM

EMERGENCY DEPARTMENT DOCUMENTATION

Performing Physician: Heritage MD, Erin
Performed Date/Time: 4/4/2010 8:24:00 PM
Authenticated By: Moats MD, Leslie M
Authenticated Date/Time: 4/9/2010 6:32:11 PM

allowed to stand up and ambulate. The patient was able to ambulate without difficulty. Therefore, he was ready for discharge to home with a prescription for Tylox.

DIAGNOSES/IMPRESSION:

1. Left clavicle fracture.
2. Multiple abrasions.
3. Status post motorcycle crash.

DISPOSITION: The patient will be discharged to home. He should follow up with Premier Orthopedics. He should return to the emergency department as needed especially for signs of infection or fever or appearance of chest or abdominal pain or difficulty breathing. He should also follow up with his regular doctor within the next 1-2 weeks. He was given a prescription for Tylox for pain.

NOTE: Discussed the patient's care with attending physician, Dr. Leslie Moats, who was present for evaluation.

D: 04/04/2010 20:04 T: 04/04/2010 20:24 TID: km
Job #: 57716 Doc #: 10087421
cc: Erin Heritage, MD-R
Leslie M. Moats, MD

I was present with the resident during the history and exam. I discussed the case with the resident and agree with the findings and plan as documented in the resident's note. I supervised all above procedures done by the resident.

Electronically Signed & Verified on 04/07/2010 07:58
by Heritage MD, Erin

Electronically Signed & Verified on 04/09/10 18:32
by Moats MD, Leslie M

000296

Patient Name: HARRISON, ROBERT LEWIS
MRN: R000039055

Page 3 of 41

Print Date/Time 10/28/2010 4:44 PM

RECEIVED

JUL 01 2013

Client Name: Palmetto Health Richland
Client Address: 5 Richland Medical Park
Columbia, SC 29203

Admitting Physician: Moats MD, Leslie M
Attending Physician: Moats MD, Leslie M

Patient Name: HARRISON, ROBERT LEW
Patient Address: 7290 CABIN CREEK RD
HOPKINS, SC 29061

Age: 38 years
Date of Birth:

MRN: R000039055
FIN: R1009400312
Financial Class: Blue Cross PPC

Admit Date: 4/4/2010
Admit Time: 3:20:00 PM
Discharge Date: 4/4/2010
Discharge Time: 8:07:00 PM

Triage PHED

04/04/10 04:01 pm Performed by Gault RN, Elizabeth J
Entered on 04/04/10 04:11 pm

Chief Complaint PHED
Mode of Arrival
ED Chief Complaint
Chief Complaint

Information Obtained from
Pregnant
Gynecological Status
ED Pain Screen
Chronic Conditions
ED Surgical History
Implantable Devices
Communicable Disease Exposure
Abuses
Tobacco Use
Abuse Signs Yes/No
Tobacco Use Packs per Day
Risk for Harm to Self or Others
Last Tetanus Date
Influenza Vaccination Up to Date
Pneumococcal Vaccination Up to Date
Home Meds Listed
Allergies Screen
Latex Allergy Screen
Private Physician
Private Physician Called in ED?
ED Triage Nurse
DCP GENERIC CODE
H Tracking Group
DCP GENERIC CODE
Acuity
Triage Date/Time

EMS, Self
MCC
pt at stop hit by car and knocked off motorcycle,
pt denies loc, c/o pain to wounds on head, hand,
left shoulder.

Patient
N/A
N/A
Yes
None
Other: ,neck surgery
None
None
Tobacco
Current Use - Within the last 12 months
No
1.0
No
Unknown
Unknown
Unknown
Open
Open
Open
none
Wants EMS to see
Gault RN, Elizabeth J

H Tracking Group

3
04/04/10 16:00

Home Medications
Home Medication Information

Home Medication Information Unavailable

Medication List

acetaminophen-oxycodone
SIG: 1 cap, PO, q6hr(s), 12 cap, PRN: for pain
Provider: Davis MD, Cale M
Date: 10/04/10 11:47 pm
Status: Ordered

diazepam
SIG: 10 mg, 2 tab, PO, 4xdaily, 20 tab, PRN: for muscle spasms
Provider: Busken MD, Melissa R
Date: 10/10/10 06:06 pm
Status: Ordered

acetaminophen-oxycodone
SIG: 1 cap, PO, q4hr(s), 20 cap, PRN: for pain
Provider: Busken MD, Melissa R
Date: 10/10/10 06:06 pm
Status: Ordered

Pain Management PHED
Current Pain Score

10

Patient Name: HARRISON, ROBERT LEWIS
MRN: R000039055

Page 4 of 41

Print Date/Time 10/28/2010

RECEIVED

3:41 PM

JUL 01 2013



Claimant's Name: Robert Harrison SSN: _____ Employer's Name: Owens Steel Company, Inc.
Address: 7290 Cabin Creek Rd Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Old Republic Insurance/Gallagher Basset
Preparer's Name: Connie Soles Law Firm: Mullis Law Firm Preparer's Phone #: (803) 799-9577

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: Sep 17, 2008

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to 4 (Part(s) of Body Injured) on 9/17/08 (Month/Day/Year) in Richland county, state of SC.

1b. Body part(s) affected are: See 1 in Addendum

Briefly describe how the accident occurred. See 2 in Addendum

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 9/17/08 (Month/Day/Year) in the following manner: reported to supervisor

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: see 1 b above. Claimant has change of condition. see attached

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

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. 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 \$ 734.72 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: Owens Steel

11a. Further grounds or unusual aspects of claim: See 3 in Addendum

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr. Wade Reynolds at Doctors Express Urgent Care, Dr. Thomas Holbrook, Palmetto Imaging.

11c. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: no prior disability for this accident.

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.

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

14. Estimated time needed for hearing: 45 minutes.... We are also asking that this case be combined with WCC# 1013900.

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

SCWCC

MAY 13 2013

JUDICIAL

5/8/2013

Preparer's Signature

Title

Email

Date

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 Claims Department.

WCC Form # 50

Revised 9/07

50

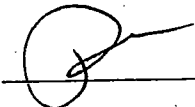
000298

Employee's Notice of Claim and/or
Request for Hearing

Addendum
Robert Harrison WCC# 0804580

1. back, neck/cervical spine, right shoulder, left shoulder, and/any all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result there from. Claimant has a change of condition (see medical documentation attached). He was also seen by Dr. Thomas Holbrook who recommended some outpatient physical therapy, cervical epidural injection and some further conservative measures. He also prescribed prescriptions; anti-inflammatory, Mobic, and muscle relaxer, Flexeril due to radicular type pain on the right whereas before he had surgery for radicular pain on the left.
2. Claimant was injured while welding. He stood up to cut off the machine and his back and neck locked up resulting in surgery to the cervical spine with discectomy and fusion C5-6.
3. Claimant request additional medical care due to a change of condition (see attached medical records) and all other benefits applicable under the Act. Believe Claimant to have additional permanency but we are not requesting permanency unless by the time the case is scheduled for a hearing that any and all physicians treating him have released him and state he is at maximum medical improvement.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.


