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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2015-000808

James Osment.....Appellant,

v.

The Timken Company, Employer,
and Phoenix Insurance Company, ...Respondents.

RECORD ON APPEAL
VOLUME I

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**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1008356**

JAMES OSMENT,

CLAIMANT - APPELLANT,

-vs-

THE TIMKEN COMPANY AND
PHOENIX INSURANCE COMPANY,

DEFENDANTS - RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on February 25, 2015 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed April 1, 2015

APPEARANCES:

Claimant - Appellant represented by Logan Rollins, Esquire of The Hawkins Law Firm of Spartanburg, South Carolina.

Defendants - Respondents represented by J. South Lewis, II, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden, on September 26, 2014, in Spartanburg, South Carolina. On November 24, 2014, Commissioner Barden issued her Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order/Award:

Single Commissioner's Findings of Fact:

It is found as fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Osment as Employee/Claimant and The Timken Company as Employer/Defendant, and Phoenix Insurance Company as Carrier/Defendant.
2. As of the date of the hearing, Claimant is 64 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant).
4. Claimant's employment history includes: (a) doffing; b) casting tubs and other plumbing fixtures for Kohler; (c) making dairy and drug packaging; and, (d) training doffers (testimony of Claimant).
5. Claimant's job with Employer was Lead Maintenance Associate (LMA). This job required Claimant to sit in his office for half the day (performing scheduling, ordering parts, maintaining supplies), and to check on maintenance mechanics/problems the other half (testimony of Claimant).
6. Claimant injured his right knee in an admitted accident on May 20, 2010.
7. Claimant alleges that he injured his back (affecting his right foot) and right hip through an antalgic gait, aggravating a pre-existing condition (*See* Tr. at 5-7).
8. Claimant was a 37-year employee, a factor which weighs very heavily in his favor. Further, by all descriptions, Claimant was a good and valuable employee. However, these factors are not dispositive in any workers' compensation case (or else, there would be no need for a hearing/review of the medical evidence). In this case, this factor is not persuasive enough to override or overcome other more compelling evidence presented at the hearing (testimony of Claimant; testimony of Sarratt; Depo. of Poston).
9. As there is **no medical record documenting a right hip or back complaint until almost 3 years after the date of the accident**, Claimant's theory of the case (*See* Tr. at 5-7) is that he injured his right hip and back through an antalgic gait. By contrast, Claimant testified at the hearing that he **immediately injured both his right hip and back when the accident occurred**, specifically **rejected an antalgic gait theory** in his testimony, and that he reported his hip and back injuries to Dr. Grady (with whom Claimant treated through the date of the first surgery). (Tr. at 19-20; 65) **Dr. Grady's records are completely devoid of any complaint or mention of a right hip or back problem, refuting Claimant's testimony at the hearing.** Similarly, Employer's (a) accident report (signed by Claimant) and (b) temporal medical notes are also devoid of any complaint/reference to the hip or back. Finally, temporal records from Peachview Medical Park are likewise

devoid of any reference to the hip or back. I find Claimant's testimony inconsistent with the medical evidence, and with his own vocational report, which states that Claimant "later started having the onset of low back pain as well." (Claimant's APA #1; Claimant's APA #2; Claimant's APA #3; Claimant's APA #4; Claimant's APA #11, p. 139)

10. Claimant has **pre-existing back problems which waxed and waned prior to the date of the injury**, and for which Claimant sought and received treatment including pain medication: a) at a visit in 2008 for back pain/"back strain, lumbar" (approximately 2 years prior to the date of the accident in issue), Claimant's gait is was documented as "arthritic" (which Dr. Sanchez interprets as "antalgic" per his deposition testimony). At the end of 2008, Claimant returned to his family doctor with no complaint of back pain (Defendants' APA #15, pp. 318-327); (b) In late 2009 -- just 6 months prior to the date of the work accident, Claimant returned to his family doctor with low back pain again (Claimant's urine testing was normal and he was not prescribed an antibiotic; Claimant was prescribed Flomax for his prostate). **For his back complaints, Claimant was prescribed Meloxicam pain medication with 5 refills** (Defendants' APA #15, pp. 328-332; Depo. of Dr. Sanchez, pp. 32-33, as contained in Claimant's APA #12)
11. I find that Claimant's back condition waxed and waned after the date of the accident as well, and that his alleged hip condition resolved or never occurred: I give the greatest weight in this case--**of all the evidence--to Claimant's first family doctor record post-accident** (March 2014 -- 4 years after the date of the accident in issue, and **6 months prior to the date of the hearing**) and Claimant's follow-up visit with his family doctor one week later. **Notwithstanding the family physician's detailed list of all Claimant's problems/complaints, nowhere to be found in these records is there any documentation of back or hip pain.** It might be argued that Claimant's back and hip were not documented/recorded by Claimant's family doctor because these conditions are workers' compensation-related (*i.e.*, only non-workers' compensation conditions were recorded. However, such is not the case: Under "Status of Existing Problems," Claimant's work-related right knee pain is in fact recorded along with all his other conditions, including but not limited to cervical disc disease with radiculopathy, groin pain, CTS, rotator cuff syndrome, urinary frequency, hypertension, high cholesterol, and GERD. Noticeably absent from the list of problems are either low back and/or hip pain, as Claimant has inconsistently pled, told Dr. Sanchez, and testified to at the hearing. (Defendants' APA #15, pp. 333-340)
12. Claimant did in fact complain of groin pain in March 2014 (4 years after the accident--6 months prior to the date of the hearing). However, that complaint was in the context of lifting wood onto an ATV bed, such that Claimant "thinks he may have a hernia in his groin." I cannot find Defendants liable for Claimant's non-work injuries. Claimant's testimony that "lifting wood" was actually a small piece of a 2x4 that he bent over to pick up is not believable or credible, based upon Claimant's demeanor and delivery of this testimony. I also note that the record does not say "bending over to pick up a piece of wood" or words to that effect; instead, the record says "lifting." Claimant is far more active

than he has let on to Dr. Sanchez, thereby calling into question the legitimacy of Claimant's complaints to Dr. Sanchez regarding the hip/back. If Claimant's statements to Dr. Sanchez (in furtherance of Claimant's workers' compensation claim) were dispositive, it would be unnecessary for a commissioner to review all the evidence, or to hold a hearing to determine credibility. (Defendants' APA #15, p. 333)

13. At Claimant's follow-up visit to his family doctor later that month (March 2014), **there is no mention of the hip or back.** However, Claimant's family physician documents **no fewer than 25 conditions/complaints--including Claimant's work-related right knee,** his unrelated (pre-existing) left knee, and his unrelated cervical spine, CTS, and rotator cuff problems--are all listed. **Nowhere to be found in this list of problems is either the hip or back.** I give great weight to this record as it is the truest catalogue of Claimant's problems.
14. During the last family doctor visit prior to the hearing (5 months prior), Claimant likewise made no complaint of his hip/back (Defendants' APA #15, pp. 341-342).
15. I could easily believe and find that an antalgic gait from a knee injury would cause or aggravate a hip and/or back injury/problem. However, Claimant's testimony--no fewer than 3 times throughout the hearing--was that walking on the concrete floors caused his hip and back pain--not that his hip and back conditions were caused/aggravated by an antalgic gait from his knee. (Tr. at 29, 34, 62, 65)
16. Claimant also essentially testified that the situs of his injury is his knee in that he claims his knee pain "shoots up" into his back (i.e., not a separate injury to the hip and back caused by antalgia, but a radicular component). Claimant appeared to be confused as to how he was supposed to testify and as to how and when the back/hip injuries allegedly occurred.
17. Even if I interpret Claimant's testimony to mean that the concrete floors aggravated his knee condition, which in turn aggravated his back/hip, I am still left with the latest family physician records (2014) **which document no back/hip condition of which Claimant complained at the hearing and which Claimant reported to Dr. Sanchez.** The groin pain Claimant did complain of to his family was attributable to the ATV/wood incident; Claimant's work injury is not mentioned as a causative factor. If the workers' compensation injury (the right knee) had been omitted from the very lengthy list of maladies compiled by Claimant's own personal physician, I would not expect the back/hip to appear either. However, as the workers' compensation-related right knee condition *is* in fact listed, I would expect the hip and back to be listed as well, regardless of its etiology. (See Defendants' APA #15, pp. 333-340)
18. If, as Claimant testified, he did in fact injure his hip and back on the date of the accident (which testimony is not borne out by medical records for years after the accident), I find that these conditions resolved/returned to baseline. I base this finding on the records from Claimant's own family physician, records to which I give the greatest weight as I find that they are the **truest indicator of all of Claimant's current problems.** If Claimant's family doctor had listed the back and hip along with the right knee, the result in this case might be vastly different. (again, See Defendants APA #15, pp 333-340)
19. I fully take into account Claimant's impressive job tenure, but he is not credible,

- and seemed unsure as to how and when his hip/back were supposedly injured.
20. I also considered Dr. Sanchez's questionnaire and deposition testimony as to causation of the alleged body parts, but, there are multiple inconsistencies:
 - (a) Dr. Sanchez "flip flops" in a rather significant way, and is equivocal at best; after Defendants' counsel takes Dr. Sanchez through the documented, prior back complaints—including one record just mere months prior to the date of the accident, Dr. Sanchez inexplicably says that Claimant's back was exacerbated in that "[Claimant] didn't have any back symptoms beforehand, and he had it afterward." This makes his testimony appear outcome determinative for his patient;
 - (b) Very importantly, Dr. Sanchez's deposition does not reconcile or even address the 2014 family physician records containing extensive lists of Claimant's current problems—including Claimant's workers' compensation knee injury--none of which records include the back or hip; there is no evidence that Dr. Sanchez had access to these records from Claimant's family physician;
 - (c) Claimant is far more active than he has led Dr. Sanchez to believe, as evidenced by Claimant's lifting wood and concomitantly complaining of groin and chest pain; there was clearly some exertion involved in this incident (Depo. of Dr. Sanchez in its entirety; Claimant's APA #8, pp. 134-135; Depo. of Dr. Sanchez in its entirety, including but not limited to pp. 35-42, 44-47, 53, and 55-56, as contained in Claimant's APA #12).
 21. Despite Dr. Sanchez's testimony that Claimant's altered gait "could" have resulted in Claimant's back pain, Dr. Sanchez never cited an altered gait in his treatment notes, and never opined during his treatment that an altered gait was causing Claimant's back pain. (Depo. of Dr. Sanchez, p. 38) Further, Dr. Sanchez reviewed pre-injury records for the first time at his deposition. He acknowledged Claimant's records reveal an arthritic/altered gait prior to the work injury, and that his present back pain could be a continuation of the pre-existing back pain and gait issue. (Depo. of Dr. Sanchez, pp. 35-41)
 22. Dr. Sanchez's causation opinion is further undermined by his deposition testimony that he was of the belief that Claimant had no back complaints prior to the work injury. (Depo. of Dr. Sanchez, pp. 9, 27, 30) As detailed herein, the history as understood by Dr. Sanchez was not accurate.
 23. Because of his work-related right knee injury, Claimant underwent two surgeries, the second of which was a total knee replacement surgery in 2011. (Claimant's APA #6, pp. 38-43; Claimant's APA #7, p. 64-67)
 24. Although Claimant's knee has never been pain free since the date of the accident, I find that the knee replacement surgery improved Claimant's symptoms after the date of the injury. I base this finding on the record in which Claimant's knee has "done well," but working on concrete floors aggravates him symptoms especially after a full day. Claimant has no instability; nor does he have the bone-on-bone pain as he did prior to the TKA. (Claimant's APA #7, e.g., pp. 58-59, 72, 75, 79, 81, and 85)

