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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1402652

RECEIVED
JUL 28 2016
SC Court of Appeals

James Lipscomb, Employee,

Respondent,

v.

Stein Fibers/Innovative Fibers, Employer,
and Key Risk Management, Carrier,

Appellants.

MOTION TO SUBSTITUTE PARTY

Appellants respectfully move pursuant to Rule 265, SCRAP, for an Order substituting StarNet Insurance Company for Key Risk Management as the Appellant Carrier in this appeal.

This Motion is made on the following grounds:

1. That as shown by the Commission's website, StarNet Insurance Company had coverage of Stein Fibers and Innovative Fibers on the date of Respondent's injury, March 20, 2014. (Attachment 1).
2. That the Commission's Notices of Hearing indicated that StarNet Insurance Company was the carrier for Innovative Fibers in this case. (Attachment 2).
3. That the Hearing Commissioner's Decision and Order of December 22, 2015, indicated that StarNet Insurance Company was the carrier in the case. (Attachment 3).

4. That Appellants' Form 30, Request for Commission Review, indicated that StarNet Insurance Company was the carrier in the case. (Attachment 4).

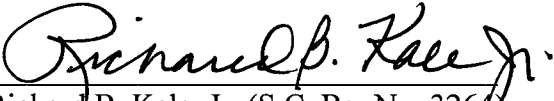
5. That the Commission's Notice of Briefing Schedule and Notice of Appellate Hearing indicated that StarNet Insurance Company was the carrier in the case. (Attachment 5).

6. That the listing of Key Risk Management instead of StarNet Insurance Company as the carrier on the Appellate Panel's Decision and Order was an inadvertent error.

WHEREFORE, upon good cause shown, Appellants request that StarNet Insurance Company be substituted as the Appellant Carrier in place of Key Risk Management.

Respectfully submitted,

July 28, 2016.


Richard B. Kale, Jr. (S.C. Bar No. 3264)
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Appellants

Other Counsel of Record:

W. Scott Palmer, Esquire
W. Scott Palmer Law Firm, P.A.
P.O. Box 722
Santee, South Carolina 29142
(803) 854-4417
Attorney for Respondent

South Carolina Workers Compensation Commission

Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date Default = Today's Date

Employer Name Contains Starts With

OR

Federal Employer Identification Number

[Click here for claim processing information \(and register for mid-term cancellation notice\).](#)

Worker's Compensation Insurance Coverage Provider: STARNET INSURANCE COMPANY

Policy Number: 992000000450113

Coverage Date: 03/20/14

[Return to Policy Results](#)

Employer Name	Street Address	City	State	Zip
<input type="text"/>		<input type="text"/>		<input type="text"/>
STEIN FIBERS LTD	185 LITTLEJOHN RD	SPARTANBURG	SC	29301-5520

South Carolina Workers Compensation Commission

Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date Default = Today's Date

Employer Name Contains Starts With

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STEIN FIBERS LTD	185 LITTLEJOHN RD	SPARTANBURG	SC	29301-5520

South Carolina Workers' Compensation Commission

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



WCC File #: 1402652
Carrier File #: 03149911
February 18, 2015

NOTICE OF HEARING

JAMES LIPSCOMB v. INOVATED FIBERS

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 14, 2015 at 11:30 AM
Location: County Administration Bldg., 366 N. Church St., Workers' Compensation Hearing Room
Spartanburg, SC 29304

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

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

Commissioner Aisha Taylor
803-737-5692, rgsmith@wcc.sc.gov

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

By: Renee G Smith, SC Workers' Compensation, February 18, 2015

Party

Employee: JAMES LIPSCOMB

Employer: INOVATED FIBERS
Carrier: StarNet Insurance Company

Attorney

W Scott Palmer
wpalmer@santeeattorney.com
803-854-4417

Richard B. Kale, Jr
rbkale@wjlaw.net
864-527-3272

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1402652

JAMES C. LIPSCOMB

vs.

STEIN FIBERS / INNOVATIVE FIBERS

and

STARNET INSURANCE COMPANY,

Carrier

Hearing: Spartanburg, South Carolina

Appearances: For the Claimant:

W. Scott Palmer, Esquire
W. Scott Palmer Law Firm, P.A.
Santee, South Carolina

For the Defendants:

Richard B. Kale, Esquire
Willson Jones Carter & Baxley, P.A.
Greenville, South Carolina

Purpose of Hearing: To determine issues as set forth in the Forms 50/51.

Decision and Order: By Aisha Taylor, Commissioner.