_____fab

SC Workers' Compensation Commission

333 Main Street, suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
803)737-5723



WCC File #: 0804580

Carrier File #: 002979-04968-WC-01

Carrier Code #: 1095

Employer FEIN #:

Robert L. Harrison

Claimant's Name SSN

7290 Cabin Creek Road
Hopkins, South Carolina 29061

Address City State Zip

(803) 776-2327

Home Phone #

Jason W. Lockhart

Preparer's Name

Work Phone #

McAngus Goudelock & Courie

Law Firm

Owen Steel Company, Inc.

Employer's Name

727 Mauney Drive
Columbia, South Carolina 29201

Address City State Zip

Old Republic Insurance Company c/o Gallagher Bassett
Services, Inc.

Insurance Carrier

(803) 227-2283

Phone Number

Date of Accident: 4/21/08

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

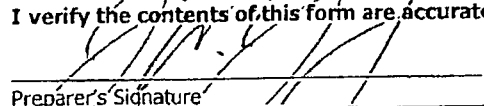
1. It is **denied** that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: The investigation of the Employer/Carrier does not reveal a compensable injury by accident within the course and scope of the Claimant's employment with the Defendants. In addition, the Employer/Carrier maintain that the Claimant's current problems with his back, neck/cervical spine, right shoulder, left shoulder, mental condition, nervous condition, psyche, and/or all other areas of the body directly/indirectly affected are not causally-connected to the Claimant's alleged September 17, 2008 work-related accident.
2. It is **admitted** that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 1 above.
3. It is **admitted** that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 1 above.
4. It is **denied** that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See No. 1 above.
5. It is **denied** that notice of injury was given to the employer. The reasons for denial are: See No. 1 above.
6. It is **denied** that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to additional medical treatment with regards to the Claimant's alleged September 17, 2008 work-related accident.
7. It is **denied** that the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to temporary total disability benefits with regards to the Claimant's alleged September 17, 2008 work-related accident.
8. It is **denied** that the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to permanent disability benefits with regards to the Claimant's alleged September 17, 2008 work-related accident.
9. It is **denied** that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of **Form 20 to be submitted** applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: The Employer/Carrier maintain that the Claimant has erroneously listed a date of accident of September 17, 2008 that does not correspond to W.C.C. File No. 0804580. More specifically, W.C.C. File No. 0804580 was established arising out of the Claimant's work-related accident, which occurred on April 21, 2008. The Employer/Carrier maintain that any claim for compensation, arising out of alleged injuries to the back, neck, right shoulder, left shoulder, nervous condition, mental condition, psyche, and/or any and all of the areas of the body directly or indirectly affected as a result of the Claimant's alleged September 17, 2008 work-related accident will be barred pursuant to §42-15-40 of the Act. Furthermore, the Employer/Carrier maintain that the Claimant cannot satisfy his burden of proving a compensable injury to the back, neck, right shoulder, left shoulder, nervous condition, mental condition, psyche, and/or any and all of the areas of the body directly/indirectly affected pursuant to §42-1-160 and/or §42-9-35 of the Act. The Employer/Carrier maintain that the Claimant's alleged change of condition claim should be barred pursuant to §42-17-90 of the Act on the basis that there has been no payment of compensation, arising out of the Claimant's alleged September 2008 work-related accident, upon which the Claimant could pursue a claim for a change of condition. In addition, the Employer/Carrier will request the Commission issue an Order assessing actual cost of the hearing, pursuant to Regulation 67-614, on the basis that the Employer/Carrier maintain that the Claimant's request for a hearing is being brought on unreasonable grounds.
12. Estimated time needed for hearing: 1 hour

000300

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

Pamela R. Mullis
Mullis Law Firm
Post Office Box 7757
Columbia, South Carolina 29202

on the 24th day of May, 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.

	Attorney for Employer/Carrier	<u>jlockhart@mgclaw.com</u>	<u>May 24, 2013</u>
Preparer's Signature	Title	Email	Date

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.

WCC Form # 51 Revised 9/07

51

Employer's Answer to Request for Hearing

000301



Claimant's Name: Robert Harrison SSN: _____ Employer's Name: Owent Steel Company
Address: 290 Cabin Creek Road Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Old Republic Ins. Company
Preparer's Name: Frank A. Barton Law Firm: Mullis Law Firm Preparer's Phone #: 803-799-9577

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: (m/d/yyyy)
September 17, 2008

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

See Attachment

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason Lockhart

Address PO Box 12519 Columbia, SC 29211 on the 21st day of November 2013 by X first class postage certified
mail personal service.

Frank A. Barton
Preparer's Signature

Attorney
Title

Csoles@mullislawfirm.com
Email

November 21, 2013
Date

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

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

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

ROBERT HARRISON v. OWENS STEEL CO.
WCC No. 0824526

FORM 30 ATTACHMENT:

1. The Hearing Commissioner erred as a matter of law and fact in finding that the claim for benefits related to the 2008 accident was "barred" on the erroneous basis that Claimant did not file a claim for compensation until the filing of his Form 50 on May 8, 2013, where, to the contrary, the claim for benefits related to the admitted September 17, 2008, accident was filed with the Commission and the statute of limitations tolled as of September 17, 2009, when Counsel for Claimant filed a claim letter with the Commission for the purpose of satisfying the requirements of Section 42-15-40.
2. The Hearing Commissioner erred as a matter of fact and law in finding that pursuant to S.C. Code Ann. § 42-15-40 and the case of Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989), the claim for benefits was barred on the basis that, as the result of a lack of diligence, Claimant did not file a claim for compensation until the filing of a Form 50, on May 8, 2013, where, in fact, the claim for benefits from the September 17, 2008, accident was timely filed and the statute of limitations tolled as of September 17, 2009, when Counsel for Claimant filed a claim letter with the Commission which satisfied the requirements of Section 42-15-40.
3. The Hearing Commissioner erred as a matter of law and fact in determining, pursuant to S.C. Code Ann. § 42-15-40, Hucks v. GreenFuel, 247 S.C. 457, 148 S.E.2d 149 (1966), and Rogers v. Spartanburg, 328 S.C. 415, 491 S.E.2d 708 (Ct.App.1997), that Claimant's claim was barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after his September 17, 2008 work-related accident where the claim was filed and the statute of limitations tolled as of September 17, 2009, when a claim letter was filed with the Commission which satisfied the requirements of the statute of limitations.
4. The Hearing Commissioner erred as a matter of law and fact in mistakenly "assuming that workers' compensation claimant relied on employer's alleged assurances that his claim would be handled without a formal finding" where, to the contrary, Claimant relied instead upon his formally and timely filed September 17, 2009, claim letter to toll the statute of limitations.
5. The Hearing Commissioner erred as a matter of law and fact in finding, pursuant to S.C. Code Ann. § 42-15-40, Hopkins, and Rogers, that Claimant's claim for benefits is barred on the basis that Claimant failed to satisfy his burden of proving that he filed a claim for benefits with the Commission within two years after the last payment of compensation to Claimant where, regardless of the last payment of compensation, the claim was filed and the statute of limitations tolled as of September 17, 2009, by claim letter filed with the Commission for the purpose of satisfying the requirements of Section 42-15-40.