25. Claimant reached maximum medical improvement on August 22, 2012. On this date, Claimant had no complaints of regarding his back or hip. Claimant's only restrictions on this date were kneeling/crawling. (Claimant's APA #7, p. 90; Depo. of Dr. Sanchez, pp. 13-14, as contained in Claimant's APA #12)
26. The first documented complaint of back pain is January 2013--6 months after Claimant was released at MMI. Claimant reported that he "*had* been doing fairly well" until this particular visit; for the very first time, Claimant reported post-surgical "give way" and radiating pain into his low back and groin. However, Dr. Sanchez by contrast noted "*very mild* swelling" of the knee, "*very mild pain*" and "*no instability*." Further, I give great weight to the statement, "As his pain has been somewhat *migratory*, it is difficult to assess the origin of his pain." At the next visit, Claimant reported "global pain." Nonetheless, Dr. Sanchez noted **no effusion and no instability**. Because of Claimant's complaints (including alleged pain into his foot), Dr. Sanchez ultimately ordered an EMG **which was normal**. **Claimant's labs and bone scan were also normal**. **Claimant first reported hip pain in 2014—4 months prior to the date of the hearing**. (Claimant's APA #7, pp. 94, 96, 98, 100, 109, 111, 113, and 126; Depo. of Dr. Sanchez, p. 22, as contained in Claimant's APA #12)
27. Although Claimant told Dr. Sanchez that Claimant was having difficulty performing even office work, Claimant inconsistently testified at the hearing--and his vocational expert states--that Claimant could perform a sedentary job. (Claimant's APA #7, p. 111; testimony of Claimant; Claimant's APA #11, p. 144)
28. The authorized treating physician assigned a 50% impairment rating for the lower extremity attributable to the admitted right knee injury. (Claimant's APA #7, p. 90)
29. Claimant's restrictions limit him to sedentary work only. (Depo. of Dr. Sanchez, pp. 24 and 54, as contained in Claimant's APA #12)
30. As this is a single member injury (the right knee), a wage loss analysis is not appropriate. However, Claimant's vocational report (which I reviewed along with all the other evidence) states that Employer made "a valiant effort" to accommodate Claimant's restrictions. (testimony of Sarratt; Claimant's APA #11, p. 144; *See also* Claimant's APA #4, p. 16)
31. I find Raymond Sarratt to be very credible, a finding I base upon his demeanor and delivery. Regarding the use of the golf cart and the accommodation of Claimant's restrictions, Sarratt's testimony was straightforward and not embellished. (Testimony of Sarratt; observations of the undersigned.)
32. Claimant's testimony was not as credible as Sarratt's.
33. Claimant's back and hip are not compensable body parts. The existence of any causally-related problem is refuted by Claimant's family physician's records of 2014. I also question the timing of the appearance of these body parts, and the inconsistencies in this case. If Claimant's statements to Dr. Sanchez are dispositive, Commission involvement is irrelevant and unnecessary. Further, statements made in furtherance of a workers' compensation claim are **not as persuasive as the full itemized catalogue of Claimant's physical problem as Claimant himself reported to his own personal physician**.

34. I do agree with Claimant that it was incumbent upon Employer to offer employment, and that Claimant's Exhibit #1 did not offer a job or invite Claimant to call the Employer for a job. Claimant testified that he would have taken a strictly sedentary job. (Claimant's Exhibit #1; testimony of Claimant; Depo. of Poston, including but not limited to pp. 59-61, as contained in Claimant's APA #13; Depo. of Sarratt, p. 23, as contained in Claimant's APA #14; Depo. of Griffin, p. 13, as contained in Claimant's APA #15)
35. Permanent partial disability (PPD) to right leg, pursuant to Section 42-9-30(16): 60%. This award is based upon the impairment rating, but primarily on Claimant's restrictions. I have no doubt that it was difficult for Claimant to walk or work on concrete given the condition of his knee. However, I find that Employer accommodated his restrictions, and never required him to work outside imposed restrictions.
36. Claimant's request for temporary total disability benefits (TTD) from September 9, 2013 and continuing is denied. As the South Carolina courts have held, the date of MMI "signals the end of entitlement to temporary total benefits." *Curiel v. Environmental Management Services*, 376 S.C. 23 (2007). I find that Claimant reached MMI as of August 22, 2012. Therefore, no TTD is due beyond that date.
37. Claimant to receive his award in lump sum with *Utica-Mohawk (James v. Anne's)* language.
38. Claimant is entitled to receive lifetime hardware maintenance repair/replacement/removal), yearly office visits/x-rays, and other modalities for the knee as recommended by Dr. Sanchez, including but not limited to a future total knee revision. (Depo. of Dr. Sanchez, p. 52, as contained in Claimant's APA #12)
39. As credit was not requested (and a Form 21 was not filed), that issue is not adjudicated herein.
40. Claimant's average weekly wage is \$1,079.46, yielding a compensation rate of \$689.71.

Single Commissioner's Conclusions of Law:

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant sustained an injury by accident to his right knee. Claimant did not sustain injury to any additional body parts.
3. Under § 42-15-60, Defendants are responsible for all causally-related right knee treatment, until the date of maximum medical improvement, and continuing treatment and maintenance of the total knee replacement per the direction of the authorized physician.
4. Under § 42-9-30(16), Claimant has sustained 60% permanent partial disability to his right leg.

Single Commissioner's Order/Award:

IT IS HEREBY ORDERED that Claimant reached maximum medical improvement on August 22, 2012, and is entitled to permanent partial disability of sixty percent (60%) to the right lower extremity, or 117 weeks, for a lump sum total of Eighty Thousand, Six Hundred Ninety-six and 07/100 Dollars (\$80,696.07).

Claimant's request for additional treatment or benefits to any other body parts, including back and/or hip, is **DENIED**.

No hearing costs are assessed in this instance

IT IS SO ORDERED.

On December 3, 2014, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on February 25, 2015. 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 has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Whether the Hearing Commissioner erred in Finding of Fact No. 9, in which she states that Claimant rejected an antalgic gait theory [as a cause for the injury to his hip and back] in his testimony when such a finding is against a preponderance of the evidence.
2. Whether the Hearing Commissioner erred in Finding of Fact No. 9 in which she states that Claimant's testimony [is] inconsistent with the medical evidence, and with his own vocational report when such a finding is against a preponderance of the evidence.
3. Whether the Hearing Commissioner erred in Finding of Fact No. 11 in which she states that Claimant's "alleged hip condition resolved or never occurred" when such a finding is against a preponderance of the evidence.
4. Whether the Hearing Commissioner erred in Finding of Fact No. 13 in which she states that there is no mention of hip or back problems in Claimant's visit to his family doctor in March 2014 and finds this record as "the truest catalogue of Claimant's post-accident problems" when such a finding is against a preponderance of the evidence.
5. Whether the Hearing Commissioner erred in Finding of Fact No. 15 in which she discounts the lay testimony of Claimant that his hip and back pains are coming from walking on concrete floors as such a finding is against a preponderance of the evidence.

6. Whether the Hearing Commissioner erred in Finding of Fact No. 16 in which she states that Claimant's back and hip pains are radicular in nature and not separate injuries caused by antalgia as such a finding is against a preponderance of the evidence.
7. Whether the Hearing Commissioner erred in Finding of Fact No. 17 in which she discounts Claimant's complaints of hip and back pains simply because no mention is made of these problems in records of Claimant's family physician as such a finding is against a preponderance of the evidence.
8. Whether the Hearing Commissioner erred in Finding of Fact No. 18 in which she states that Claimant's hip and back conditions resolved/returned to baseline as such finding is against a preponderance of the evidence.
9. Whether the Hearing Commissioner erred in Finding of Fact No. 19 concerning Claimant's credibility as such a Finding is not consistent with Claimant's testimony, demeanor, age, work history and such other and further factors as may be reasonably necessary to determine witness credibility.
10. Whether the Hearing Commissioner erred in Finding of Fact No. 21 in which she states there are multiple inconsistencies in Dr. Sanchez's opinions and deposition testimony when such findings are against a preponderance of the evidence.
11. Whether the Hearing Commissioner erred in Finding of Fact No. 22 in finding that Dr. Sanchez's causation opinion is undermined by his deposition testimony when such finding is against a preponderance of the evidence.
12. Whether the Hearing Commissioner erred in Finding of Fact No. 27 in finding that Claimant inconsistently testified at the hearing regarding office/sedentary work when such a finding is against a preponderance of the evidence.
13. Whether the Hearing Commissioner erred in Finding of Fact No. 32 in finding that Claimant's testimony was not as credible as Raymond Sarratt's when such finding is against a preponderance of the evidence.
14. Whether the Hearing Commissioner erred in Finding of Fact No. 33 in finding the back and hip are not compensable body parts, when such finding is against a preponderance of the evidence.
15. Whether the Hearing Commissioner erred in Finding of Fact No. 35 in finding that Claimant only has 60% permanent partial disability to the right leg when such finding is against a preponderance of the evidence.
16. Whether the Hearing Commissioner erred in Finding of Fact No. 36 in stating that Claimant's request for Temporary Total Disability benefits (TTD) from September 9, 2013 and continuing is denied, when such a finding is against a preponderance of the evidence.
17. Whether the Hearing Commissioner erred in Conclusion of Law No. 2 in which she found that Claimant did not sustain injury to any body parts other than the right knee when such conclusion is against a preponderance of the evidence.
18. Whether the Hearing Commissioner erred in Conclusion of Law No. 4 in finding that Claimant had sustained only a 60% permanent partial disability to his right leg when such a conclusion is against a preponderance of the evidence.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), 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 Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Osment as Employee/Claimant and The Timken Company as Employer/Defendant, and Phoenix Insurance Company as Carrier/Defendant.
2. As of the date of the hearing, Claimant is 64 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant).
4. Claimant's employment history includes: (a) doffing; b) casting tubs and other plumbing fixtures for Kohler; (c) making dairy and drug packaging; and, (d) training doffers (testimony of Claimant).
5. Claimant's job with Employer was Lead Maintenance Associate (LMA). This job required Claimant to sit in his office for half the day (performing scheduling, ordering parts, maintaining supplies), and to check on maintenance mechanics/problems the other half (testimony of Claimant).

6. Claimant injured his right knee in an admitted accident on May 20, 2010.
7. Claimant alleges that he injured his back (affecting his right foot) and right hip through an antalgic gait, aggravating a pre-existing condition (*See* Tr. at 5-7).
8. Claimant was a 37-year employee, a factor which weighs very heavily in his favor. Further, by all descriptions, Claimant was a good and valuable employee. However, these factors are not dispositive in any workers' compensation case (or else, there would be no need for a hearing/review of the medical evidence). In this case, this factor is not persuasive enough to override or overcome other more compelling evidence presented at the hearing (testimony of Claimant; testimony of Sarratt; Depo. of Poston).
9. **As there is no medical record documenting a right hip or back complaint until almost 3 years after the date of the accident, Claimant's theory of the case (*See* Tr. at 5-7) is that he injured his right hip and back through an antalgic gait. By contrast, Claimant testified at the hearing that he immediately injured both his right hip and back when the accident occurred, specifically rejected an antalgic gait theory in his testimony, and that he reported his hip and back injuries to Dr. Grady (with whom Claimant treated through the date of the first surgery). (Tr. at 19-20; 65) **Dr. Grady's records are completely devoid of any complaint or mention of a right hip or back problem, refuting Claimant's testimony at the hearing.** Similarly, Employer's (a) accident report (signed by Claimant) and (b) temporal medical notes are also devoid of any complaint/reference to the hip or back. Finally, temporal records from Peachview Medical Park are likewise devoid of any reference to the hip or back. **We find Claimant's testimony inconsistent with the medical evidence, and with his own vocational report, which states that Claimant "*later started having the onset of low back pain as well.*" (Claimant's APA #1; Claimant's APA #2; Claimant's APA #3; Claimant's APA #4; Claimant's APA #11, p. 139)****
10. Claimant has **pre-existing back problems which waxed and waned prior to the date of the injury**, and for which Claimant sought and received treatment including pain medication: a) at a visit in 2008 for back pain/"back strain, lumbar" (approximately 2 years prior to the date of the accident in issue), Claimant's gait is was documented as "arthritic" (which Dr. Sanchez interprets as "antalgic" per his deposition testimony). At the end of 2008, Claimant returned to his family doctor with no complaint of back

pain (Defendants' APA #15, pp. 318-327); (b) In late 2009 -- just 6 months prior to the date of the work accident, Claimant returned to his family doctor with low back pain again (Claimant's urine testing was normal and he was not prescribed an antibiotic; Claimant was prescribed Flomax for his prostate). For his back complaints, Claimant was prescribed Meloxicam pain medication with 5 refills (Defendants' APA #15, pp. 328-332; Depo. of Dr. Sanchez, pp. 32-33, as contained in Claimant's APA #12)

11. We find that Claimant's back condition waxed and waned after the date of the accident as well, and that his alleged hip condition resolved or never occurred. We give the greatest weight in this case--of all the evidence--to Claimant's first family doctor record post-accident (March 2014 -- 4 years after the date of the accident in issue, and 6 months prior to the date of the hearing) and Claimant's follow-up visit with his family doctor one week later. Notwithstanding the family physician's detailed list of all Claimant's problems/complaints, nowhere to be found in these records is there any documentation of back or hip pain. It might be argued that Claimant's back and hip were not documented/recorded by Claimant's family doctor because these conditions are workers' compensation-related (*i.e.*, only non-workers' compensation conditions were recorded. However, such is not the case: Under "Status of Existing Problems," Claimant's work-related right knee pain is in fact recorded along with all his other conditions, including but not limited to cervical disc disease with radiculopathy, groin pain, CTS, rotator cuff syndrome, urinary frequency, hypertension, high cholesterol, and GERD. Noticeably absent from the list of problems are either low back and/or hip pain, as Claimant has inconsistently pled, told Dr. Sanchez, and testified to at the hearing. (Defendants' APA #15, pp. 333-340)
12. Claimant did in fact complain of groin pain in March 2014 (4 years after the accident--6 months prior to the date of the hearing). However, that complaint was in the context of lifting wood onto an ATV bed, such that Claimant "thinks he may have a hernia in his groin." We cannot find Defendants liable for Claimant's non-work injuries. Claimant's testimony that "lifting wood" was actually a small piece of a 2x4 that he bent over to pick up is not believable or credible, based upon Claimant's demeanor and delivery of this testimony. We also note that the record does not say "bending over to pick up a piece of wood" or words to that effect; instead, the record says "*lifting*."