Filed: December 22, 2015.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted by the parties for inclusion in the record of this case, without objections:

I. CLAIMANT'S APA SUBMISSIONS

<u>APA</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
1.	Spartanburg EMS	03/20/14	1-9
2.	Spartanburg Regional Emergency Center	03/20/14	10-39
3.	Spartanburg Regional Medical Center	03/20/14-04/04/14	40-108
4.	Carolina Musculoskeletal Institute	03/23/15	109-113
5.	Spartanburg Regional Medical Center (bill)	03/20/14-04/02/14	114-132
6.	Deposition Transcript of Joanne Matthiesen		133-157

II. DEFENDANT'S APA SUBMISSIONS

<u>APA</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
7.	John H. Mennear, Ph.D.	08/18/14	158-164
8.	Spartanburg Regional Emergency Center	03/20/14 - 04/02/04	165-170

9.	Spartanburg Regional Ethanol/Blood Test	03/21/14	171
10.	Dr. Shawn A. Birchenough	03/21/14 – 06/23/14	172-194
11.	Spartanburg Regional Healthcare System	12/09/07 – 12/10/07	195-202

Exhibits:

Exhibit #1	Innovative Fibers Substance Abuse Policy Statement	11/12/14	1-5
Exhibit #2	Claimant Acknowledgement of Alcohol Abuse Policy	04/24/13	6
Exhibit #3	Claimant's Certificate of Agreement to Company's Substance Abuse and Testing Policy	04/22/13	7
Exhibit #4	Claimant's Attendance at Lockout/Tagout Safety Meeting	08/13/12 – 10/16/12	8-11
Exhibit #5	Claimant's Termination Letter	05/22/14	12

The transcript deposition of the Claimant dated July 23, 2014, was admitted into evidence without objection.

The transcript deposition of Joanne Matthiesen dated November 24, 2014, was admitted into evidence without objection.

APA Exhibit 7 was admitted into evidence over the objection of the Claimant's

attorney. Claimant's attorney objected based on the following: the qualifications of the Employer's expert, Dr. Mennear; the chain of custody with regard to the blood test and the type of blood test that was performed; and the reference in Dr. Mennear's report to information from a 2007 emergency room report.

STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction.
2. Venue is proper in Spartanburg County.
3. Notice of Hearing was sufficient.
4. The Claimant's average weekly wage is \$437.79, resulting in a compensation rate of \$292.01.

STATEMENT OF THE CASE

This matter came before the undersigned Commissioner for a hearing to determine issues set forth on timely filed forms 50 and 51.

The Claimant, James C. Lipscomb, alleges he suffered an injury to his right upper extremity as the result of an industrial accident that occurred on March 20, 2014, in the course and scope of his employment at Stein Fibers/Innovative Fibers ("Employer"). Claimant seeks a finding of total and permanent disability, payment of temporary total benefits, and payment of outstanding medical bills. In addition, Claimant seeks compensation for serious bodily disfigurement of both lower extremities.

The Defendants deny that the claim is compensable contending that Claimant's

injury was occasioned by his intoxication. (See Tr. 10, lines 1-2.) In support of this position, the Defendants submit the emergency room toxicology report and the report of Dr. Mennear. The Defendants also contend that the Claimant was working outside the course and scope of his employment at the time of injury due to his alleged noncompliance with an acknowledged company policy. In support of this claim, the Defendants submit the company policy, the Claimant's acknowledgment form, the Claimant's certificate of understanding with regard to the substance abuse and testing policy, and Claimant's termination letter. The Defendants further cite *Wright v. BI-LO, Inc.*, 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994) in support of this position.

The Claimant was treated by Dr. Shawn Birchenough, Dr. Manny Trujillo, Dr. Thomas Ashley, Dr. Michael Orseck, Dr. Todd Cook, and Dr. John Broderick for a severe injury and degloving of his right arm, and associated reconstructive surgery.

On March 23, 2015, Dr. Clark D. Moore assigned a 100% impairment to the right upper extremity, and a 60% impairment to the whole man. (Claimant's APA #4, p. 113.)

EVIDENCE OF THE CASE

Testimony:

The Claimant testified on his own behalf at the hearing on this matter. Claimant also called Nashid Henderson, a co-worker, to testify on behalf of Claimant. The Defendants called Human Resource Manager, Joanne Matthiesen, as a witness. The relevant testimony can be summarized as follows:

On March 20, 2014, Claimant suffered an injury while working as a baler at Innovative Fibers. (Tr. at 14:2-8.) At the time of the injury, Claimant had been

operating the baling machine for approximately one year. (Tr. at 15:8-15.) Before becoming a baler, Claimant had worked at Innovative Fibers as a creeler. (Tr. at 14:2-8.) Prior to working at Innovative Fibers, Claimant worked as a baler at Leigh Fibers. (Tr. at 14:9-16.) Claimant has a high school education and has attended trade school for brick masonry. (Tr. 34:11-16.) Claimant was 44 years old at the time of his injury.