6. The Hearing Commissioner erred as a matter of law and fact in failing to recognize that the claim for benefits resulting from the work accident in 2010 was settled on a Form 16 with Commission approval and that it was explicitly agreed among the parties and stated for the record by the commissioner at the hearing on July 25, 2011, that only the 2010 claim was being settled and that the claim for injuries from the initial 2008 accident continued.

7. The Hearing Commissioner erred as a matter of law and fact in determining that Claimant had not proven his entitlement to benefits for any disability resulting from his September 17, 2008, work accident, where the medical records conclusively established that, according to the authorized treating surgeon, Claimant had sustained a permanent partial impairment as the result of the 2008 accident of 25% loss of use to the back/whole person in 2009.

8. The Hearing Commissioner erred as a matter of law and fact in finding that Claimant had sustained no disability or loss of use as the result of the 2008 accident where it was objectively established that Claimant had a steel plate placed in his spine as the direct result of the 2008 accident.

9. The Hearing Commissioner erred as a matter of law and fact in failing to recognize that the injuries from the 2008 work accident were established and rated prior to Claimant's subsequent work accident in 2010 so that the 2010 accident was not relevant to the determination of entitlement to benefits for the 2008 accident.

10. The Hearing Commissioner erred as a matter of law and fact in failing to recognize that the 2008 and 2010 accidents were separate and in denying erred in denying benefits for the 2008 accident where that the 25% permanent partial loss of use to the cervical spine resulting from the 2008 accident was established as fact where Claimant was diagnosed, had a cervical fusion surgery, and was released at MMI in November 2009, prior to the 2010 accident's taking place.

11. The Hearing Commissioner erred as a matter of law and fact in finding that pursuant to S.C. Code Ann. § 42-9-30, and based on the entirety of the evidence including the medical records submitted, documentation in the Commission file, and Claimant's testimony, even if the claim for compensation was not barred by the statute of limitations, Claimant had not satisfied his burden of proving permanent partial disability resulting from the 2008 accident on the basis that Claimant is currently working full time with the Defendants, earning a greater wage with the Defendants than he was earning on the date of accident, and is currently working in a less physically demanding position with the Defendants than he was working in 2008 or 2010 where neither the fact that the employer has created a lighter duty supervisory-type position for Claimant as the result of his injuries nor the fact that supervisors typically earn a greater wage than manual laborers is relevant to Claimant's established loss of use to the back/permanent partial disability.

12. The Hearing Commissioner erred as a matter of law and fact in concluding that Claimant had not established permanent partial disability from the 2008 accident on the basis that, at the time of the hearing, the employer had designed a position to accommodate Claimant's injuries so that he was working lighter duty for higher wages where in fact, the employer considered Claimant's lighter duty position to be only a temporary assignment and advised that Claimant would have to return to his particular position as a welder in order to continue his employment.

13. The Hearing Commissioner erred as a matter of law and fact in concluding that Claimant had not established any permanent partial disability resulting from the 2008 accident which resulted in a herniated cervical disc which required cervical fusion surgery using a titanium disc so that the finding that Claimant sustained no permanent partial disability as the result of the 2008 accident is contradicted by the substantial evidence submitted.

14. The Hearing Commissioner erred as a matter of law and fact in determining that Claimant had failed to satisfy his burden of showing that he sustained permanent partial disability as the result of the 2008 accident where the testimony and medical records, including the rating of permanent partial disability provided by Dr. Holbrook in 2009 established that Claimant unquestionably sustained permanent partial disability as the result of the 2008 accident.

15. The Hearing Commissioner erred as a matter of law and fact in determining that Claimant had failed to satisfy his burden of showing permanent partial disability as the result of the 2008 accident where the medical restrictions and limitations placed upon Claimant after the 2008 accident would not permit Claimant to perform his pre-injury work as a heavy-duty welder.

16. The Hearing Commissioner erred as a matter of law and fact in finding that Claimant had failed to prove that he was entitled to permanent partial disability benefits pursuant to Section 42-9-30 where the undisputed evidence established that Claimant sustained loss of use/permanent partial disability as the result of his 2008 injury which required

17. The Hearing Commissioner erred as a matter of law and fact in concluding that even if the claim for compensation was not barred by the statute of limitations, Claimant had not satisfied his burden of proving entitlement to "additional" permanent partial disability benefits pursuant to S.C. Code Ann. § 42-9-30 where Claimant sought only an award of benefits related to his 2008 work accident and injuries and not "additional" benefits where the admitted 2010 accident and injuries took place after the 2008 accident and the claim for the 2010 accident was explicitly settled in 2011 without referencing or affecting the claim for benefits from the admitted 2008 accident and injuries.

18. The Hearing Commissioner erred as a matter of law and fact in ordering that the claim for all benefits available under the Act was denied where Claimant's entitlement to benefits for his admitted injuries was established by the substantial evidence submitted.

19. The Hearing Commissioner erred as a matter of law and fact in determining that Claimant had not proven his entitlement to disability resulting from his September 17, 2008, work accident, where the medical records conclusively established that, according to the authorized treating surgeon, Claimant had sustained a permanent partial impairment as the result of the 2008 accident of 25% loss to the back/whole person in 2009.

20. The Hearing Commissioner erred as a matter of law and fact in not ordering the further, and continuing medical care necessitated by the 2008 injury and surgery.

21. The Hearing Commissioner erred as a matter of law and fact in not interpreting the Workers' Compensation Act in a manner favorable to the injured worker as required by the nature and scope of the Act.