Claimant is far more active than he has let on to Dr. Sanchez, thereby calling into question the legitimacy of Claimant's complaints to Dr. Sanchez regarding the hip/back. If Claimant's statements to Dr. Sanchez (in furtherance of Claimant's workers' compensation claim) were dispositive, it would be unnecessary for a commissioner to review all the evidence, or to hold a hearing to determine credibility. (Defendants' APA #15, p. 333)

13. At Claimant's follow-up visit to his family doctor later that month (March 2014), **there is no mention of the hip or back.** However, Claimant's family physician documents **no fewer than 25 conditions/complaints--including Claimant's work-related right knee,** his unrelated (pre-existing) left knee, and his unrelated cervical spine, CTS, and rotator cuff problems--are all listed. **Nowhere to be found in this list of problems is either the hip or back.** We give great weight to this record as it is the truest catalogue of Claimant's problems.
14. During the last family doctor visit prior to the hearing (5 months prior), Claimant likewise made no complaint of his hip/back (Defendants' APA #15, pp. 341-342).
15. We could easily believe and find that an antalgic gait from a knee injury would cause or aggravate a hip and/or back injury/problem. However, Claimant's testimony--no fewer than 3 times throughout the hearing--was that walking on the concrete floors caused his hip and back pain--not that his hip and back conditions were caused/aggravated by an antalgic gait from his knee. (Tr. at 29, 34, 62, 65)
16. Claimant also essentially testified that the situs of his injury is his knee in that he claims his knee pain "shoots up" into his back (i.e., not a separate injury to the hip and back caused by antalgia, but a radicular component). **Claimant appeared to be confused as to how he was supposed to testify and as to how and when the back/hip injuries allegedly occurred.**
17. Even if we interpret Claimant's testimony to mean that the concrete floors aggravated his knee condition, which in turn aggravated his back/hip, we are still left with the latest family physician records (2014) **which document no back/hip condition of which Claimant complained at the hearing and which Claimant reported to Dr. Sanchez.** The groin pain Claimant did complain of to his family was attributable to the ATV/wood incident; Claimant's work injury is not mentioned as a causative factor. If

the workers' compensation injury (the right knee) had been omitted from the very lengthy list of maladies compiled by Claimant's own personal physician, one would not expect the back/hip to appear either. However, as the workers' compensation-related right knee condition *is* in fact listed, we would expect the hip and back to be listed as well, regardless of its etiology. (See Defendants' APA #15, pp. 333-340)

18. If, as Claimant testified, he did in fact injure his hip and back on the date of the accident (which testimony is not borne out by medical records for years after the accident), we find that these conditions resolved/returned to baseline. We base this finding on the records from Claimant's own family physician, records to which we give the greatest weight as we find that they are the **truest indicator of all of Claimant's current problems**. If Claimant's family doctor had listed the back and hip along with the right knee, the result in this case might be vastly different. (again, See Defendants APA #15, pp 333-340)
19. We fully take into account Claimant's impressive job tenure, but he is not credible, and seemed unsure as to how and when his hip/back were supposedly injured.
20. We also considered Dr. Sanchez's questionnaire and deposition testimony as to causation of the alleged body parts, but, there are multiple inconsistencies:
 - (a) Dr. Sanchez "flip flops" in a rather significant way, and is equivocal at best; after Defendants' counsel takes Dr. Sanchez through the documented, prior back complaints—including one record just mere months prior to the date of the accident, Dr. Sanchez inexplicably says that Claimant's back was exacerbated in that "[Claimant] didn't have any back symptoms beforehand, and he had it afterward." This makes his testimony appear outcome determinative for his patient;
 - (b) Very importantly, Dr. Sanchez's deposition does not reconcile or even address the 2014 family physician records containing extensive lists of Claimant's current problems—including Claimant's workers' compensation knee injury--none of which records include the back or hip; there is no evidence that Dr. Sanchez had access to these records from Claimant's family physician;
 - (c) Claimant is far more active than he has led Dr. Sanchez to believe, as evidenced

by Claimant's lifting wood and concomitantly complaining of groin and chest pain; there was clearly some exertion involved in this incident (Depo. of Dr. Sanchez in its entirety; Claimant's APA #8, pp. 134-135; Depo. of Dr. Sanchez in its entirety, including but not limited to pp. 35-42, 44-47, 53, and 55-56, as contained in Claimant's APA #12).

21. Despite Dr. Sanchez's testimony that Claimant's altered gait "could" have resulted in Claimant's back pain, Dr. Sanchez never cited an altered gait in his treatment notes, and never opined during his treatment that an altered gait was causing Claimant's back pain. (Depo. of Dr. Sanchez, p. 38) Further, Dr. Sanchez reviewed pre-injury records for the first time at his deposition. He acknowledged Claimant's records reveal an arthritic/altered gait prior to the work injury, and that his present back pain could be a continuation of the pre-existing back pain and gait issue. (Depo. of Dr. Sanchez, pp. 35-41)
22. Dr. Sanchez's causation opinion is further undermined by his deposition testimony that he was of the belief that Claimant had no back complaints prior to the work injury. (Depo. of Dr. Sanchez, pp. 9, 27, 30) As detailed herein, the history as understood by Dr. Sanchez was not accurate.
23. Because of his work-related right knee injury, Claimant underwent two surgeries, the second of which was a total knee replacement surgery in 2011. (Claimant's APA #6, pp. 38-43; Claimant's APA #7, p. 64-67)
24. Although Claimant's knee has never been pain free since the date of the accident, we find that the knee replacement surgery improved Claimant's symptoms after the date of the injury. We base this finding on the record in which Claimant's knee has "done well," but working on concrete floors aggravates him symptoms especially after a full day. Claimant has no instability; nor does he have the bone-on-bone pain as he did prior to the TKA. (Claimant's APA #7, e.g., pp. 58-59, 72, 75, 79, 81, and 85)
25. Claimant reached maximum medical improvement on August 22, 2012. On this date, Claimant had no complaints of regarding his back or hip. Claimant's only restrictions on this date were kneeling/crawling. (Claimant's APA #7, p. 90; Depo. of Dr. Sanchez, pp. 13-14, as contained in Claimant's APA #12)

26. The first documented complaint of back pain is January 2013--6 months after Claimant was released at MMI. Claimant reported that he "*had been doing fairly well*" until this particular visit; **for the very first time**, Claimant reported post-surgical "give way" and radiating pain into his low back and groin. However, Dr. Sanchez by contrast noted "*very mild swelling*" of the knee, "*very mild pain*" and "*no instability*." Further, we give great weight to the statement, "As his pain has been somewhat *migratory*, it is difficult to assess the origin of his pain." At the next visit, Claimant reported "global pain." Nonetheless, Dr. Sanchez noted **no effusion and no instability**. Because of Claimant's complaints (including alleged pain into his foot), Dr. Sanchez ultimately ordered an **EMG which was normal**. **Claimant's labs and bone scan were also normal**. **Claimant first reported hip pain in 2014—4 months prior to the date of the hearing**. (Claimant's APA #7, pp. 94, 96, 98, 100, 109, 111, 113, and 126; Depo. of Dr. Sanchez, p. 22, as contained in Claimant's APA #12)
27. Although Claimant told Dr. Sanchez that Claimant was having difficulty performing even office work, Claimant inconsistently testified at the hearing--and his vocational expert states--that Claimant could perform a sedentary job. (Claimant's APA #7, p. 111; testimony of Claimant; Claimant's APA #11, p. 144)
28. The authorized treating physician assigned a 50% impairment rating for the lower extremity attributable to the admitted right knee injury. (Claimant's APA #7, p. 90)
29. Claimant's restrictions limit him to sedentary work only. (Depo. of Dr. Sanchez, pp. 24 and 54, as contained in Claimant's APA #12)
30. As this is a single member injury (the right knee), a wage loss analysis is not appropriate. However, Claimant's vocational report (which we reviewed along with all the other evidence) states that Employer made "a valiant effort" to accommodate Claimant's restrictions. (testimony of Sarratt; Claimant's APA #11, p. 144; *See also* Claimant's APA #4, p. 16)
31. We find Raymond Sarratt to be very credible, a finding based upon the Hearing Commissioner's observations of his demeanor and delivery. Regarding the use of the golf cart and the accommodation of Claimant's restrictions, Sarratt's testimony was straightforward and not embellished. (Testimony of Sarratt; observations of the Hearing Commissioner.)

32. Claimant's testimony was not as credible as Sarratt's.
33. Claimant's back and hip are not compensable body parts. The existence of any causally-related problem is refuted by Claimant's family physician's records of 2014. We also question the timing of the appearance of these body parts, and the inconsistencies in this case. If Claimant's statements to Dr. Sanchez are dispositive, Commission involvement is irrelevant and unnecessary. Further, statements made in furtherance of a workers' compensation claim are **not as persuasive as the full itemized catalogue of Claimant's physical problem as Claimant himself reported to his own personal physician.**
34. We do agree with Claimant that it was incumbent upon Employer to offer employment, and that Claimant's Exhibit #1 did not offer a job or invite Claimant to call the Employer for a job. Claimant testified that he would have taken a strictly sedentary job. (Claimant's Exhibit #1; testimony of Claimant; Depo. of Poston, including but not limited to pp. 59-61, as contained in Claimant's APA #13; Depo. of Sarratt, p. 23, as contained in Claimant's APA #14; Depo. of Griffin, p. 13, as contained in Claimant's APA #15)
35. Permanent partial disability (PPD) to right leg, pursuant to Section 42-9-30(16): 60%. This award is based upon the impairment rating, but primarily on Claimant's restrictions. We have no doubt that it was difficult for Claimant to walk or work on concrete given the condition of his knee. However, we find that Employer accommodated his restrictions, and never required him to work outside imposed restrictions.
36. Claimant's request for temporary total disability benefits (TTD) from September 9, 2013 and continuing is denied. As the South Carolina courts have held, the date of MMI "signals the end of entitlement to temporary total benefits." *Curiel v. Environmental Management Services*, 376 S.C. 23 (2007). We find that Claimant reached MMI as of August 22, 2012. Therefore, no TTD is due beyond that date.
37. Claimant to receive his award in lump sum with *Utica-Mohawk (James v. Anne's)* language.
38. Claimant is entitled to receive lifetime hardware maintenance/repair/replacement/

removal), yearly office visits/x-rays, and other modalities for the knee as recommended by Dr. Sanchez, including but not limited to a future total knee revision. (Depo. of Dr. Sanchez, p. 52, as contained in Claimant's APA #12)

39. As credit was not requested (and a Form 21 was not filed), that issue is not adjudicated herein.
40. Claimant's average weekly wage is \$1,079.46, yielding a compensation rate of \$689.71.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant sustained an injury by accident to his right knee. Claimant did not sustain injury to any additional body parts.
3. Under § 42-15-60, Defendants are responsible for all causally-related right knee treatment, until the date of maximum medical improvement, and continuing treatment and maintenance of the total knee replacement per the direction of the authorized physician.
4. Under § 42-9-30(16), Claimant has sustained 60% permanent partial disability to his right leg.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner, filed in the above-captioned matter on November 24, 2014, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

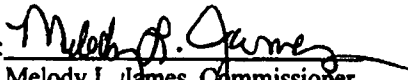
IT IS FURTHER ORDERED that Claimant reached maximum medical improvement on August 22, 2012, and is entitled to permanent partial disability of sixty percent (60%) to the right lower extremity, or 117 weeks, for a lump sum total of Eighty Thousand, Six Hundred Ninety-six and 07/100 Dollars (\$80,696.07).