At the time of the accident, Claimant was working 12-hour shifts, from 8 p.m. until 8 a.m., four days a week. (Tr. at 15:19-16:2.) Prior to the shift during which the accident occurred, Claimant had a 12 hour break following his previous shift. (Tr. at 18:6-18.) During this break, Claimant and a co-worker worked on Claimant's hot water heater. (Tr. at 18:19-19:15) Claimant testified that while he was working on the hot water heater, he had taken a shot of brandy at about 9:00 or 10:00 a.m. (Tr. at 18:19-19:15; 38:8-25.) He testified that he did not take more than one shot because he needed to drive to get parts for the hot water heater. (Tr. at 18:19-19:15; 38:8-25.) Claimant also testified that he was sick and had taken some cough medicine before he went to bed and again when he woke up. (Tr. at 19:25-21:19)

Claimant's co-worker and friend, Nashid Henderson, picked Claimant up for work on the evening of the accident. (Tr. at 22:5-6.) On the way to work, they stopped at the Hot Spot and bought snacks and energy drinks, and the Claimant then drove them from the Hot Spot to work. (Tr. at 22:13-17.) The Claimant testified that he did not have any difficulties making that drive. (Tr. at 22:20-21.) Mr. Henderson testified that at the time he picked up the Claimant, he was given no reason to believe that the Claimant had consumed any alcoholic beverage. (Tr. at 58:7-19.)

Prior to the beginning of his shift, Claimant attended the mandatory safety meeting with his supervisor. (Tr. at 22:22-24:10.) The other employees on the shift were present at the meeting, including Mr. Henderson. (Tr. at 22:22-24:10.) Mr. Henderson testified that he did not notice anything unusual about the Claimant during that meeting. (Tr. at 58:20-59:3.)

At the conclusion of the meeting, Claimant's supervisor told him that he (the Claimant) needed to re-feed bales during his shift. (Tr. at 24:11-25:7.) Re-feeding bales meant that the Claimant would be required to feed material into the baling machine by hand. (Tr. at 24:17-25:8.) Running the baler was a two-man operation with one person as the "cutter" and one person as the "gunner" or "baler." (Lipscomb Dep. 15:20-16:4.) During the re-feeding process, the machine was not running automatically; rather, the cutter operated the pedal that activated the baling machine. (Lipscomb Dep. 33:20-23.) When manually operating the baler, the cutter was supposed to observe the Claimant (baler), and not activate the baling machine unless he observed that the Claimant's hands were free of the baling machine. (Tr. at 26:22-25; Lipscomb Dep. 38:22-39:10; 39:25-40:4.)

The Claimant testified that, immediately prior to the accident, he was clearing scraps from the baling machine by hand and the machine had not been on. (Tr. at 36:13-22.) He testified that while his hands were still near the machine, the machine was activated, and the machine's rollers caught the fingers of his right hand and pulled his arm into the baling machine. (Tr. at 26:21-27:23.) The Claimant testified that the cutter was not watching him and activated the machine while the Claimant's hand was

still near the machine. (Tr. at 36:3-22.) The Claimant further testified that the rollers pulled him up and over a metal grid that was part of the machine and which became caught under his arm. (Tr. at 45:20-47:14.) Claimant testified that he was standing on the floor when the accident occurred and that he was not standing on a bar on the side of the machine and had not climbed on top of the machine at the time of the accident. (Tr. at 45:8-19.) Mr. Henderson testified that in order to wipe off the rollers, the baler can just reach from a standing position as the area is between shoulder and elbow level. (Tr. at 67:19-68:5.)

Claimant testified that at the time of the accident, there was no safety cage or screen around the machine to prevent the accident from happening. (Tr. at 36:3-12.) Ms. Matthiesen testified that safety guards were added to the baling machine after the accident as a safety precaution. (Matthiesen Dep. 23:7-15.)

After the accident, Mr. Henderson was one of the first individuals to see the Claimant. (Tr. at 60:8-61:19.) Mr. Henderson testified that he did not smell any alcohol or see any evidence that the Claimant had had anything to drink. (Tr. at 62:11-16.) Mr. Henderson further testified that he has never known the Claimant to drink on the job and, on the day of the accident, did not see the Claimant drink anything with alcohol in it. (Tr. at 64:17-22.)

Joanne Matthiesen testified that, as Human Resource Manager, she was called into the plant soon after the accident. (Tr. at 76:20-77:2.) She testified that it was standard protocol for her to go to the plant when an employee was injured and that when she arrived at the plant that evening, she found the Claimant to be calm, awake

and alert. (Tr. at 77:20-78:16.)

Ms. Matthiesen further testified that they conducted an accident investigation and concluded that Claimant bypassed safety procedure by standing on the side of the bale machine and reaching into the moving machine. (Tr. at 79:6-23.) Ms. Matthiesen testified that no one told her that the Claimant was under the influence of alcohol on the night of the accident and she did not encounter any information that would have led her to believe that Claimant was under the influence of alcohol that night. (Tr. at 80:15-23.) She further testified that she did not formally interview Claimant as part of the investigation. (Tr. at 79:24-80:9.)