South Carolina Workers' Compensation Commission
1612 Marlon St. • P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1013900
Carrier File #: 002979-019578-wc-01
Carrier Code #: _____
Employer FEIN #: 91-8088938

Employer's Name: OWEN STEEL/ORCPG

Claimant's Name: ROBERT HARRISON SSN: _____

Address: 727 MAUNEY DRIVE

Address: 7290 CABIN CREEK RD

City: HOPKINS State: SC Zip: 29061

City: COLUMBIA State: SC Zip: 29201

Home Phone: (803) 776 - 2327 Work Phone: () -

Insurance Carrier: GALLAGHER BASSETT SERVICES INC

Preparer's Name: TARA POTTER Law Firm: _____

Preparer's Phone #: (704) 547 - 1586

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	_____	_____	_____	\$ <u>0.00</u>
2. Number of Weeks T.P.	_____	_____	_____	\$ <u>0.00</u>
3. Number of Weeks P.P.	_____	_____	_____	\$ <u>42193.63</u>
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ _____
Total Compensation Paid				\$ <u>42193.63</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>4704.51</u>
7. Funeral Benefits	_____	_____	_____	\$ <u>0.00</u>

☐ Case Denied

Date of Injury: 10/4/2010
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: [Signature]
Claimant

By: [Signature]
Employer's Representative

Date: 8/17/2011
(m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party _____ \$ _____
B. Attorney's Fee Paid by Employer _____ \$ _____
C. Attorney's Fee Paid by Claimant _____ \$ _____
(Non-contingent fees only)

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0824526

ROBERT HARRISON	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	HEARING OF
OWEN STEEL COMPANY	)	
	)	ROBERT HARRISON
EMPLOYER,	)	
AND	)	VS
	)	
OLD REPUBLIC GENERAL	)	OWEN STEEL COMPANY
	)	
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Robert Harrison versus Owen Steel Company, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 8:56 A.M., Thursday, August 8, 2013, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY**REPORTED****BY****GLORIA DAVIS**

PALMETTO COURT REPORTING
 321 Mac Circle Lexington, SC 29073
 (803) 358-0515
www.PalmettoCourtReporting.com

000308

1 Witness: Robert Lewis Harrison.

2 Court Reporter: Thank you, sir.

3 Commissioner Wilkerson: Thank you, Mr.

4 Harrison. Mr. Barton?

5 Mr. Barton: Okay.

6 DIRECT EXAMINATION

7 By Mr. Barton:

8 Q. Mr. Harrison, on September 17th of 2008, who were you
9 working for?

10 A. Owen Steel.

11 Q. How long had you worked for them at that time?

12 A. Approximately eleven (11) years.

13 Q. Okay. What type of work were you doing back in
14 September of 2008?

15 A. I was a Gantry Welder.

16 Q. Okay. Is that a fairly -- is that fairly heavy work?

17 A. Depending on what you weld, like plate girders is a lot
18 of bending.

19 Q. Okay. Now, on September 17th of 2008, did you suffer
20 an injury while you were working at -- at Owen's?

21 A. Yes, I did.

22 Q. Okay. Did they subsequently provide you with medical
23 treatment?

24 A. Yes, they did.

25 Q. When you were out of work did they pay you for

1 temporary disability benefits?

2 A. Yes, they did.

3 Q. Did you happen to see Dr. Thomas Holbrook?

4 A. Yes, I did.

5 Q. What did Dr. Holbrook do for you?

6 A. He gave me an injection in the neck, did a follow up,
7 saw that that didn't work; so, he did surgery.

8 Q. Okay. Do you recall what kind of surgery he did?

9 A. A cervical fusion.

10 Q. Okay. And would that have been in November of 2009?

11 A. Yes.

12 Q. How long did he follow you after that surgery?

13 A. I seen him again around February.

14 Q. Okay. And did he release you as being at maximum
15 medical improvement at that time?

16 A. Yes.

17 Q. All right. Now, at that time what physical limitations
18 did you still have?

19 A. I was still having stiffness and pain in my neck and
20 pain radiating down my left arm.

21 Q. Okay. At that time were you able to return to your
22 normal duties as a welder that you were doing back in
23 September of 2008?

24 A. No, sir.

25 Q. Okay. Are you still working for Owen's?

1 A. Yes, I am.

2 Q. What kind of position are you in now?

3 A. I'm the lead man on nightshift.

4 Q. What does the lead man involve?

5 A. The Floor Foreman, I make sure all the -- all the guys
6 are in their workstations, make sure they're doing the
7 right thing, any questions I answer, any help that they
8 need I go help them.

9 Q. Okay. Are you making more money now than you were
10 then?

11 A. Yes, I am.

12 Q. Okay. Is this more of a hands-on job or is this a --
13 more of a supervisory position?

14 A. More of a supervisory.

15 Q. All right, sir. And you enjoy working for them?

16 A. Yes, I do.

17 Q. After Dr. Holbrook released you from the surgery that
18 you talked about in November of 2009, did your injuries
19 ever go away?

20 A. After he released me, no it didn't.

21 Q. Okay.

22 Mr. Barton: Nothing further, Your Honor.

23 CROSS-EXAMINATION

24 By Mr. Lockhart:

25 Q. Mr. Harrison, good morning, sir.

1 Q. And how many hours a week do you work?

2 A. Forty-four (44).

3 Q. Now, prior to becoming a lead man in August of 2012,
4 what was your job with Owen Steel?

5 A. Prior to that I was in the -- doing -- they put me back
6 on the floor to do welding and also they -- before that
7 they had me in the tool room.

8 Q. You were working as a welder and working in the tool
9 room at the same time?

10 A. Before I became -- got back on the floor to weld I was
11 in the tool room.

12 Q. What was the last position you held before becoming a
13 lead man; were you a welder or did you work in the tool
14 room?

15 A. Welder.

16 Q. Would you have last worked as a welder in August of
17 2012 --

18 A. Yes.

19 Q. -- approximately?

20 A. Uh-huh.

21 Q. Okay. How long did you work as a welder prior to
22 August of 2012?

23 A. About -- about a -- I'd say eight (8) to ten (10)
24 months.

25 Q. And what was your rate of pay as a welder?

- 1 A. It was the same.
- 2 Q. Sixteen, forty (\$16.40) an hour?
- 3 A. Yes.
- 4 Q. And were you working the same number of hours per week?
- 5 A. I was working more hours.
- 6 Q. How many hours were you working?
- 7 A. Forty-eight (48).
- 8 Q. As a welder can you tell the Court what your job duties
- 9 were, just the physical requirements of that job, what
- 10 you had to do on a -- from a physical standpoint?
- 11 A. Yes. First of all, I have to wear a hard hat with the
- 12 shield. The pieces that we weld requires for me to
- 13 bend down to get the weld stiffeners on the plants,
- 14 full penetration welds, partial-pen welds.
- 15 Q. Did it require you to engage in any lifting?
- 16 A. Yes, it does.
- 17 Q. Okay. What type of objects or the -- or the weights
- 18 are -- are you having to -- or did you have to lift as
- 19 a welder?
- 20 A. Upon turning the pieces over we have to lift crane
- 21 chains; some can weight up to forty (40) pounds just
- 22 the hooks alone.
- 23 Q. Now, prior to working as a welder was that when you
- 24 worked in the tool room?
- 25 A. Yes, they had me on light duty.

1 Q. Okay. How long did you work in the tool room?

2 A. Approximately a year.

3 Q. So, did you work in the tool room essentially during
4 the entire year of 2011; does that sound about accurate
5 to you?