IT IS FURTHER ORDERED Claimant's request for additional treatment or benefits to any other body parts, including back and/or hip, is **DENIED**.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

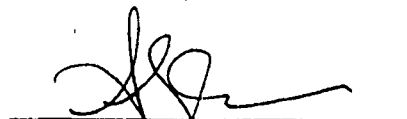
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

BY: 
Melody L. James, Commissioner

**FULL
AFFIRMATION**

CONCUR:


Gene McCaskill, Commissioner


Aisha G. Taylor, Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on April 1, 2015

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1008356

James Osment,	)
Employee,	)
Claimant,	)
	)
vs.	)
	)
The Timken Company,	)
	)
Employer,	)
and	)
	)
Phoenix Insurance Company,	)
	)
Carrier,	)
Defendants.	)

HEARING: Held in Spartanburg, South Carolina on September 26, 2014.

APPEARANCES: Claimant represented by John Hawkins of The Hawkins Law Firm, Spartanburg, South Carolina.

Defendants represented by J. South Lewis, II, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

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

DECISION AND ORDER: By Susan S. Barden, Commissioner

FILED: November 24, 2014.

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

By Claimant:

- APA #1: The Timken Company Medical Records, dated 5/20/10, consisting of page 1.
- APA #2: Records of Peachview Medical Park, dated 5/20/10 – 5/21/10, consisting of page 2.
- APA #3: Timken Company Statement of Physical Condition, dated 5/20/10, consisting of pages 3-13.
- APA #4: Timken Company Physical Exam/Supplemental Doctors Notes, dated 5/24/10-10/28/13, consisting of pages 14-19.
- APA #5: Reports of Upstate Carolina Medical Center, dated 5/25/10 – 6/10/10, consisting of pages 20-27.
- APA #6: Records of Walter Grady, D.O. (Grady Orthopaedics), dated 6/7/10 – 1/20/11, consisting of pages 28-55.
- APA #7: Records of Orthopedic Specialties of Spartanburg, dated 5/2/11 – 8/27/14, consisting of pages 56-131.
- APA #8: Records of Orthopedic Specialties of Spartanburg – Work Statements, dated 9/9/13 – 10/28/13, consisting of pages 132-133.
- APA #9: Questionnaires of Dr. Anthony Sanchez, dated 3/9/14 & 6/16/14, consisting of pages 134-137.
- APA #10: The Timken Company Retirement Election Form, dated 10/21/13, consisting of page 138.
- APA #11: Vocational Report of J. Adger Brown, Jr., MA, CDMS, dated 4/30/14, consisting of pages 139-145.
- APA #12: Deposition Transcript of Dr. Anthony Sanchez, dated 5/23/14, consisting of pages 146-215.
- APA #13: Deposition Transcript of Rick Poston, dated 8/21/14, consisting of pages 216-284.
- APA #14: Deposition Transcript of Raymond Sarratt, dated 8/21/14, consisting of pages 285-317.

By Defendants:

APA #15: Records of Carolina Medical Affiliates, dated 9/15/08 – 4/4/14, consisting of pages 318-346.

Submitted by Claimant at the hearing, without objection:

APA #16: Deposition Transcript of Barbara Griffin (Travelers), dated 9/24/14, consisting of pages 347-380.

Exhibits:

Ex. 1: Letter [from Adjuster] to Dr. Sanchez.

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51, and any other issues which may timely come before the Commission;
2. That the date of Claimant's accident was May 20, 2010;
3. That Claimant's average weekly wage was \$1,079.46, with a corresponding compensation rate of \$689.71;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Spartanburg, SC, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

This claim involves and admitted injury from May 20, 2010. Defendants at all times admitted injury to Claimant's right knee, and provided medical treatment. Claimant filed a Form 50 on July 17, 2014, alleging injury to the "right knee, right leg, back, right hip, [and] right foot." Defendants filed a Form 51 admitting injury only to the right knee, but denying compensable injuries to any other body parts. Defendants further asserted on the Form 51 that Claimant reached MMI.

A hearing was held before the undersigned on September 26, 2014, to address the issues regarding compensability of the denied body parts. At the pre-hearing conference, Claimant alleged that in addition to the injury to his right knee, he also sustained injury to his back and right hip. Specifically, Claimant contends that his back was injured due to an antalgic gait as a result of his right knee injury. Claimant seeks additional medical treatment for his back and right hip, and is not at MMI. Further, Claimant seeks TTD benefits from September 9, 2013 to the present, and continuing. Defendants' position is that Claimant reached MMI for his right knee on August 22, 2012 and that any issues with his back and/or hip are not related to the work injury. Defendants deny entitlement to TTD benefits after the date of MMI. Defendants assert a permanent partial disability award to the leg, pursuant to § 42-9-30, is appropriate.

IV. EVIDENCE OF THE CASE

MEDICAL EVIDENCE:

By Claimant:

APA #1: On May 20, 2010, Claimant was treated at Timken medical facility for twisting his right knee while stepping off a train track.

APA #2: On May 20, 2010, Claimant went to Peachview Medical Park and reported

“stepped off train onto track twisted right knee some swelling.”

APA #3: Multiple Timken “Statement of Physical Condition” forms, from May 20, 2010 through September 10, 2013. All forms reference various work restrictions, as applicable as of the date of each form.

APA #4: “Physical Exam Supplemental Doctors Notes” from May 24, 2010 – October 28, 2013. On May 24 and 26, 2010, Claimant reported right knee pain, and was eventually referred to an orthopedist. On June 18, 2010, Claimant reported that Dr. Grady recommended a knee surgery. On January 24, 2011, Claimant reported that another right knee surgery was recommended. On February 3 and March 28, 2011, Claimant was still having right knee pain. On January 4, 2012, it was noted that Claimant was placed on sedentary work restrictions. On January 11, 2012, his swelling was improved due to a change of shoes.

On January 10, 2013, Claimant was noted to have returned to Dr. Morgan, who referred him to Dr. Sanchez. Claimant had an appointment with Dr. Sanchez scheduled for January 11. On January 17, Claimant called to report a rash around his knee; he further reported that his knee “felt tight.” On the 18th, Claimant went to the plant nurse and had a severe rash and blisters on the right knee. He was under the care of his primary care physician and taken out of work until the 24th.

By February 14, 2013, Claimant was walking with a “steady/upright gait.” He was complaining of limited range of motion, swelling, pain, and tenderness. On April 20, 2013, Claimant told medical that Dr. Sanchez had ordered a bone scan, and that he was having worse pain than the prior week. Claimant was noted to walk with a slight limp. On July 9, 2013, Claimant relayed that Dr. Sanchez recommended a “nerve test.”

On September 9, 2013, Claimant went to medical and left work around 11:00 a.m. to go see Dr. Sanchez. On the 10th, Claimant presented a note to be out of work indefinitely.

APA #5: Upstate Carolina Medical Center: An MRI of the right knee was conducted on May 25, 2010. The MRI was read to show a “flap type tear of the patella cartilage,” significant thinning of the medial femoral condyle, and a mild medial collateral ligament sprain. Claimant underwent a Right Lower Extremity Venous Study on June 10, 2010, which revealed no evidence of deep venous thrombosis.

APA #6: Dr. Walter Grady, DO. Claimant was evaluated on June 7, 2010 for right knee pain. Claimant did not report back or hip pain. Claimant was diagnosed with bursitis and MRI consistent with a tear of the patella cartilage and thinning of the medial femoral condyle. Claimant was referred for a venous Doppler ultrasound to rule out deep vein thrombosis. After the Doppler study, Claimant followed up with Dr. Grady on June 17, 2010, at which time he was recommended for a right knee arthroscopic surgery. On June 17, Claimant denied “backache.” Claimant’s pre-operative visit was July 12, 2010; he denied “backache.”

Claimant underwent a right knee arthroscopic surgery, by Dr. Grady, on July 14, 2010. Post-operatively, Claimant was gradually released to restricted duty work, while he was participating in physical therapy. On September 14, 2010, Claimant reported continued right knee pain. He did not report any pain in his back or hip. Claimant underwent injection on the 14th. Claimant underwent a 2nd injection on November 19, 2010, and a 3rd injection on November 29. By January 20, 2011, Claimant still had right knee pain, and Dr. Grady recommended a right total knee replacement (TKR).

APA #7: Dr. Sanchez (Orthopedic Specialties of Spartanburg). Claimant was initially evaluated by Dr. Sanchez on May 2, 2011 for a second opinion relative to continued right knee pain. Dr. Sanchez agreed that Claimant was a candidate for a TKR. Claimant next followed up on September 29, 2011, and expressed a desire to have a TKR. Claimant underwent a right TKR with Dr. Sanchez (at Spartanburg Regional) on October 12, 2011.

In follow up on October 31, 2011, Claimant was advanced to weight bearing as tolerated. He was participating in physical therapy. On November 30, Claimant reported night pain and was instructed to continue with his exercises. He was allowed to perform sedentary work only. On January 17, 2012, Claimant reported improving walking tolerance and that he'd returned to work. On March 5, 2012, Claimant was advised to avoid kneeling, squatting, or crawling, but otherwise to progress activities as tolerated. By April 23, Claimant reported to Dr. Sanchez that he was doing well overall, but that concrete floors aggravated his symptoms. Claimant did not report any back or hip pain/complaints.

Claimant reported to Dr. Sanchez on June 4, 2012 that he had a walking tolerance of $\frac{1}{4}$ mile, and noticed occasional swelling at work, especially on concrete floors. He was placed on restrictions of no climbing or prolonged walking. On July 11, 2012, Claimant reported slow improvement, a walking tolerance of $\frac{1}{2}$ mile, and some swelling at the end of the day after walking on concrete floors. Claimant reported no complaints concerning the back or hip. Dr. Sanchez placed Claimant at MMI on August 22, 2012, at which time Claimant reported that he has been on light duty and was able to perform a job in such a capacity. Claimant was given permanent restrictions of no kneeling or crawling. Dr. Sanchez assigned a 50% impairment to the right leg.

Claimant next followed up on November 21, 2012. He reported a walking tolerance of 200 yards, aching at night, and occasional thigh pain. Claimant reported exacerbating symptoms from working on concrete floors. Dr. Sanchez believed that concrete floors were exacerbating Claimant's symptoms. Claimant did not report any back or hip problems on November 21.

On January 11, 2013, Claimant reported "a fair amount of pain in his knee as well as some swelling with radiation of pain into his groin that did seem to migrate posteriorly and into his low back." Dr. Sanchez noted that his pain was "somewhat migratory" and it was difficult to assess the origin of same. On February 20, Claimant's complaints were limited to the knee. A bone scan

revealed no evidence of prosthetic loosening. On April 3, Claimant noted pain medially in the knee. He did not complain of back or hip pain. Dr. Sanchez referred for an EMG/NCV on July 8, 2013. That EMG/NCV, taken August 19, 2013, showed no nerve root compromise or radiculopathy.

Claimant followed up with Dr. Sanchez on September 9, 2013. He reported some cramping sensation in his calf and occasional shooting sensation. Further, Claimant reported a walking tolerance of ¼ mile, with soreness afterwards. Dr. Sanchez opined that his work was exacerbating his symptoms, and wrote Claimant out of work. On October 28, Claimant said his knee was better, but that his low back began to "hurt more recently," with radiating pain down the right leg. Claimant was referred for a lumbar MRI.