Ms. Matthiesen also testified to the company alcohol abuse policy and the Claimant's acknowledgment of that policy. (Tr. at 72:2-73:3.) Ms. Matthiesen testified that Claimant's employment was terminated as a result of the post-accident blood test taken at Spartanburg Regional. (Tr. 73:8-74:11.) The blood alcohol test taken at the hospital showed a level of .097, which exceeded the .04 level of the company policy. (Tr. At 73:13-74:3.) Ms. Matthiesen testified that she was contacted by the hospital about taking a blood test but that Innovative Fibers did not order or direct the hospital to take the test or have anything else to do with the test. (Tr. at 75:6-76:6.) Ms. Matthiesen testified that employee drug and alcohol testing is normally performed by Mary Black Industrial Health, and not Spartanburg Regional Medical Center. (Tr. at 75:15-22.) The Defendant did not present any witnesses from the medical facility to establish the chain of custody of the blood sample taken from the Claimant, or to describe the testing procedure.

On cross-examination, Ms. Matthiesen testified that after the accident, she received a call from a nurse at Spartanburg Regional Medical Center who indicated that they had smelled alcohol on Claimant's breath and wanted to know if the company did post-accident drug testing. (Tr. at 83:11-16.) Ms. Matthiesen told the nurse to go ahead and do the drug testing. (Tr. at 84:25-85:2.)

Medical Evidence:

The medical evidence submitted by the parties pursuant to the Administrative Procedures Act is briefly summarized as follows:

Following the accident, Claimant was transported by EMS to Spartanburg Regional Emergency Center where he was initially treated by the trauma team prior to being admitted to Spartanburg Regional Medical Center. Prior to his discharge from Spartanburg Regional on April 4, 2014, Claimant underwent numerous surgeries and/or other procedures, including the following (Claimant's APA #1-3):

- Upon his admission, Claimant underwent emergency surgery performed by Dr. Thomas Ashley and Dr. Manny Trujillo with a postoperative diagnosis of trauma to the right forearm with avulsion of skin and subcutaneous tissue of the entire forearm with underlying fracture of the radius and ulna.
- On March 21, 2014, Dr. Todd Cook performed a right radial shaft external fixator placement with placement of a negative pressure wound device.
- On March 22, 2014, Dr. Scott Broderick performed an open treatment and internal fixation of the right radius and ulnar shaft with repeat irrigation and debridement of soft tissue only.

□ On March 20, 2014, Dr. Shawn Birchenough performed a sharp excisional debridement of skin and subcutaneous tissue and fascia of the arm over 200 sq. cm and of the dorsal hand 250 sq. cm. He also performed a fasciotomy of the hand and placed INTEGRA dermal skin substitute on the arm.

□ On March 28, 2014, Claimant underwent plastic and reconstructive surgery. Dr. Birchenough performed an anterolateral thigh flap from the right thigh to the right dorsal hand exposed extensor tendons. He also performed a 950 sq. cm split-thickness skin graft from the left thigh to the right arm. Dr. Michael Orseck was present during all critical portions of the procedures.

Claimant was examined by Clark D. Moore, M.D., a physician with Carolina Musculoskeletal Institute, on March 23, 2015. Dr. Moore assigned a 100% medical impairment to Claimant's right forearm, and a 60% whole man impairment. Dr. Moore also opined that Claimant is "currently unemployable and will be for the foreseeable future."

FINDINGS OF FACT

1. I find Claimant sustained a compensable injury to his right arm within the course and scope of his employment.
2. On March 20, 2014, Claimant was working as a baler at the Innovative Fibers plant in Spartanburg, South Carolina.
3. At the beginning of his shift, Claimant attended the mandatory safety meeting with his supervisor which was attended by the other employees on his shift.

4. Following the safety meeting, Claimant was told by his supervisor that he would be re-feeding bales during his shift that night.
5. Re-feeding bales requires feeding materials into the baler by hand.
6. Manually re-feeding material in this manner was part of Claimant's responsibilities as a baler.
7. During the re-feeding process, the baler is not running automatically but is activated manually by the cutter operating a pedal.
8. Claimant was attempting to remove scraps of material which had not fully cleared the baling machine during the re-feeding process when the baler was activated and the injury occurred.
9. Claimant was standing on the floor when the accident occurred. Claimant was not standing on the machine or reaching over a safety cage when the accident occurred.
10. Defendants' intoxication defense is denied. In order to bar a recovery based on intoxication, the injury must be "occasioned" by the intoxication of the employee, which means that the proximate cause of the injury must be the intoxication of the employee. (See *Reeves v. Carolina Foundry & Machine Works*, 194 S.C. 403, 9 S.E.2d 919 (1940).)11.
11. I find the greater weight of the evidence does not support Defendants' contention that Claimant's consumption of alcohol proximately caused his injury. For intoxication to be a bar to recovery, it must be the proximate cause of the injury, and not just precede the injury. (See *Baggot v. Southern Music, Inc.*, 330