6 A. That's about right.

7 Q. Okay. Now, were you working in the tool room in 2011
8 on light duty; is that what you said?

9 A. Yes.

10 Q. Okay. And were you on light duty because of a work
11 accident that you had had in September of 2010?

12 A. It was 2000 and -- yeah, 2010; yes, it was.

13 Q. In October of 2010 --

14 Commissioner Wilkerson: September.

15 Q. -- did you suffer an injury -- I'm sorry, September of
16 2010, did you suffer an injury at work?

17 A. I received an injury when I had the re-injury to my
18 neck; I can't recall the exact month.

19 Q. But in 2010, you re-injured the same part of your body
20 that you injured in this 2008 accident?

21 A. Yes, I did.

22 Q. Okay. Now, during the tool room, when you were working
23 in the tool room on light duty what was your rate of
24 pay at that time?

25 A. It was the same.

1 A. After the surgery.

2 Q. Okay. And then you returned to work after surgery on
3 light duty?

4 A. Yes.

5 Q. Okay. And at some point in time did you return to your
6 job as a Gantry welder?

7 A. They put me back on the floor as a welder first.

8 Q. Okay. All right. Was that around the time you were
9 released by Dr. Holbrook?

10 A. Yes.

11 Q. Okay. So, after Dr. Holbrook released you you went
12 back to the floor working as a welder --

13 A. Yes.

14 Q. -- correct?

15 A. (Nodded head in an up and down motion).

16 Q. Okay. And then at some point did you return to the
17 Gantry welder position?

18 A. I didn't return to the Gantry till years later.

19 Q. Okay. All right. But you were certainly working as a
20 Gantry welder when your -- when your second work
21 accident happened where you re-injured your neck --

22 A. I was not a Gantry welder then.

23 Q. -- okay. You were just a regular welder?

24 A. Yes.

25 Q. Okay. That job though, I presume, had a -- had a

1 pretty physical --

2 A. Yes.

3 Q. -- a significant requirement associated with it?

4 A. It did.

5 Q. Okay. This was not an easy job?

6 A. It's not.

7 Q. It's difficult?

8 A. (Nodded head in an up and down motion).

9 Q. Now, at the time that your second neck injury occurred
10 were you physical able to perform your job duties and
11 responsibilities as a welder?

12 A. According to my FCE I was.

13 Q. Were you performing those job duties without any
14 accommodations?

15 A. Yes, I was.

16 Q. Okay. The employer didn't have to make any special
17 arrangements for you to perform your job because of
18 your neck injury?

19 A. No, they did not.

20 Q. Now, let me ask you this. You -- you were released by
21 Dr. Holbrook in July of 2010; is that correct?

22 A. Okay.

23 Q. Is that correct?

24 A. Yes.

25 Q. Okay. And several years passed before you saw him

1 again; isn't that true?

2 A. Yes.

3 Q. You've seen him --

4 A. Yes.

5 Q. -- you've seen him since --

6 A. Uh-huh.

7 Q. -- July of 2010?

8 A. Yes.

9 Q. As a matter of fact I think you saw him in February of
10 2012; is that correct?

11 A. It could -- yes.

12 Q. All right. Did you see him after a -- an injury where
13 you had to pick up your daughter or lift your daughter
14 off the ground after she had fallen off a porch?

15 A. Yes.

16 Q. Okay. And that necessitated you going back to see Dr.
17 Holbrook?

18 A. No, I went to a Urgent Care --

19 Q. Okay.

20 A. -- they sent me to Dr. Holbrook.

21 Q. Okay. Did you re-injury your neck in February of
22 2012, when you were lifting your daughter off of the
23 ground?

24 A. It was my shoulder.

25 Q. Your shoulder?

1 A. Yes.

2 Q. Okay. But did you return to Dr. Holbrook's office with
3 complaints of neck and shoulder pain?

4 A. I told him it was radiating through my arm.

5 Q. Okay. And wasn't that very similar to the problems
6 that you experienced following your 2008 accident?

7 A. Yes, it was.

8 Q. Are you still under the care of Dr. Holbrook right now?

9 A. No, I'm not.

10 Q. When Dr. Holbrook released you in July of 2010, were
11 you still taking any type of prescription medications
12 prescribed to him because of the neck pain and
13 problems?

14 A. Yes, I was.

15 Q. How long did you take prescription medications?

16 A. I took them at least two (2) months afterwards.

17 Q. When Dr. Holbrook released you from his care in July of
18 2010, do you recall if you were provided with any
19 permanent work restrictions?

20 A. He gave me a -- after the FC -- well, after the 2000 --
21 they took the FCE and said I could lift fifty (50)
22 pounds, you know, off-and-on, up to seventy (70)
23 pounds, you know, every now and then; that was the
24 restriction that he wrote and sent to the job.

25 Q. Was your job as a welder within those restrictions?

1 A. Yes.

2 Q. At any point in time since you were released from Dr.
3 Holbrook's care have you performed work outside of
4 these restrictions?

5 A. Outside of those restrictions?

6 Q. Yes, sir.

7 A. Those restrictions were eliminated --

8 Q. Okay.

9 A. -- after the --

10 Q. By whom?

11 A. -- Dr. Raymond Sweets.

12 Q. Okay. These -- these restrictions that Dr. Holbrook
13 gave you were eliminated after you had your second
14 injury --

15 A. Exactly.

16 Q. -- correct? All right. Now, your second injury
17 resulted in you receiving some medical treatment as
18 well from Dr. Sweet; is that correct?

19 A. It did.

20 Q. Okay. And ultimately your second injury resulted in a
21 -- a settlement of your case, which you received
22 compensation from Owen Steel, correct?

23 A. Correct.

24 Q. Mr. Harrison, let me ask you this. You would agree
25 with me that we're almost five (5) years from the date

1 of your September, '08 accident; is that a fair
2 statement?

3 A. Yes.

4 Q. Okay. And -- and wouldn't you agree that -- that it's
5 difficult for you five (5) years later to tell the
6 court exactly what kind of problems you are having with
7 your neck after an accident that happened in September
8 of 2008?

9 A. No, sir.

10 Q. You have a clear memory of -- of how you were feeling
11 five (5) years ago?

12 A. Sir, that -- that's a pain I'll never forget.

13 Q. Okay. But wouldn't you agree with me that you had
14 another injury to your neck in 2010 --

15 A. Yes.

16 Q. -- and that -- and that it's difficult for you to
17 distinguish between the problems that you're having
18 because of your 2008 neck injury and the problems that
19 you're having because of your 2010 neck injury?

20 A. I can distinguish it, sir.

21 Q. All right. How so?

22 A. Sir, when you go through excruciating pain like that on
23 the 2008 injury where two (2) of your supervisors had
24 to walk you to the office then take you to a Urgent
25 Care and on the 2010 re-injury when you're lifting a

1 fifty (50) pound spool of wire and that pain shoots
2 down through your neck and your arm you'll never forget
3 it.