On January 3, 2014, Claimant indicated that he had intermittent pain in the right groin. Dr. Sanchez diagnosed Claimant with right hip arthritis, and referred him for a hip x-ray and hip injection. On March 19, 2014, Claimant reported low back pain with radiation to the foot, and occasional groin pain. He was again recommended to undergo lumbar MRI. Claimant had continued back and right hip pain on May 28, 2014. Dr. Sanchez diagnosed pain secondary to radiculopathy. On August 27, Claimant's history included medial and lateral knee pain, right hip, and back pain.

APA #8: Out of work notes from Dr. Sanchez, dated September 9 and October 28, 2013.

APA #9: Medical questionnaires of Dr. Sanchez, dated March 19 and June 16, 2014.

APA #10: Retirement Election form, completed by Claimant on October 21, 2013, wherein he elects a retirement date of November 30, 2013.

APA #11: Vocational Evaluation of Adger Brown: Opines that Claimant could work in a sedentary capacity, and perhaps even more, but that most employers would not choose someone of his age and skill set over a younger, less physically encumbered applicant.

APA #12: Deposition of Dr. Anthony Sanchez:

Dr. Sanchez began treating Claimant on May 2, 2011 for right knee complaints. On the patient medical history form, completed by Claimant, he did not report any prior back or hip complaints. Dr. Sanchez diagnosed Claimant with right knee arthritis and agreed that a TKR was warranted. Claimant made no complaints of back or hip pain at the May 2 visit. Dr. Sanchez performed the TKR on October 12, 2011.

In post-operative follow up, Claimant progressed normally and as expected. On August 22, 2012, Dr. Sanchez deemed Claimant to be at MMI. As of MMI, Claimant had never reported back or hip complaints. Had Claimant made a report of back or hip pain, Dr. Sanchez would have noted in his dictations. Claimant was released with the normal restrictions of no kneeling or crawling. On November 21, 2012, Claimant followed up with Dr. Sanchez and told him that concrete floors were exacerbating his symptoms. Claimant did not report any problems to his back or hip on November 21.

The first time Claimant reported back pain was January 11, 2013. At that time, he described groin pain, migrating into his back. This is not a common symptom associated with TKRs. Rather, such symptoms would likely be more related to a back or hip condition. However, Claimant did not complain of back or hip problems on his April 3 visit.

Claimant underwent a bone scan, which was normal. Further, Dr. Sanchez sent him for an EMG, which also turned out normal. A normal EMG would rule out a constant radiculopathy, but may not necessarily identify an intermittent radiculopathy. Claimant was seen again on September 9, 2013. Dr. Sanchez then wrote him out of work, due to a discussion he had with Claimant regarding what he was doing at work. Dr. Sanchez believed Claimant's symptoms had worsened, and that what he was doing at work, including walking on concrete floors, were not helping matters. Dr. Sanchez acknowledged receiving a letter from Travelers indicating that Timken could

accommodate even sedentary restrictions. Ultimately, Dr. Sanchez testified that Claimant should have been able to do sedentary work. He believed that Claimant's job required him to walk on concrete floors.

Dr. Sanchez believed that an altered gait could have been causing Claimant's developing back pain. However, he never noted an altered gait in his treatment notes/reports. Dr. Sanchez believed that Claimant had never had back problems prior to his work injury. After reviewing records from Dr. McElhaney from 2008 and 2009, Dr. Sanchez testified that Claimant did apparently have prior back problems, as well as a prior "arthritic gait," which is the equivalent of an antalgic gait. Dr. Sanchez acknowledged that his newer back complaints could be a continuation of the pre-injury back complaints documented in Dr. McElhaney's records. Dr. Sanchez could not opine to a reasonable degree of medical certainty that Claimant's hip was aggravated in the work accident.

Dr. Sanchez then testified that even if Claimant did not injure his hip in the work accident, Claimant's hip problems could be aggravated by his altered gait. Dr. Sanchez opined to a reasonable degree of medical certainty that Claimant's back was aggravated by his altered gait.

Dr. Sanchez testified that Claimant may not be at MMI for his right knee, since his symptoms had worsened recently. In addition, Claimant is not at MMI for his back or hip. Claimant can do sedentary work, but not on a full-time 40 hour week basis, due to problems relative to the back from prolonged sitting. However, Dr. Sanchez verified that Claimant could do sedentary work as it relates solely to the knee. Dr. Sanchez also testified that Claimant's hip arthritis developed since the work injury, so the connection is not as strong to the work injury. Dr. Sanchez remained of the opinion that the "constellation of symptoms" after the TKR contributed to Claimant's present back complaints.

APA #13: Deposition of Rick Poston, August 21, 2014.

APA #14: Deposition of Raymond Sarratt, August 21, 2014.

APA #16: Deposition of Bobbie Griffin, September 24, 2014.

By Defendants:

APA #15: Carolina Medical Affiliates: On September 15, 2008, Claimant saw Dr. McElhaney with a chief complaint of right back pain. Claimant's history indicated a history of degenerative arthritis in the back, left knee, and cervical spine. Claimant presented with a "mildly arthritic gait." Among other medications, Claimant was prescribed Lortab. On December 28, 2009, Claimant reported to Dr. McElhaney for right lower back pain, which he'd had for about a week. He denied pain with urination, but reported more frequent urination. Claimant's diagnosis was urinary frequency.

On March 19, 2014, Claimant reported "chest pain after lifting wood onto a ATV bed." Claimant was diagnosed with chest pain and referred for a stress test. In the "Existing Problems," over 30 diagnoses are noted; none of them involve the back or hip. Claimant underwent coronary stent placement and heart catheterization on April 4, 2014 (at Spartanburg Regional).

CLAIMANT'S TESTIMONY:

Claimant testified at the hearing, and his testimony allowed the undersigned to observe Claimant, and judge his credibility as a witness.

Claimant is 64-years old and holds a diploma from the "Adult School" from Gaffney High School. He also has taken masonry course work at a technical school, and is able to read and write (Tr. at 12-14¹)

Claimant began working as a doffer at Milliken at the age of 15. Claimant has also worked in the Casting Department at Kohler in Spartanburg. Claimant said he has also worked at

¹ "Tr. at ____" is referencing page(s) in the Hearing Transcript.

Limestone Manufacturing, where he trained doffers, and ultimately moved to the Maintenance Department. (Tr. at 15-17)

Claimant started at Timken in 1976 as a maintenance mechanic. He earned promotions over the years, working his way up to LMA (Lead Maintenance Associate). (Tr. at 17-18) Claimant has been with Timken a total of 37 years, and last worked there in September 2013. (Tr. at 18)

Claimant described his injury as occurring while he was changing a chip car in the Green Department. When he stepped off a rail car, his right foot slipped, and he twisted his right knee. In addition to pain in his right knee, claimant had immediate onset of pain in his back and his hip. (Tr. at 19-20)

Claimant initially went to Dr. Morgan for treatment. He stayed out of work a couple days, and then returned to work the following week. Claimant was still experiencing swelling, so he went to the plant nurse, and was sent back to Dr. Morgan. Dr. Morgan then referred Claimant to Dr. Grady. Eventually, Dr. Grady did perform an arthroscopic surgery on the right knee. (Tr. at 21-24)

Following the initial surgery, Claimant was still having problems and received some injections in the knee. Those injections "didn't work." He then asked for a second opinion, and was sent to Dr. Sanchez. (Tr. at 26) Dr. Sanchez performed a right total knee replacement [in 2011]. Claimant stayed out of work approximately six to eight weeks, and then he returned to work in a light-duty capacity, working in the Shop. (Tr. at 27-28) In January 2013, Claimant's back and hip began bothering him because he was walking more on cement floors. (Tr. at 29)

Timken cut back on the number of golf carts, from three to two, in the Maintenance Department. As a result, Claimant had to walk more throughout the plant, on its concrete floors. If

a golf cart was unavailable, Claimant was unable to call Raymond Sarratt and ask for an available cart. (Tr. at 30-33)

After his return to work, Claimant's knee would swell when he had to walk "a good distance." Additionally, he had hip and back pain. In September 2013, Claimant was taken out of work by Dr. Sanchez. Claimant was experiencing significant pain in the knee, back and hip, at the end of each day. (Tr. at 34-36) Thus, Dr. Sanchez wrote him out of work; Claimant took the work note to Timken. Claimant received a letter from the adjuster (The Travelers) to Dr. Sanchez indicating that Timken could make sedentary work available for him. Claimant did not take any action upon receiving that letter, and no one from Timken contacted him. (Tr. at 40-41)

Since Claimant has been out of work, and away from the cement floors, his pain has improved. However, he still ices his knee when he gets up in the morning, and/or will take Tylenol. (Tr. at 42-43) Furthermore, Claimant's hip and back still bothers him, and he experiences occasional numbness and tingling in the foot and ankle. His back and hip did not return to its pre-injury status, even after going out of work and getting off the concrete floors. (Tr. at 43-44)

Claimant acknowledged having prior back and hip problems, but mostly in his back. Then, Claimant testified that his prior problems were *only* in his back. He had experienced gait problems in 2008 and 2009, which Claimant attributed to back pain. Claimant also had prior left knee and right knee problems. (Tr. at 44-46)

On cross-examination, Claimant testified that his job as a Lead Maintenance Associate required him to assign jobs, order parts, and work out of an office in the shop. Claimant spent approximately half of his day sitting down. When Claimant was working light-duty, his light-duty assignment was in his normal office.

Claimant acknowledged that there were two golf carts in the Management Department, and at least one of them would be parked right outside his office. Claimant denied that it would be

unusual for both carts in the department to be unavailable at the same time. Furthermore, Claimant testified there were times that he could not reach Raymond Sarratt to tell him about needing a golf cart. However, Claimant had complained to Raymond Sarratt about golf cart unavailability. When questioned as to whether there was a specific time that he approached Raymond Sarratt and told him he was in need of a golf cart at that time, but one was not available, Claimant simply testified that "Raymond and them was aware of that." (Tr. at 50-53)

Regarding the letter from The Travelers adjuster to Dr. Sanchez, Claimant testified that he did not contact Timken after he received the letter. Claimant would have been willing to perform a sedentary job. Nonetheless, Claimant never called Dr. Sanchez about a sedentary job, and never mentioned to him on a follow-up office visit about the possibility of there being sedentary work available at Timken. (Tr. at 54-56)

Claimant testified that he intended to work until age 67, which would occur in November 2016. He acknowledges that he requested previous quotes from Timken Corporate about retirement at age 62. The undersigned Commissioner stopped this line of inquiry concerning retirement, since wage loss was not an issue at the hearing. (Tr. at 56-59)

Claimant told Dr. Grady, after the work injury, that he was having hip and back problems and testified that he would think that Dr. Grady "should have" mentioned those in his treatment notes. (Tr. at 60-61) Claimant clarified that he actually hurt his back ("twisted it") at the time that he fell. Subsequently, walking on the cement floors caused his back to worsen. Claimant testified that the back pain was not the result of a limp or gait issue, but rather specifically from walking on cement floors. (Tr. at 61-62; 65)

Claimant admits to limping when he saw his primary care physician on December 28, 2009. He also was prescribed Lortab at that time for his back pain. Claimant's testimony is that he

was seeing his doctor for a sinus infection, and his doctor asked him about his back pain, and as a result prescribed Lortab. (Tr. at 63-64)

In terms of Claimant's ongoing activities, he testified that he does not do any heavy lifting. (Tr. at 66) Sometimes, Claimant will "crank the lawnmower up and I'll ride it 10 or 15 minutes." (Tr. at 64) When questioned about a March 19, 2014, note from his primary care physician where it referenced him experiencing chest pain after lifting wood, Claimant explained that he "lifted a little ol' -- like a 2x4 piece of wood." Claimant explained that it was a 2' piece of wood, which was laying on the ground, and he stopped the ATV that he was operating to pick it up. Claimant owns 23 acres of property. (Tr. at 67-69)

TESTIMONY OF RAYMOND SARRATT:

Raymond Sarratt testified at the hearing, and his testimony allowed the undersigned to observe him, and judge his credibility as a witness.