S.C. 1, 496 S.E.2d 852 (S.C. 1998) and *Kinsey v. Champion Am. Service Ctr.*, 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977).¹²

12. Additionally, I find that although there was a general safety policy as it pertained to the position of a "baler," I find there were some instances in the performance of the job that allowed the Claimant some discretion as to how to remove scraps that didn't fully clear the machine. Thus, I find that this case is distinguishable from *Wright v. BI-LO, Inc.*, 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994), wherein Claimant's claim was denied after he ignored specific and contemporaneous instructions from his supervisor.

13. I gave very little weight to Dr. Mennear's toxicology report, as he never met or examined the Claimant. Also, it is unclear from Dr. Mennear's report whether he had specific details of how the injury occurred.

14. Claimant is at maximum medical improvement.

15. I find Claimant has sustained 100% loss of use of his right arm as a result of his work injury and is entitled to the full 220 weeks of benefits based on the same.

16. I find Claimant is entitled to temporary total disability from March 20, 2014, to March 23, 2015.

17. I find Defendants are liable for all causally-related medical treatment related to this injury.

18. I find Claimant is entitled to reimbursement for all causally-related out of pocket expenses, including mileage reimbursement, if any.

19. Claimant's claim for disfigurement to his right and left thigh is denied as high thighs are not normally exposed in his employment.
20. Claimant is entitled to receipt of his award in a lump sum.
21. No hearing costs are assessed.

CONCLUSIONS OF LAW

Based upon the foregoing and as provided by S.C. Code Ann. § 42-17-40, it is hereby concluded as a matter of law that:

1. I find Claimant sustained a compensable injury to his right arm within the course and scope of his employment.
2. Defendants' intoxication defense is denied. In order to bar a recovery based on intoxication, the injury must be "occasioned" by the intoxication of the employee, which means that the proximate cause of the injury must be the intoxication of the employee. (See *Reeves v. Carolina Foundry & Machine Works*, 194 S.C. 403, 9 S.E.2d 919 (1940).)
3. South Carolina Code Ann. § 42-9-60 provides that "[n]o compensation shall be payable if the injury ... was occasioned by the intoxication of the employee" Our Supreme Court has "interpreted this provision as barring compensation when the employee's intoxication is the proximate cause of the injury." (*Baggot v. Southern Music, Inc.*, 330 S.C. 1, 7, 496 S.E.2d 852, 855 (1998).) Intoxication must proximately cause the injury; it is not enough that intoxication just precede the injury. (See *Kinsey v. Champion Am. Service Ctr.*, 268 S.C. 177, 183, 232 S.E.2d 720, 723 (S.C. 1977).)

4. As the party claiming the applicability of § 42-9-60, the burden of proof is upon Defendants to show that that Claimant's intoxication was the proximate cause of his injury. South Carolina Code Ann. § 42-9-60.

5. I find the greater weight of the evidence does not support Defendants' contention that Claimant's consumption of alcohol proximately caused his injury. For intoxication to be a bar to recovery, it must be the proximate cause of the injury, and not just precede the injury. (See *Baggot v. Southern Music, Inc.*, 330 S.C. 1, 496 S.E.2d 852 (S.C. 1998) and *Kinsey v. Champion Am. Service Ctr.*, 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977).)

6. I do not find that Defendants have met their burden to show that Claimant's intoxication proximately caused his injury.

7. Additionally, I find that although there was a general safety policy as it pertained to the position of a "baler," I find there were some instances in the performing of the job, where the Claimant had some discretion as to how to remove scraps that didn't fully clear the machine. Thus, I find that this case is distinguishable from *Wright v. BI-LO, Inc.*, 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994), wherein Claimant's claim was denied after he ignored specific and contemporaneous instructions from his supervisor.

8. I find Claimant has sustained 100% loss of use of his right arm as a result of his work injury and is entitled to the full 220 weeks of benefits based on the same.

9. I find Claimant is entitled to temporary total disability from March 20, 2014,

to March 23, 2015.

10. I find Defendants are liable for all causally-related medical treatment related to this injury.

11. I find Claimant is entitled to reimbursement for all causally-related out of pocket expenses, including mileage reimbursement, if any.

12. Claimant's claim for disfigurement to his right and left thigh is denied as high thighs are not normally exposed in his employment.