4 Q. So, they were similar; the problems are very similar?

5 A. Yeah, they're similar but you differentiate them.

6 Q. But it's been three (3) years -- over three (3) years
7 since Dr. Holbrook released you?

8 A. Yes.

9 Q. Okay. When you last saw him what type of problems did
10 you tell him you were having?

11 A. When I last saw Dr. Holbrook I was having pain on my
12 right shoulder and my neck and pain shooting down
13 through my arm.

14 Q. Okay.

15 Mr. Lockhart: Your Honor, I'm looking at
16 page 15 of the Claimant's APA submissions.

17 Q. Your testimony is that you told him you were having
18 pain shooting down your arm?

19 A. Yes.

20 Q. According --

21 A. And tingling -- and tingling in my fingertips.

22 Q. -- okay. According to his report, and I'm just reading
23 from it, okay? He says, "Robert Harrison returns to
24 the office for follow up after having undergone an
25 anterior cervical discectomy and fusion of C-5, 6 for

1 disk herniation on the left. He states he is doing
2 well. He has no radicular arm pain."

3 A. Could you tell me the date on that, sir?

4 Q. July 21st of 2010, which is the last time you were seen
5 by him.

6 A. No, the last time I was seen by Dr. Holbrook was 2012,
7 when my daughter fell off the porch, sir.

8 Q. I was asking you when you were released from his care.

9 A. You asked me the last time I had seen him.

10 Q. Okay. Well, I'll rephrase my question then.

11 A. Okay.

12 Q. When you were released by him in July of 2010, what
13 type of problems did you tell him you having?

14 A. I told him I was having -- still having tingling pain
15 shooting through my arm, tingling in my fingertips and
16 I know exactly what you're talking about; I did not
17 state that.

18 Q. Well, his report says you weren't having any radicular
19 arm pain.

20 A. I did -- I did not -- I did not tell him that. When I
21 came in his office he -- his exact words, "How are you
22 doing today, Robert?" I said, "Fine." He said, "So,
23 how are you -- how is your neck doing?" I said, "I'm
24 still having pain radiating through my arm and tingling
25 in my fingertips."

1 Q. According to his report he says you were doing well.

2 A. That's coming from him asking me when I walked in his
3 office how was I doing today.

4 Q. Okay. It's a little cloudy, right? I mean, it's been
5 three (3) years; so, it's understandable why you
6 probably can't remember exactly what you told him?

7 A. I can remember.

8 Mr. Barton: Objection, Your Honor. He
9 didn't testify he couldn't remember it.

10 Commissioner Wilkerson: No. I understand.

11 Mr. Lockhart: It's cross-examination.

12 Mr. Barton: Yes, sir.

13 Commissioner Wilkerson: Yes, it's cross.

14 Mr. Barton: But objection, that's misleading
15 and I object to the form of the question. He's
16 accusing him of saying something that he didn't
17 say.

18 Commissioner Wilkerson: I -- I'm fine. And
19 we don't have Dr. Holbrook's deposition, right?

20 Mr. Lockhart: No, sir.

21 Commissioner Wilkerson: Okay. I'm fine.

22 Mr. Lockhart: We do have his last note
23 though.

24 Commissioner Wilkerson: Yes. I -- I don't
25 have a deposition; that's why I was making sure I

1 Q. Okay. All right. The problems that you're having with
2 your neck today, are those all attributable to this
3 episode with your daughter where you were lifting your
4 daughter?

5 A. I'm not going to say that; no, sir.

6 Q. Well, what are they attributable to?

7 A. It's attributable to the surgery I had from the
8 accident I had in my neck.

9 Q. And the 2010 accident that you had?

10 A. That's the only -- the two (2); yes, sir.

11 Q. Okay. And the incident with your daughter?

12 A. That's on the right side --

13 Q. Okay. That's on the right side --

14 A. -- that's not on the left side.

15 Q. -- but as far as your neck pain is concerned, you agree
16 that all three (3) of those events contribute to your
17 current neck pain?

18 A. With me reaching down; yes, sir.

19 Q. When you were originally injured in September of 2008,
20 do you recall where you went for medical treatment
21 first?

22 A. Doctor's Care.

23 Q. Okay.

24 Mr. Lockhart: Your Honor, I'm looking at
25 page 52 of the Defendant's APA's.

1 Q. Yes, sir.

2 A. Probably physical therapy; yes, sir.

3 Q. This note from Doctor's Care says, "Feels one hundred
4 percent (100%); ready to resume normal duties.

5 A. I did not make that statement.

6 Q. Okay. Well, that's what the medical -- I'm just
7 reading --

8 A. I can understand --

9 Q. -- from the medical report.

10 A. -- I did not make that statement.

11 Q. Do you think you might have not have remembered this
12 appointment?

13 A. Sir, I did not make that statement.

14 Q. I'm just asking you --

15 A. I understand.

16 Q. -- if you remember the appointment --

17 A. I understand.

18 Q. -- the appointment?

19 A. I remember because I get stuff -- I'll get the same
20 Physical Trainer every time I go there.

21 Q. Did you go back to work regular duty in -- in October
22 of 2008?

23 A. Yes. They put me right back on the gantry; yes, sir.

24 Q. Okay. Where was the next place you were seen after you
25 saw Doctor's Care?

1 A. After Doctor's Care they sent me to get a MRI. After
2 the results from the MRI they sent me to see Dr.
3 Holbrook.

4 Q. All right. Prior to being released from Dr. Holbrook's
5 care in July of 2010, were you in a motorcycle
6 accident?

7 A. Yes, I was.

8 Q. Okay. And when did it occur?

9 A. That was approximately in April.

10 Q. Did you injure your neck at all in the motorcycle
11 accident?

12 A. No, I did not.

13 Commissioner Wilkerson: In April of what
14 year?

15 Mr. Lockhart: April of 2010.

16 Commissioner Wilkerson: Okay. Hold on,
17 we've got so many dates up here.

18 Q. You suffered no residual neck pain or problems as a
19 result?

20 A. No, sir.

21 Q. Did you inform Dr. Holbrook that you had been involved
22 in a motorcycle accident?

23 A. I felt no need to.

24 Q. Okay. Did you suffer any injuries at all?

25 A. Yes, I did.

1 Q. Okay. Where were you injured?

2 A. I had a collar bone fracture and scarring on my hands.

3 Q. And which collar bone was that?

4 A. Left.

5 Q. Okay. Now, you were also experiencing some left arm
6 and shoulder problems after your work accidents in '08
7 and 2010, as well, right?