Raymond Sarratt is the Facilities Manager at the Timken Plant, and Claimant would fall under his supervision. Mr. Sarratt described Claimant as a valuable employee. Claimant did have a strong work ethic, and was not much of a complainer. (Tr. at 84-85) Claimant's job duties as a Lead Maintenance Associate generally consisted of communicating with supervisors, scheduling work, ordering parts, and maintaining supplies in the shop. Claimant actually had an office, with a computer, in the shop. He spent approximately half his time in the office. Claimant generally didn't do any of the actual mechanic work. (Tr. at 76-78)

Mr. Sarratt testified that there was a reduction of golf carts in Claimant's area - - the Maintenance Department. There was a reduction down to two golf carts. Claimant regularly used a golf cart, both before and after, his work injury. Mr. Sarratt recalls that there probably were times

when the golf carts were gone, but Claimant was instructed to wait until one came back (to go do his assignment). The golf carts were never unavailable throughout the entire day. (Tr. at 80-81)

On cross-examination, Mr. Sarratt testified that if Claimant ever walked in excess of his restrictions, it was voluntary. Claimant was instructed to abide by his restrictions. Mr. Sarratt acknowledged that there may have been times when Claimant needed a cart, but one was not available. When asked how many times this would have occurred, Mr. Sarratt testified only once or twice. (Tr. at 86)

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Osment as Employee/Claimant and The Timken Company as Employer/Defendant, and Phoenix Insurance Company as Carrier/Defendant.
2. As of the date of the hearing, Claimant is 64 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant).
4. Claimant's employment history includes: (a) doffing; b) casting tubs and other plumbing fixtures for Kohler; (c) making dairy and drug packaging; and, (d) training doffers (testimony of Claimant).
5. Claimant's job with Employer was Lead Maintenance Associate (LMA). This job required Claimant to sit in his office for half the day (performing scheduling, ordering

parts, maintaining supplies), and to check on maintenance mechanics/problems the other half (testimony of Claimant).

6. Claimant injured his right knee in an admitted accident on May 20, 2010.
7. Claimant alleges that he injured his back (affecting his right foot) and right hip through an antalgic gait, aggravating a pre-existing condition (*See Tr. at 5-7*).
8. Claimant was a 37-year employee, a factor which weighs very heavily in his favor. Further, by all descriptions, Claimant was a good and valuable employee. However, these factors are not dispositive in any workers' compensation case (or else, there would be no need for a hearing/review of the medical evidence). In this case, this factor is not persuasive enough to override or overcome other more compelling evidence presented at the hearing (testimony of Claimant; testimony of Sarratt; Depo. of Poston).
9. **As there is no medical record documenting a right hip or back complaint until almost 3 years after the date of the accident,** Claimant's theory of the case (*See Tr. at 5-7*) is that he injured his right hip and back through an antalgic gait. By contrast, Claimant testified at the hearing that he immediately injured both his right hip and back when the accident occurred, specifically rejected an antalgic gait theory in his testimony, and that he reported his hip and back injuries to Dr. Grady (with whom Claimant treated through the date of the first surgery). (*Tr. at 19-20; 65*) **Dr. Grady's records are completely devoid of any complaint or mention of a right hip or back problem, refuting Claimant's testimony at the hearing.** Similarly, Employer's (a) accident report (signed by Claimant) and (b) temporal medical notes are also devoid of any complaint/reference to the hip or back. Finally, temporal records from Peachview Medical Park are likewise devoid of any reference to the hip or back. **I find Claimant's testimony inconsistent with the medical evidence, and with his own vocational report, which states that Claimant "later started having the onset of low back pain as well."** (Claimant's APA #1; Claimant's APA #2; Claimant's APA #3; Claimant's APA #4; Claimant's APA #11, p. 139)

10. Claimant has **pre-existing back problems which waxed and waned prior to the date of the injury**, and for which Claimant sought and received treatment including pain medication: a) at a visit in 2008 for back pain/"back strain, lumbar" (approximately 2 years prior to the date of the accident in issue), Claimant's gait is was documented as "arthritic" (which Dr. Sanchez interprets as "antalgic" per his deposition testimony). At the end of 2008, Claimant returned to his family doctor with no complaint of back pain (Defendants' APA #15, pp. 318-327); (b) In late 2009 -- just 6 months prior to the date of the work accident, Claimant returned to his family doctor with low back pain again (Claimant's urine testing was normal and he was not prescribed an antibiotic; Claimant was prescribed Flomax for his prostate). For his back complaints (just 6 months prior to the date of the accident) Claimant was prescribed Meloxicam pain medication with 5 refills (Defendants' APA #15, pp. 328-332; Depo. of Dr. Sanchez, pp. 32-33, as contained in Claimant's APA #12)
11. I find that Claimant's back condition waxed and waned after the date of the accident as well, and that his alleged hip condition resolved or never occurred: I give the greatest weight in this case--**of all the evidence**--to Claimant's first family doctor record post-accident (March 2014 -- 4 years after the date of the accident in issue, and 6 months prior to the date of the hearing) and Claimant's follow-up visit with his family doctor one week later. **Notwithstanding the family physician's detailed list of all Claimant's problems/complaints, nowhere to be found in these records is there any documentation of back or hip pain.** It might be argued that Claimant's back and hip were not documented/recorded by Claimant's family doctor because these conditions are workers' compensation-related (*i.e.*, only non-workers' compensation conditions were recorded). However, such is not the case: Under "Status of Existing Problems," Claimant's work-related right knee pain is in fact recorded along with all his other conditions, including but not limited to cervical disc disease with radiculopathy, groin pain, CTS, rotator cuff syndrome, urinary frequency, hypertension, high cholesterol, and GERD. Noticeably absent from the list of problems are either low back and/or hip pain, as Claimant has inconsistently pled, told Dr. Sanchez, and testified to at the hearing. (Defendants' APA #15, pp. 333-340)

12. Claimant did in fact complain of groin pain in March 2014 (4 years after the accident--6 months prior to the date of the hearing). However, that complaint was in the **context of lifting wood onto an ATV bed, such that Claimant "thinks he may have a hernia in his groin."** I cannot find Defendants liable for Claimant's non-work injuries. Claimant's testimony that "lifting wood" was actually a small piece of a 2x4 that he bent over to pick up is not believable or credible, based upon Claimant's demeanor and delivery of this testimony. I also note that the record does not say "bending over to pick up a piece of wood" or words to that effect; instead, the record says "*lifting*." Claimant is far more active than he has let on to Dr. Sanchez, thereby calling into question the legitimacy of Claimant's complaints to Dr. Sanchez regarding the hip/back. If Claimant's statements to Dr. Sanchez (in furtherance of Claimant's workers' compensation claim) were dispositive, it would be unnecessary for a commissioner to review all the evidence, or to hold a hearing to determine credibility. (Defendants' APA #15, p. 333)
13. At Claimant's follow-up visit to his family doctor later that month (March 2014), **there is no mention of the hip or back.** However, Claimant's family physician documents **no fewer than 25 conditions/complaints--including Claimant's work-related right knee,** his unrelated (pre-existing) left knee, and his unrelated cervical spine, CTS, and rotator cuff problems. **Nowhere to be found in this list of problems is either the hip or back.** I give great weight to this record as it is the truest catalogue of Claimant's post-accident problems.
14. During the last family doctor visit prior to the hearing (5 months prior), Claimant likewise made no complaint of his hip/back (Defendants' APA #15, pp. 341-342).
15. I could easily believe and find that an antalgic gait from a knee injury would cause or aggravate a hip and/or back injury/problem. However, Claimant's testimony--no fewer than 3 times throughout the hearing--was that walking on the concrete floors caused his hip and back pain--not that his hip and back conditions were caused/aggravated by an antalgic gait from his knee. (Tr. at 29, 34, 62, 65)

16. Claimant also essentially testified that the situs of his injury is his knee in that he claims his knee pain “shoots up” into his back (i.e., not a separate injury to the hip and back caused by antalgia, but a radicular component). **Claimant appeared to be confused as to how he was supposed to testify and as to how and when the back/hip injuries allegedly occurred.**
17. Even if I interpret Claimant’s testimony to mean that the concrete floors aggravated his knee condition, which in turn aggravated his back/hip, I am still left with the latest family physician records (2014) **which document no back/hip condition of which Claimant complained at the hearing and which Claimant reported to Dr. Sanchez.** The groin pain Claimant did complain of to his family was attributable to the ATV/wood incident; Claimant’s work injury is not mentioned as a causative factor. If the workers’ compensation injury (the right knee) had been omitted from the very lengthy list of maladies compiled by Claimant’s own personal physician, I would not expect the back/hip to appear either. However, as the workers’ compensation-related right knee condition *is* in fact listed, I would expect the hip and back to be listed as well, regardless of its etiology. (See Defendants’ APA #15, pp. 333-340)
18. If, as Claimant testified, he did in fact injure his hip and back on the date of the accident (which testimony is not borne out by medical records for **years** after the accident), I find that these conditions resolved/returned to baseline. I base this finding on the records from Claimant’s own family physician, records to which I give the greatest weight as I find that they are the **truest indicator of all of Claimant’s current problems.** If Claimant’s family doctor had listed the back and hip (along with the right knee) as problematic, the result in this case might be vastly different. However, among the conditions Claimant alleges only the right knee is documented (again, *See* Defendants APA #15, pp 333-340) .
19. I fully take into account Claimant’s impressive job tenure, but he is not credible, and seemed unsure as to how and when his hip/back were supposedly injured.
20. I also considered Dr. Sanchez’s questionnaire and deposition testimony as to causation

of the alleged body parts, but, there are multiple inconsistencies:

- (a) Dr. Sanchez “flip flops” in a rather significant way, and is equivocal at best; after Defendants’ counsel takes Dr. Sanchez through the documented, prior back complaints—including one record just mere months prior to the date of the accident, Dr. Sanchez inexplicably says that Claimant’s back was exacerbated in that “[Claimant] didn’t have any back symptoms beforehand, and he had it afterward.” This makes his testimony appear outcome determinative for his patient;
- (b) Very importantly, Dr. Sanchez’s deposition does not reconcile or even address the 2014 family physician records containing extensive lists of Claimant’s current problems—including Claimant’s workers’ compensation knee injury--none of which records include the back or hip; there is no evidence that Dr. Sanchez had access to these records from Claimant’s family physician;
- (c) Claimant is far more active than he has led Dr. Sanchez to believe, as evidenced by Claimant’s lifting wood and concomitantly complaining of groin and chest pain; there was clearly some exertion involved in this incident (Depo. of Dr. Sanchez in its entirety; Claimant’s APA #8, pp. 134-135; Depo. of Dr. Sanchez in its entirety, including but not limited to pp. 35-42, 44-47, 53, and 55-56, as contained in Claimant’s APA #12).

21. Despite Dr. Sanchez’s testimony that Claimant’s altered gait “could” have resulted in Claimant’s back pain, Dr. Sanchez never cited an altered gait in his treatment notes, and never opined during his treatment that an altered gait was causing Claimant’s back pain. (Depo. of Dr. Sanchez, p. 38) Further, Dr. Sanchez reviewed pre-injury records for the first time at his deposition. He acknowledged Claimant’s records reveal an arthritic/altered gait prior to the work injury, and that his present back pain could be a continuation of the pre-existing back pain and gait issue. (Depo. of Dr. Sanchez, pp. 35-41)

22. Dr. Sanchez’s causation opinion is further undermined by his deposition testimony that he was of the belief that Claimant had no back complaints prior to the work injury. (Depo. of Dr. Sanchez, pp. 9, 27, 30) As detailed herein, the history as understood by

Dr. Sanchez was not accurate.