13. Claimant is entitled to receipt of his award in a lump sum.

14. No hearing costs are assessed.

AWARD

The Claimant shall receive an award from this Commission as follows:

Compensation Benefits:

1. Claimant is entitled to 220 weeks of compensation, at the compensation rate of \$292.01, with the award to be paid in a commuted lump sum, pursuant to the provisions of § 42-9-301, South Carolina Code of Laws; and pursuant to §§ 42-9-10 and 42-9-20 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of *James v. Anne's Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010); Cf. *Utica Mohawk Mills v. Orr* 227 S.C. 226, 87 S.E.2d 587 (1955) and *Sciarotta v. Bowen*, 837 F.2d 135 (3d Cir. 1988).

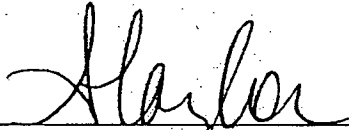
2. Temporary total disability from March 20, 2014, to March 23, 2015, for a period of 51 weeks at Claimant's compensation rate.

Medical and Other Benefits:

1. Reimbursement of all causally-related medical treatment related to this injury.
2. Reimbursement of all causally-related out of pocket expenses, including mileage reimbursement, if any.

AND IT IS SO ORDERED

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

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

December 22, 2015

By: Renee Smith, Administrative Assistant to Commissioner Taylor



WCC File #:	1402652
Carrier File #:	03149911
Carrier Code #:	
Employer FEIN #:	141584173

Claimant's Name: James T. Lipscomb SSN: [redacted] Employer's Name: Stein Fibers
 Address: 170 Irby Court Address: 185 Littlejohn Road
 City: Spartanburg State: SC Zip: 29601 City: Spartanburg State: SC Zip: 29301
 Home Phone: _____ Work Phone: _____ Insurance Carrier: StarNet Insurance Company
 Preparer's Name: Richard B. Kale, Jr. Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3272

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 3/20/2014

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 Attached.

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

Mediation

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

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

Certify that I have served this document pursuant to R.67-212 by delivering a copy to: W. Scott Palmer, PO Box 722, Santee, SC 29142
 Name & Address
 I, Judicial Director, SC WCC, P.O. Box 1715, Columbia, SC 29202 on the 28th day of December, 2015 by first class mail personal service certified mail
Richard B. Kale Jr. Attorney for Defendants rbkale@wilaw.net 12/28/2015
 Preparer's Signature Title Email 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. 67-607 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.

GROUNDS FOR REVIEW

1. That the Hearing Commissioner erred in finding as a fact that Claimant sustained a compensable injury to his right arm within the course and scope of his employment, that error being that such finding was not supported by the greater weight of the evidence.
2. That the Hearing Commissioner erred in finding as a fact that Claimant suffered a compensable injury to his right arm within the course and scope of his employment, that error being that Claimant's injury was barred because the injury was occasioned by his intoxication.
3. That the Hearing Commissioner erred in finding as a fact that Claimant suffered a compensable injury to his right arm within the course and scope of his employment, that error being that Claimant stepped outside the course and scope of his employment by violating the company's alcohol abuse policy which prohibits an employee from reporting to work with a blood alcohol level of .04 or higher.
4. That the Hearing Commissioner erred in finding that Defendants failed to prove the intoxication defense under Section 42-9-60, S.C. Code Ann. (1976), that error being that the greater weight of the evidence established that Claimant's injury was proximately caused by his intoxication.
5. That the Hearing Commissioner erred in finding that Claimant's consumption of alcohol did not proximately cause his injury, that error being that such finding was not supported by the greater weight of the evidence.
6. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D., that error being that such finding constituted an abuse of discretion.
7. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D., that error being that Dr. Mennear's report was reliable, credible, probative and substantial evidence.
8. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D., that error being that Dr. Mennear's report was supported by the greater weight of the evidence.
9. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D. because Dr. Mennear never met or examined the Claimant, that error being that Dr. Mennear is a toxicologist and former Professor of Pharmacology and Toxicology and Chairman of the Department of Pharmacology Sciences, School of Pharmacy at Campbell University, and not a medical doctor.
10. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D., because Dr. Mennear never met or examined the Claimant, that error being that

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examining Claimant six months after the intoxication event would be a meaningless and useless act.