8 A. Yes.

9 Mr. Lockhart: Your Honor, I beg the Court's
10 indulgence just a brief moment; I think I'm done.

11 Commissioner Wilkerson: Okay.

12 Q. Mr. Harrison, just so I'm -- I'm clear because I -- I
13 feel like I -- I want to make sure I understand this
14 before we leave here today. What specific problems are
15 you having today that are entirely attributable to your
16 2008 accident and can you tell us that?

17 A. Yes. I'm still having a little pain in my neck every
18 now and then and pain still shoots down through my left
19 arm; every now and then my -- my fingertips will go
20 numb, tingling.

21 Q. Okay. And what kind of problems are you still having
22 today as a result of your 2010 accident?

23 A. The same.

24 Q. Are you taking any medications at all right now for the
25 injury that you suffered in 2008?

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0824526

Robert Harrison,)
)
Claimant,)
)
v.)
)
Owen Steel Company,)
)
Employer,)
)
and)
)
Old Republic General Ins.,)
)
Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Tuesday, February 18, 2014
1:30 p.m. - 1:48 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, Gene McCaskill, and Aisha Taylor, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 18th day of February, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000827

1 And I think that's what the hearing
2 Commissioner got tied up on. And that's it in
3 a nutshell. And if y'all have any questions
4 I'll be glad to answer you. I think the
5 rulings in this order are clearly erroneous and
6 should be reversed.

7 THE CHAIR: Okay. Thank you. Mr. Lockhart.

8 MR. LOCKHART: Your Honor, may it please the
9 Commission, we obviously take a contradictory
10 position to that of Mr. Barton. We maintain
11 that Commissioner Wilkerson's decision should
12 be affirmed in this case, both his finding that
13 the claim was barred by the statute of
14 limitations, as well as his determination that
15 there was insufficient evidence to support an
16 award of disability. Let's talk about the
17 statute of limitations issue first. In all
18 candor, there was quite a bit of confusion
19 created by the pleadings that were filed in
20 this case, more specifically the Form 50 that
21 was initially filed. The first Form 50 that
22 you're going to see filed in this case was
23 dated April 24th of 2013. It listed the date
24 of accident of September 17th of 2008. So what
25 we have is a Form 50 filed nearly four and a



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000328

1 half years following the date of injury. The
2 Form 50 that was filed in April of 2013
3 utilized a WCC file number for a date of
4 accident that occurred on April 21st of 2008;
5 and that particular file, the April 21, '08,
6 claim was actually closed by the Commission in
7 August of 2008. So once the issue and the
8 confusion created by the Form 50 was resolved
9 and it became clear that we were actually going
10 forward to a hearing on the 9/17/08 date of
11 injury, as you can see from the Form 51, the
12 statute of limitations was asserted in this
13 case. What I also find interesting about the
14 claim letter too, if you review the claim
15 letter and you review the 50 and you review the
16 pre-hearing brief, the description of the
17 accident sort of changes somewhat, particularly
18 between the claim letter and the 50. The claim
19 letter also listed virtually every body part
20 you can imagine, whereas when the 50 and the
21 pre-hearing brief were filed, what we were
22 dealing with essentially was a neck injury.

23 **THE CHAIR:** Well, since the Form 50's were later
24 after the claim letter, if you'll address 67-
25 206(C), I think it is, because that claim



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000329

1 two years, but can we get back to this letter
2 for a minute.

3 MR. LOCKHART: Sure.

4 THE CHAIR: Is it your position you'd have to file
5 another pleading after the initial letter to
6 cure any statute of limitations deficiency? I
7 mean why would he have to file twice?

8 MR. LOCKHART: I think in light of the -- and with
9 all due respect to the late Mr. Mullis, in
10 light of the information contained in this
11 letter that was filed with the Commission in
12 2009, we've got multiple body parts; we've got
13 an ambiguous description of the accident. I
14 mean, to me, it seems like there would have to
15 be an additional filing on someone's part, and
16 if not, if y'all find that that letter tolled
17 the statute or represented a filing to satisfy
18 the requirements of 15-40, then I think we've
19 got to go back and deal with the laches issues.

20 THE CHAIR: I think maybe you would have maybe a
21 laches argument for sure, but is that in front
22 of us?

23 MR. LOCKHART: It's not in front of you, Your Honor,
24 and I guess my point being that if you decide
25 to reverse the decision on the statute of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000330

1 limitations then I think you'd have to send it
2 back to a hearing because, again, we've got all
3 of these other issues out in front of us as
4 well. I would point out, you know, to the
5 court, there was no evidence at the hearing
6 submitted regarding any assurances made by the
7 defendants to the claimant that would enable
8 the notion of estoppel to apply in a case like
9 this. Benefits were paid, medical was
10 provided, but at some point those were stopped.
11 And again, if we look at that, and I think it
12 goes back to the argument that we made earlier.
13 The *Hucks* decision that we also cited to in our
14 brief, it stands for the proposition that the
15 lack of diligence on the part of the attorney
16 for the claimant is attributable to the
17 claimant themselves. You know, again, in that
18 case what you had was a lawyer who actually was
19 engaged in settlement negotiations with an
20 insurance carrier in a disputed claim who did
21 not timely file for benefits, and the court
22 ultimately found the claim was barred by the
23 statute. Now that's an older claim and did not
24 deal with a two-year statute, and it dealt with
25 I believe at the time a one-year statute of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000331

1 be candid with you. But the Commissioner found
2 that his testimony didn't support an additional
3 award of disability and I -- the problem again
4 being that we also already have him being paid
5 permanent partial disability benefits for his
6 subsequent claim. And so then, as I raised at
7 the hearing with Commissioner Wilkerson, do we
8 get into 42-9-150, 160 and 170 where we're
9 dealing with payment of disability by the same
10 employer to the same claimant and you're
11 dealing with multiple claims. It really
12 creates sort of a Pandora's box of issues when
13 you're trying to partial out the disability
14 award in this case. But again, we maintain
15 that the decision should be affirmed. We
16 maintain it's supported by the evidence and by
17 the statute and the case law. Thank you.

18 THE CHAIR: Thank you. Mr. Barton.

19 MR. BARTON: Laches was pled as a defense, and it's
20 my understanding that the order ruled against
21 him because it did not find for it in the
22 Commissioner's order. Also, they can file a
23 Form 21 and get a hearing any time they wanted.
24 So they're entitled to a hearing if they want
25 it. They can request it. It's not our problem



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000332

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 #: 0804580 & 1013900

Carrier File #: 0804580 + 1013900

Carrier Code #:

Employer FEIN #:

Claimant's Name: Robert Harrison SSN: _____

Employer's Name: Owens Steel Company, Inc.