23. Because of his work-related right knee injury, Claimant underwent two surgeries, the second of which was a total knee replacement surgery in 2011. (Claimant's APA #6, pp. 38-43; Claimant's APA #7, p. 64-67)
24. Although Claimant's knee has never been pain free since the date of the accident, I find that the knee replacement surgery improved Claimant's symptoms after the date of the injury. I base this finding on the record in which Claimant's knee has "done well," but working on concrete floors aggravates him symptoms especially after a full day. Claimant has **no instability**; nor does he have the bone-on-bone pain as he did prior to the TKA. (Claimant's APA #7, e.g., pp. 58-59, 72, 75, 79, 81, and 85)
25. Claimant reached maximum medical improvement on August 22, 2012. On this date, Claimant had no complaints of regarding his back or hip. Claimant's only restrictions on this date were kneeling/crawling. (Claimant's APA #7, p. 90; Depo. of Dr. Sanchez, pp. 13-14, as contained in Claimant's APA #12)
26. The first documented complaint of back pain is January 2013--6 months after Claimant was released at MMI. Claimant reported that he "*had* been doing fairly well" until this particular visit; **for the very first time**, Claimant reported post-surgical "give way" and radiating pain into his low back and groin. However, Dr. Sanchez by contrast noted "*very mild* swelling" of the knee, "*very mild pain*" and "*no instability*." Further, I give great weight to the statement, "As his pain has been somewhat *migratory*, it is difficult to assess the origin of his pain." At the next visit, Claimant reported "global pain." Nonetheless, Dr. Sanchez noted **no effusion and no instability**. Because of Claimant's complaints (including alleged pain into his foot), Dr. Sanchez ultimately ordered an **EMG which was normal**. **Claimant's labs and bone scan were also normal**. **Claimant first reported hip pain in 2014—4 months prior to the date of the hearing**. (Claimant's APA #7, pp. 94, 96, 98, 100, 109, 111, 113, and 126; Depo. of Dr. Sanchez, p. 22, as contained in Claimant's APA #12)

27. Although Claimant told Dr. Sanchez that Claimant was having difficulty performing even office work, Claimant inconsistently testified at the hearing--and his vocational expert states--that Claimant could perform a sedentary job. (Claimant's APA #7, p. 111; testimony of Claimant; Claimant's APA #11, p. 144)
28. The authorized treating physician assigned a 50% impairment rating for the lower extremity attributable to the admitted right knee injury. (Claimant's APA #7, p. 90)
29. Claimant's restrictions limit him to sedentary work only. (Depo. of Dr. Sanchez, pp. 24 and 54, as contained in Claimant's APA #12)
30. As this is a single member injury (the right knee), a wage loss analysis is not appropriate. However, Claimant's vocational report (which I reviewed along with all the other evidence) states that Employer made "a valiant effort" to accommodate Claimant's restrictions. (testimony of Sarratt; Claimant's APA #11, p. 144; *See also* Claimant's APA #4, p. 16)
31. I find Raymond Sarratt to be very credible, a finding I base upon his demeanor and delivery. Regarding the use of the golf cart and the accommodation of Claimant's restrictions, Sarratt's testimony was straightforward and not embellished. (Testimony of Sarratt; observations of the undersigned.)
32. Claimant's testimony was not as credible as Sarratt's.
33. Claimant's back and hip are not compensable body parts. The existence of any causally-related problem is refuted by Claimant's family physician's records of 2014. I also question the timing of the appearance of these body parts, and the inconsistencies in this case. If Claimant's statements to Dr. Sanchez are dispositive, Commission involvement is irrelevant and unnecessary. Further, statements made in furtherance of a workers' compensation claim are **not as persuasive as the full itemized catalogue of Claimant's physical problem as Claimant himself reported to his own personal physician.**

34. I do agree with Claimant that it was incumbent upon Employer to offer employment, and that Claimant's Exhibit #1 did not offer a job or invite Claimant to call the Employer for a job. Claimant testified that he would have taken a strictly sedentary job. (Claimant's Exhibit #1; testimony of Claimant; Depo. of Poston, including but not limited to pp. 59-61, as contained in Claimant's APA #13; Depo. of Sarratt, p. 23, as contained in Claimant's APA #14; Depo. of Griffin, p. 13, as contained in Claimant's APA #15)
35. Permanent partial disability (PPD) to right leg, pursuant to Section 42-9-30(16): 60%. This award is based upon the impairment rating, but primarily on Claimant's restrictions. I have no doubt that it was difficult for Claimant to walk or work on concrete given the condition of his knee. However, I find that Employer accommodated his restrictions, and never required him to work outside imposed restrictions.
36. Claimant's request for temporary total disability benefits (TTD) from September 9, 2013 and continuing is denied. As the South Carolina courts have held, the date of MMI "signals the end of entitlement to temporary total benefits." *Curiel v. Environmental Management Services*, 376 S.C. 23 (2007). I find that Claimant reached MMI as of August 22, 2012. Therefore, no TTD is due beyond that date.
37. Claimant to receive his award in lump sum with *Utica-Mohawk (James v. Anne's)* language.
38. Claimant is entitled to receive lifetime hardware maintenance repair/replacement/removal), yearly office visits/x-rays, and other modalities for the knee as recommended by Dr. Sanchez, including but not limited to a future total knee revision. (Depo. of Dr. Sanchez, p. 52, as contained in Claimant's APA #12)
39. As credit was not requested (and a Form 21 was not filed), that issue is not adjudicated herein.

40. Claimant's average weekly wage is \$1,079.46, yielding a compensation rate of \$689.71.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant sustained an injury by accident to his right knee. Claimant did not sustain injury to any additional body parts.
3. Under § 42-15-60, Defendants are responsible for all causally-related right knee treatment, until the date of maximum medical improvement, and continuing treatment and maintenance of the total knee replacement per the direction of the authorized physician.
4. Under § 42-9-30(16), Claimant has sustained 60% permanent partial disability to his right leg.

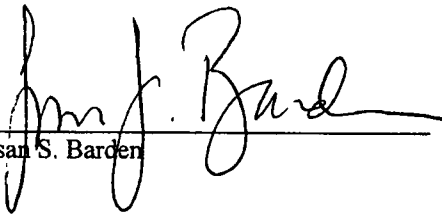
VII. ORDER/AWARD

IT IS HEREBY ORDERED that Claimant reached maximum medical improvement on August 22, 2012, and is entitled to permanent partial disability of sixty percent (60%) to the right lower extremity, or 117 weeks, for a lump sum total of Eighty Thousand, Six Hundred Ninety-six and 07/100 Dollars (\$80,696.07).

Claimant's request for additional treatment or benefits to any other body parts, including back and/or hip, is DENIED.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

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

November 24, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden

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



WCC File #: 1008356

Carrier File #:

Carrier Code #:

Employer FEIN #:

RECEIVED
JUL 21 2014
BY: [Signature]

Claimant's Name: James Osment SSN: 248-82-1547 Employer's Name: Timken
Address: 205 Fortenberry Rd Address:
City: Gaffney State: SC Zip: 29340 City: 100 Timken Rd State: SC Zip: 29341
Home Phone: () - Work Phone: () - Insurance Carrier:
Preparer's Name: John Hawkins Law Firm: The Hawkins Law Firm Preparer's Phone #: (864) 574 - 8801

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: May 20, 2010

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

1. The claimant sustained an injury to Right Knee, Right Leg, Back, Right Hip, Right Foot and any other compensable causally related body parts on 05/20/2010 in Cherokee county, state of South Carolina.
2. Body part(s) affected are: Right Knee, Right Leg, Back, Right Hip, Right Foot and any other compensable causally related body parts
Briefly describe how the accident occurred, Claimant was putting brakes on a railway car, he stepped off the railway car into some steel shavings causing him to twist his knee.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer/Defense Attorney on 05/20/2010 in the following manner: Claimant was seen by the plant nurse, Dot Clary.

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

☒ (a) medical examination and treatment for: See Above Body Parts

☒ (b) additional medical examination and treatment for: See Above Body Parts

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

☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial

☒ (2) Specific Disability: ☒ Total ☐ Partial

☒ (3) Wage Loss

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

☒ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: To Be Determined

10a. At the time of the injury, the Claimant was paid weekly wages of \$To Be Determined, 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: The Timken Company, 100 Timken Road, Gaffney, SC 29341

11. Further grounds or unusual aspects of claim: Lump Sum, Utica Mohawk, Seeking compensability as to the above referenced body parts.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Doctors on site at his employer, Timken. Dr. Walter Grady, 480 Floyd Road, Sptbg., SC 29307; Dr. Anthony A. Sanchez, Orthopedic Specialties, 303 East Wood Street, Sptbg., SC 29303

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

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

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

14. Estimated time needed for hearing: 1 hour

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

☐ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

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

☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to South Lewis, Wilson Jones Carter & Baxley, PA, 872 S. Pleasantburg Drive, Greenville, SC 29607, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: [Signature] Attorney for Claimant

john@hawkinslawsc.com
Email

07/17/2014
Date

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

WCC Form # 50
Revised 7/13

Form 50

Employee's Notice of Claim and/or
Request for Hearing

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



WCC File #: **1008356**
Carrier File #: **026-CB-EHZ9292-A**
Carrier Code #:
Employer FEIN #:

Claimant's Name: James Osment SSN: 248-82-1547 Employer's Name: The Timken Company
Address: 205 Fortanberry Rd. Address: 100 Timken Road
City: Gaffney State: SC Zip: 29340 City: Gaffney State: SC Zip: 29341
Home Phone: (864) 489-4006 Work Phone: (864) 487-2673 Insurance Carrier: The Phoenix Insurance Company
Preparer's Name: J. South Lewis, II Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3284

Date of Injury or Illness: 5/20/2010

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit Claimant sustained a compensable injury to the right knee. Defendants assert Claimant reached maximum medical improvement.
Defendants deny Claimant injured any additional body parts in the work injury.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
See No. 1.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement
10. It is contended that an average weekly wage of \$ 1,079.46 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify that I have served this document pursuant to R.67-212 by delivering a copy to: John D. Hawkins, P.O. Box 5048, 5506 Reidville Road, Moore, SC 29369
Name & Address

Spartanburg, SC 29304-5048 and Judicial Department, SC WCC, P.O. Box 1715, Columbia, SC 29202 on the 25th day of July, 2014 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.

J. South Lewis, II
Preparer's Signature
Trudy R. Sharpless
Certifier, Trudy R. Sharpless

Attorney for the Employer/Insurer
Title

jslewis@wjlaw.net
Email

07/25/2014
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. 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 07/13

51

Employer's Answer to Request for Hearing

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1008356
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

James Osment 248 82 1547
Claimant's Name SSN
205 Portan Berry Rd Gaffney SC 29340
Address City State Zip
(864) 489 4006 ()
Home Phone Work Phone

The Timken Company
Employer's Name
P.O. Box 473502 Charlotte NC 28247-3502
Address City State Zip
The Phoenix Insurance Co
Insurance Carrier

Preparer's Name

Phone #

A. Total Wages Paid

Date of injury: May 20, 2010
month day year

1. 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: _____
☐ 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.)
2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage 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	June 30, 2009	10,564.68
2nd	Sept 30, 2009	12,685.95
3rd	Dec 31, 2009	14,100.87
4th	Mar 31, 2010	14,462.58
Total Paid	2.	51,813.18

3. List total value of other allowances of any character made in lieu of wages during four quarters above. 3. 0
4. Add lines 2 and 3 **TOTAL WAGES PAID:** 4. 51,813.18
5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred. 5. 48

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).
AVERAGE WEEKLY WAGE: 6. 1079.46

C. Compensation Rate

7. 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. 7. 719.67
8. 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.

WEEKLY COMPENSATION RATE: 8. 689.71

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.

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



WCC File #: 1008356
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: James Osment SSN: 248 - 82 - 1547 Employer's Name: The Timken Company
Address: 205 Fortenberry Road Address: 100 Timken Road
City: Gaffney State: SC Zip: 29340 City: Gaffney State: SC Zip: 29341
Home Phone: () - Work Phone: () - Insurance Carrier: The Phoenix Insurance Co.
Preparer's Name: John Hawkins Law Firm: The Hawkins Law Firm Preparer's Phone #: (864) 574 - 8801

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 05/20/2010

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 Addendum For Grounds of Review

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to J. South Lewis, II, Willson, James, Carter & Baxley, PA Address 872 S. Pleasantburg Drive, Greenville, SC 29607 on the 3rd day of December 2014, by X first class postage certified mail personal service.

Randy Taylor for John D. Hawkins
Preparer's Signature

Attorney for the Claimant
Title

john@hawkinslawsc.com
Email

12/03/2014
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.