11. That the Hearing Commissioner erred in giving little weight to the toxicology report of John H. Mennear, Ph.D., that error being that the Hearing Commissioner gave no reasonable basis for her action and this constitutes an abuse of discretion.
12. That the Hearing Commissioner erred in finding as a fact that it was unclear from Dr. Mennear's report whether he had specific details on how the injury occurred, that error being that Dr. Mennear's report clearly indicates that he reviewed the Claimant's deposition testimony as a part of formulating his opinion, which deposition fully describes how the accident occurred.
13. That the Hearing Commissioner erred in finding as a fact that it was unclear from Dr. Mennear's report whether he had specific details on how the injury occurred, that error being that Dr. Mennear reviewed Claimant's deposition testimony which fully discussed how the accident occurred.
14. That the Hearing Commissioner erred and totally misconstrued Defendants' Wright v. Bi-Lo, Inc. defense, that error being that the defense was that Claimant stepped outside the course and scope of his employment by coming to work with a blood alcohol level of .097 which exceeded the company's alcohol abuse standard of .04.
15. That the Hearing Commissioner erred in finding that Claimant's case was distinguishable from Wright v. Bi-Lo, Inc., that error being that the Claimant was aware of the Employer's alcohol abuse policy, signed a copy of the alcohol abuse policy and further signed a certificate of agreement stating that he was aware that a positive substance abuse test might affect his right to obtain workers' compensation benefits.
16. That the Hearing Commissioner erred in finding as a fact that the baling machine was not running at the time that Claimant was attempting to remove scraps of material from the baling machine, that error being such finding was not supported by the greater weight of the evidence.
17. That the Hearing Commissioner erred in finding that the Claimant was standing on the floor and not on the machine when the accident occurred, that error being that such finding was not supported by the greater weight of the evidence.
18. That the Hearing Commissioner erred in finding that Claimant's injury was not occasioned by his intoxication, that error being that such finding was not supported by the greater weight of the evidence.
19. That the Hearing Commissioner erred in finding that Claimant's injury was not proximately caused by his intoxication, that error being that such finding was not supported by the greater weight of the evidence.

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20. That the Hearing Commissioner erred in not finding that Claimant's coming to work with a blood alcohol level of .097 constituted a violation of the company's specific, written alcohol abuse policy and, therefore, took Claimant out of the scope of his employment, that error being that such finding was supported by the greater weight of the evidence.
21. That the Hearing Commissioner erred in not finding that Claimant's coming to work with a blood alcohol level of .097 violated the company's alcohol abuse policy placing the Claimant outside the scope of his employment, that error being that such finding was supported by the greater weight of the evidence.
22. That the Hearing Commissioner erred in finding that the Claimant was at maximum medical improvement, that error being that such finding was not supported by the greater weight of the evidence.
23. That the Hearing Commissioner erred in finding that Claimant was at maximum medical improvement, that error being that such finding was not supported by the medical evidence.
24. That the Hearing Commissioner erred in finding and concluding that Claimant has sustained a 100% loss of use of the right arm as a result of his work injury, that error being that such finding was not supported by the greater weight of the evidence.
25. That the Hearing Commissioner erred in finding and concluding that Claimant has sustained a 100% loss of use of the right arm as a result of his work injury, that error being that a finding of permanent disability was premature since he had not reached maximum medical improvement.
26. That the Hearing Commissioner erred in finding and concluding that the Claimant was entitled to 100% loss of use of his right arm as a result of his work injury, that error being that Claimant did not suffer a compensable injury by accident arising out of and in the course of his employment.
27. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to temporary total disability compensation from March 20, 2014 to March 23, 2015, that error being that such finding was not supported by the greater weight of the evidence.
28. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to temporary total disability compensation from March 20, 2014 to March 23, 2015, that error being that Claimant did not suffer a compensable injury by accident arising out of and in the course of his employment.
29. That the Hearing Commissioner erred in finding and concluding that Defendants are liable for all causally-related medical treatment as a result of his injury of March 20, 2014, that error being that Claimant did not suffer a compensable injury by accident arising out of and in the course of his employment.

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30. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to reimbursement for all casually-related out-of-pocket expenses, including mileage reimbursement, if any, that error being that Claimant did not suffer a compensable injury by accident arising out of and in the course of his employment.
31. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to receive his award in a lump sum, that error being that Claimant presented no evidence as to why a lump sum payment would be in his best interest.
32. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to receive his award in a lump sum, that error being that such finding was not supported by the greater of the evidence.
33. That the Hearing Commissioner erred in finding and concluding that Claimant was entitled to receive his award in a lump sum, that error being that such award constituted an abuse of discretion.
34. That the Hearing Commissioner erred in concluding as a matter of law that Claimant suffered a compensable injury to his right arm within the course and scope of his employment, that error being that such finding was not supported by the greater weight of the evidence.
35. That the Hearing Commissioner erred in concluding as a matter of law that Claimant sustained a compensable injury to his right arm within the course and scope of his employment, that error being that the claim was barred because Claimant's injury was occasioned by his intoxication.
36. That the Hearing Commissioner erred in concluding as a matter of law that Claimant suffered a compensable injury to his right arm within the course and scope of his employment, that error being that Claimant stepped outside the course and scope of his employment when he came to work with a blood alcohol level of .097 in violation of a specific, written company policy. Wright v. Bi-Lo, 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994).
37. That the Hearing Commissioner erred in denying Defendants' intoxication defense under Section 42-9-60, that error being that the greater weight of the evidence established that Claimant's injury was occasioned by his intoxication.
38. That the Hearing Commissioner erred in denying Defendants' intoxication defense, that error being that the greater weight of the evidence established that Claimant's injury was proximately caused by his intoxication.
39. That the Hearing Commissioner erred in denying Defendants' intoxication defense, that error being that Defendants carried its burden of proof in establishing that Claimant's intoxication was the proximate cause of his injury.