Address: 7290 Cabin Creek Rd

Address: 727 Mauney Drive

City: Hopkins State: SC Zip: 29061

City: Columbia State: SC Zip: 29201

Home Phone: () - Work Phone: () -

Insurance Carrier: Old Republic Insurance/Gallagher Basset

Preparer's Name: Connie Soles Law Firm: Mullis Law Firm Preparer's Phone #: (803) 799-9577

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.**A claim for workers' compensation benefits is made based on the following grounds:****Date of Injury or Illness:** Sep 17, 2008☐ Injury ☐ Illness ☐ Repetitive Trauma1a. The claimant sustained an injury to 4 (Part(s) of Body Injured) On 9/17/08 (Month/Day/Year) in Richland county, state of SC.1b. Body part(s) affected are: See 1 in AddendumBriefly describe how the accident occurred. See 2 in Addendum

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 3/2/12 (Month/Day/Year) in the following manner: reported to supervisor (note sure o date)☒ 6. Due to injury, the claimant is in need of (check one):☐ (a) medical examination and treatment for: _____☒ (b) additional medical examination and treatment for: see 1 a above.☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):☐ (1) General Disability:☐ Total☐ (2) Specific Disability:☐ Total☐ (3) Wage Loss☐ Partial☐ Partial☐ 9. 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 \$ 734.72 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: Owens Steel

11a. Further grounds or unusual aspects of claim: See 3 in Addendum

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr. Wade Reynolds at Doctors Express Urgent Care, Dr. Thomas Holbrook, Palmetto Imaging.

11c. To the best of your knowledge, did you have any prior permanent disability? YesIf yes, describe: 15% to the whole person by Dr. Raymond Sweet....see form 14-B

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.☒ 13b. I am requesting a hearing. A \$25 fee is required.14. Estimated time needed for hearing: 45 minutes....We are also asking that this case be combined with WCC# 1013900.**I verify the contents of this form are accurate and true to the best of my knowledge.**Preparer's Signature: Connie Soles Title: Attorney Email: csoles@mullislawfirm.com Date: 4/24/2013

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 Claims Department.

WCC Form # 50

Revised 9/07

50 00333**Employee's Notice of Claim and/or Request for Hearing**

Addendum
Thomas Harrison WCC# 0804580 & 1013900

1. back, neck/cervical spine, right shoulder, left shoulder, and/any all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result there from. Claimant has a change of condition (see medical documentation attached). He was also seen by Dr. Thomas Holbrook who recommended some outpatient physical therapy, cervical epidural injection and some further conservative measures. He also prescribed prescriptions; anti-inflammatory, Mobic, and muscle relaxer, Flexeril due to radicular type pain on the right whereas before he had sugery for radicular pain on the left.
2. Claimant was injured while welding. He stood up to cut off the machine and his back and neck locked up resulting in surgery to the cervical spine with discectomy and fusion C5-6. After returning to work at light duty, on 10/4/10 he was standing on steel beam approximately 4 feet high; picked up 50 lb spool of wire to put in on the machine over his head and pain shot from the top of his neck to the middle of his back.
3. Claimant request additional medical care and all other benefits applicable under the Act. Believe Claimant to have additional permanency but we are not requesting permanency unless by the time the case is scheduled for a hearing that any and all physicians treating him have released him and state he is at maximum medical improvement.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.

 fab

00334



Carrier File #: 0804580 + 1013900
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Robert Harrison SSN: Employer's Name: Owens Steel Company, Inc.
Address: 7290 Cabin Creek Rd Address: 727 Mauney Drive
City: Hopkins State: SC Zip: 29061 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Old Republic Insurance/Gallagher Basset
Preparer's Name: Connie Soles Law Firm: Mullis Law Firm Preparer's Phone #: (803) 799-9577

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: Sep 17, 2008

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to 4 (Part(s) of Body Injured) on 9/17/08 (Month/Day/Year) in Richland county, state of SC.
1b. Body part(s) affected are: See 1 in Addendum

Briefly describe how the accident occurred. See 2 in Addendum

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 3/2/12 (Month/Day/Year) in the following manner: reported to supervisor (note sure o: date)

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: see 1 a above.

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

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. 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 \$ 734.72 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: Owens Steel

11a. Further grounds or unusual aspects of claim: See 3 in Addendum

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr. Wade Reynolds at Doctors Express Urgent Care, Dr. Thomas Holbrook, Palmetto Imaging.

11c. To the best of your knowledge, did you have any prior permanent disability? Yes
If yes, describe: 15% to the whole person by Dr. Raymond Sweet....see form 14-B

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.

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

14. Estimated time needed for hearing: 45 minutes....We are also asking that this case be combined with WCC# 1013900.

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

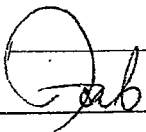
Charles A. Barton Attorney csdes@mullislawfirm.com 4/29/13
Preparer's Signature Title Email Date

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 Claims Department.

Addendum
Robert Harrison WCC# 0804580 & 1013900

1. back, neck/cervical spine, right shoulder, left shoulder, and/any all other areas of the body directly/indirectly effected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result there from. Claimant has a change of condition (see medical documentation attached). He was also seen by Dr. Thomas Holbrook who recommended some outpatient physical therapy, cervical epidural injection and some further conservative measures. He also prescribed prescriptions; anti-inflammatory, Mobic, and muscle relaxer, Flexeril due to radicular type pain on the right whereas before he had surgery for radicular pain on the left.
2. Claimant was injured while welding. He stood up to cut off the machine and his back and neck locked up resulting in surgery to the cervical spine with discectomy and fusion C5-6. After returning to work at light duty, on 10/4/10 he was standing on steel beam approximately 4 feet high; picked up 50 lb spool of wire to put in on the machine over his head and pain shot from the top of his neck to the middle of his back.
3. Claimant request additional medical care and all other benefits applicable under the Act. Believe Claimant to have additional permanency but we are not requesting permanency unless by the time the case is scheduled for a hearing that any and all physicians treating him have released him and state he is at maximum medical improvement.

Request lump sum payment as per Section 42-9-10 and Section 42-9-20 of the 1976 Code of Laws of South Carolina as interpreted by the Supreme Court decision of Utica Mohawk Mills v Orr, 277 S.C. 226, 87 SE 2d 589; Sciarotta v. Bowen, 837 F2d 135.


fab

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 0824526

RECEIVED

MAR 22 2016

SC Court of Appeals

Robert L. Harrison, Employee,.....Appellant,

v.

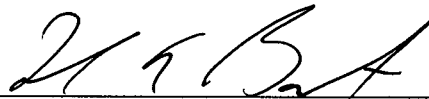
Owen Steel Company, Inc., Employer, and
Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc., Carrier,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel does hereby certify the Record on Appeal contains all
material designated by both parties and no other materials.

West Columbia, South Carolina

March 22, 2016



Frank A. Barton, Esquire

ATTORNEY AT LAW, P.A.

Post Office Box 3972

West Columbia, South Carolina 29170

803-739-1824 / fax 803-739-1888

ATTORNEY FOR APPELLANT