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40. That the Hearing Commissioner erred in not concluding that Claimant's injury was barred by his violation of the company's specific, written alcohol abuse policy, that error being that the greater weight of the evidence established that Claimant stepped outside the course and scope of his employment when he came to work with a .097 blood alcohol level in violation of the company's specific, written policy. Wright v. Bi-Lo, Inc., 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994).
41. That the Hearing Commissioner erred in awarding Claimant compensation for temporary total disability from March 20, 2014 to March 23, 2015, that error being that Claimant did not suffer a compensable injury by accident arising out of and in the course of employment.
42. That the Hearing Commissioner erred in awarding the Claimant reimbursement for all causally-related medical treatment, that error being that Claimant did not suffer an injury by accident arising out of and in the course of his employment.
43. That the hearing Commissioner erred in awarding Claimant reimbursement for all causally related out-of-pocket expenses, including mileage, if any, that error being that Claimant did not suffer an injury by accident arising out of and in the course of his employment.

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South Carolina Workers' Compensation Commission

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



WCC File #: 1402652

Carrier File #: 03149911

January 21, 2016

FORM 31 BRIEFING SCHEDULE AND NOTICE OF APPELLATE HEARING

INOVATED FIBERS v JAMES LIPSCOMB

Filing Date for Appellant's Brief: February 20, 2016

Subject: Set on Review.

Date: 03/22/16 at 10:00 AM

**Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201**

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the **Upload** functionality in eCase located on the Commission's website at www.wcc.sc.gov.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel A.

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

By: Eugenia Hollmon, SC Workers' Compensation, January 21, 2016

Party

Employee: JAMES LIPSCOMB

Employer: INOVATED FIBERS
Carrier: StarNet Insurance Company

Attorney

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wpalmer@santeeattorney.com
803-854-4417

Richard B. Kale, Jr
rbkale@wjlaw.net
864-527-3272

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1402652

James Lipscomb, Employee,

Respondent,

v.

Stein Fibers/Innovative Fibers, Employer,
and Key Risk Management, Carrier,

Appellants.

PROOF OF SERVICE

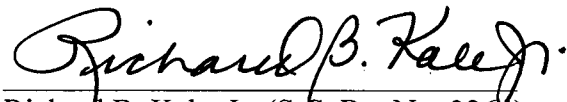
RECEIVED

JUL 28 2016

SC Court of Appeals

I certify that I have served the Motion to Substitute Party on James Lipscomb by depositing a copy of it in the United State Mail, postage prepaid, on July 28, 2016, addressed to his attorney of record, W. Scott Palmer, W. Scott Palmer Law Firm, P.A., P.O. Box 722, Santee, South Carolina 29142 and have served a copy of the Motion to Substitute Party on the South Carolina Workers' Compensation Commission by depositing a copy of it in the United State Mail, postage prepaid on July 28, 2016, addressed to Post Office Box 1715, Columbia, South Carolina 29202-1715.

July 28, 2016



Richard B. Kale, Jr. (S.C. Bar No. 3264)
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Appellants

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WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

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July 28, 2016

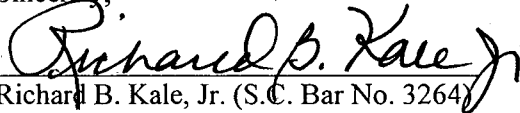
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: James T. Lipscomb vs. Stein Fibers, LTD
WCC File No.: 1402652 DOI: 3/20/2014
Appellate Case No.: 2016-001509
Claim No.: 03149911
WJC&B File No.: 0310.01577

Dear Ms. Kitchings:

Enclosed for filing is a Motion to Substitute Party in the above case as well as a \$25.00 check in payment of the filing fee. Also enclosed is a Proof of Service indicating that the Motion has been served on the Respondent and the South Carolina Workers' Compensation Commission.

Sincerely,



Richard B. Kale, Jr. (S.C. Bar No. 3264)
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Appellants

RBK/jcw
Enclosures

cc: Mr. W. Scott Palmer
W. Scott Palmer Law Firm, P.A.
P.O. Box 722
Santee, South Carolina 29142
(803) 854-4417
Attorney for Respondent

cc: South Carolina Workers' Compensation Commission

RECEIVED
JUL 28 2016
SC Court of Appeals