Form 30 Grounds for Review Addendum

On Behalf of the Claimant James Osment

1. Whether the Hearing Commissioner erred in Finding of Fact No. 9, in which she states that Claimant rejected an antalgic gait theory [as a cause for the injury to his hip and back] in his testimony when such a finding is against a preponderance of the evidence.
2. Whether the Hearing Commissioner erred in Finding of Fact No. 9 in which she states that Claimant's testimony [is] inconsistent with the medical evidence, and with his own vocational report when such a finding is against a preponderance of the evidence.
3. Whether the Hearing Commissioner erred in Finding of Fact No. 11 in which she states that Claimant's "alleged hip condition resolved or never occurred" when such a finding is against a preponderance of the evidence.
4. Whether the Hearing Commissioner erred in Finding of Fact No. 13 in which she states that there is no mention of hip or back problems in Claimant's visit to his family doctor in March 2014 and finds this record as "the truest catalogue of Claimant's post-accident problems" when such a finding is against a preponderance of the evidence.
5. Whether the Hearing Commissioner erred in Finding of Fact No. 15 in which she discounts the lay testimony of Claimant that his hip and back pains are coming from walking on concrete floors as such a finding is against a preponderance of the evidence.
6. Whether the Hearing Commissioner erred in Finding of Fact No. 16 in which she states that Claimant's back and hip pains are radicular in nature and not separate injuries caused by antalgia as such a finding is against a preponderance of the evidence.
7. Whether the Hearing Commissioner erred in Finding of Fact No. 17 in which she discounts Claimant's complaints of hip and back pains simply because no mention is made of these problems in records of Claimant's family physician as such a finding is against a preponderance of the evidence.
8. Whether the Hearing Commissioner erred in Finding of Fact No. 18 in which she states that Claimant's hip and back conditions resolved/returned to baseline as such a finding is against a preponderance of the evidence.
9. Whether the Hearing Commissioner erred in Finding of Fact No. 19 concerning Claimant's credibility as such a Finding is not consistent with Claimant's testimony, demeanor, age, work history and such other and further factors as may be reasonably necessary to determine witness credibility.

10. Whether the Hearing Commissioner erred in Finding of Fact No. 21 in which she states there are multiple inconsistencies in Dr. Sanchez's opinions and deposition testimony when such findings are against a preponderance of the evidence.
11. Whether the Hearing Commissioner erred in Finding of Fact No. 22 in finding that Dr. Sanchez's causation opinion is undermined by his deposition testimony when such finding is against a preponderance of the evidence.
12. Whether the Hearing Commissioner erred in Finding of Fact No. 27 in finding that Claimant inconsistently testified at the hearing regarding office/sedentary work when such a finding is against a preponderance of the evidence.
13. Whether the Hearing Commissioner erred in Finding of Fact No. 32 in finding that Claimant's testimony was not as credible as Raymond Sarratt's when such finding is against a preponderance of the evidence.
14. Whether the Hearing Commissioner erred in Finding of Fact No. 33 in finding the back and hip are not compensable body parts, when such finding is against a preponderance of the evidence.
15. Whether the Hearing Commissioner erred in Finding of Fact No. 35 in finding that Claimant only has a 60% permanent partial disability to the right leg when such finding is against a preponderance of the evidence.
16. Whether the Hearing Commissioner erred in Finding of Fact No. 36 in stating that Claimant's request for Temporary Total Disability benefits (TTD) from September 9, 2013 and continuing is denied, when such finding is against a preponderance of the evidence.
17. Whether the Hearing Commissioner erred in Conclusion of Law No. 2 in which she found that Claimant did not sustain injury to any body parts other than the right knee when such a conclusion is against a preponderance of the evidence.
18. Whether the Hearing Commissioner erred in Conclusion of Law No. 4 in finding that Claimant had sustained only a 60% permanent partial disability to his right leg when such a conclusion is against a preponderance of the evidence.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1008356

James Osment.....Claimant/Appellant,

v.

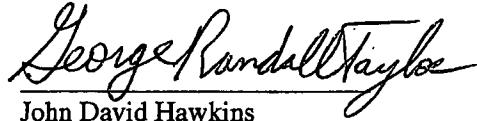
The Timken Company, Employer,
and Phoenix Insurance Company, Carrier.....Respondents.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, James Osment (Appellant) hereby appeals the Order of the South Carolina Workers' Compensation Commission, dated April 1, 2015. Appellant received written notice of entry of the Order on April 1, 2015. Respondents are represented by J. South Lewis of Willson Jones Carter & Baxley, PA, 872 Pleasantburg Drive, Greenville, SC 29607. He can be reached at 864-527-3284.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



John David Hawkins

Charles Logan Rollins

George Randall Taylor

The Hawkins Law Firm

P.O. Box 5048

Spartanburg, SC 29304

(864) 574-8801

ATTORNEYS FOR APPELLANTS

April 17, 2015

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1008356

James Osment,
Claimant,
v.
The Timkin Company,
Employer,
and
Phoenix Insurance Group,
Carrier/Defendants.

COPY

FULL COMMISSION PANEL HEARING

Wednesday, February 25, 2015
10:50 a.m. - 11:12 a.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 25th day of February, 2015 before Jill H. Vickers, Certified 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

APPEARANCES

COMMISSION PANEL:

Aisha Taylor, Chair
Melody James
Gene McCaskill

C. Logan Rollins, Esquire
Randy Taylor, Esquire
The Hawkins Law Firm
5506 Reidville Road
Moore, South Carolina 29706
Attorneys for the Claimant/Appellant

J. South Lewis, Esquire
Willson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Attorney for the Defendants/Respondent

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1 COURT REPORTER: Today is February 25, 2015. This
2 is South Carolina Workers' Compensation Case
3 Number 1008356. This is the case of James
4 Osment, Claimant, versus The Timkin Company,
5 Defendant, and Phoenix Insurance Group is the
6 Carrier. The Appellant is the Claimant
7 represented by Logan Rollins and Randy Taylor.
8 The Respondent is represented by J. South
9 Lewis. Each side is allowed ten minutes for
10 oral argument and the Appellant three minutes
11 in reply. You are requested to argue the
12 grounds of exception and stay within the
13 record.

14 COMMISSIONER TAYLOR: Mr. Rollins.

15 MR. ROLLINS: Thank you, Commissioners. What we're
16 here about is really a substantial evidence
17 case. It arises out of a work accident that
18 occurred on May 20th, 2010, in which the
19 claimant, Mr. Osment, admittedly injured his
20 right knee. And the rule of law is that "No
21 decision of the commission, of course, can be
22 based and surmise, conjecture or speculation.
23 If there are no disputed facts in the case, it
24 is merely a question of law, and in determining
25 the facts in a case, all reasonable inferences



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1 must be drawn in favor of the claimant." And
2 that's Johnson v. Beauty Supply Unlimited, 379
3 South Carolina 413. I don't think I referenced
4 that in the brief. And of course, recently, in
5 Beckham v. Cisco, the Appellant Courts have
6 clarified that the interpretation of the facts
7 in a case, that the factual inferences,
8 really -- in order to constitute substantial
9 evidence, factual inferences must be drawn in
10 favor of the claimant at the commission level,
11 and that's not just an appellant rule. So, in
12 this case, the claimant's authorized treating
13 physician at the beginning of his treatment was
14 Dr. Walter Grady, and he was eventually
15 transferred by the defendants to Dr. Sanchez,
16 who was the authorized treating physician paid
17 for by the defendants, and he opined most
18 probably and to reasonable medical certainty in
19 his deposition testimony that the claimant's
20 altered or antalgic gait as a result of his
21 total knee replacement that Dr. Sanchez
22 performed resulted in either -- either caused
23 or aggravated the claimant's hip and back pain,
24 and the only medical opinion in the record
25 about whether the antalgic gait caused or



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1 aggravated hip and back pain is from
2 Dr. Anthony Sanchez, the authorized treating
3 physician. There is no other expert opinion.
4 And if we look at the Hamilton v. Martin case
5 that I cited in my brief, the commission does
6 weigh varying medical opinions to determine
7 which has the most weight, but if there is only
8 one medical opinion, then, obviously, that is
9 weight to be put on the claimant's side of the
10 scale. Now, essentially, what we have in this
11 case is, in addition to Dr. Sanchez's
12 testimony, we have testimony from the claimant
13 that his hip and back complaints increased in
14 January of 2013, and Dr. Sanchez's notes
15 reflect that. The corollary factual
16 circumstance for those medical records are
17 basically at The Timkin Plant where the
18 claimant worked. He was a repairman. His job
19 area was basically in the center of a 16 acre
20 facility, and there were, at one point, two
21 golf carts that people could use to drive from
22 one location of the facility to another, and
23 around January of 2013, the plant got rid of
24 one of those three golf carts, and the claimant
25 was required to walk to places around the



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(803) 252-3445 / (800) 822-0896

1 facility, and this is uncontradicted, and the
2 claimant's testimony is corroborated by that of
3 a Mr. Surratt who was his supervisor there.
4 So, he was required to walk more places on the
5 facility, and his complaints got worse over
6 time and around January of 2013. So, we have
7 uncontradicted testimony from the claimant and
8 from the claimant and from Dr. Sanchez that his
9 problems got worse around January of 2013, and
10 it corresponds to the time when the cart -- the
11 third cart that he was allowed the use
12 disappeared. Now, the defense's case is based
13 upon what the single commissioner found. She
14 said that the claimant had abandoned his
15 antalgic gait, because he testified that he
16 twisted his back at the time of the accident,
17 and did testify to that, and his back did hurt
18 then, but it resolved to some extent, and it
19 really only got worse about three years after
20 the accident as he had to walk more on these
21 concrete floors, and what his testimony at the
22 hearing was, that he had to walk on concrete
23 floors and that made his back worse. The
24 commissioner said that he didn't say he had an
25 antalgic gait that caused the injury, but the



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1 testimony was that he walked on concrete
2 floors, and from a factual perspective, that 64
3 year old mechanic testified that walking on
4 concrete floors caused his back injury, and
5 it's not that surprising that a 64 year old
6 with a high school education doesn't use the
7 phrase "antalgic gait" to describe how he got
8 hurt. He just said that walking on the
9 concrete floors caused his injury. So,
10 basically, we have a single commissioner ruling
11 that is based upon either conjecture, and that
12 is, what she's done is on one side of the
13 scale, and we have Dr. Sanchez and the
14 claimant's statements that his -- that walking
15 on the concrete floors and an antalgic gait,
16 whichever you call it, caused or aggravated
17 injuries to his hip and back, and on the other
18 side of the scales, what she gives the most
19 weight to are records that occurred around
20 March of 2013 when a family physician -- and
21 actually, one of them is actually a
22 cardiologist record. She calls it a family
23 physician record, but he's having heart
24 problems, and he didn't complain of back and
25 hip problems. Of course, that's no surprise if



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1 you think you're having a heart attack. You're
2 not going to be that concerned about that pain
3 in your hip and back. But at any rate, it's
4 based upon either -- it's either pure
5 speculation that those medical records would
6 have contained hip and back complaints, or it's
7 based upon an inference drawn against the
8 claimant. It has to be one of those two
9 things. There is no alternative. The
10 inference must be that, if he had hip and back
11 complaints, they would be reflected in those
12 records. That is not a demonstrable fact.
13 That is an inference, and that is an inference
14 that is drawn against the claimant. And what
15 we really have is the evidence of Dr. Sanchez
16 and the claimant's testimony on one side of the
17 scale, and we have literally nothing on the
18 other side of the scale, and the single
19 commissioner has determined that the empty side
20 of the scale is heavier than that side of scale
21 that has something in it. Now, under the
22 liberal and munificent purposes of the act,
23 that can never be a direct decision. Those
24 inferences must be drawn in favor of the
25 claimant. Therefore, the inference must be



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1 drawn that, at best -- the best case scenario
2 for the defendants would be that those records
3 cited in the order are negated, and the only
4 evidence is the testimony of Dr. Sanchez and
5 the claimant, which means that he did have hip
6 and back injuries that were aggravated at least
7 as a result of this accepted knee injury. So,
8 what we have, then, if the claimant has
9 injuries to two body parts, it's clearly a
10 42-9-10 total disability case. There's no
11 evidence anywhere in the record that he had
12 anything other than a total disruption of
13 earning capacity totally as a result of a knee
14 injury. Of course, under South Carolina Law,
15 if he doesn't have an affected body part, he's
16 not totally disabled under 42-9-10, but he does
17 have a total loss of -- total disruption of
18 earning capacity solely based on the knee
19 injury, and if he's got that second body part
20 injury, there's no conclusion other than
21 42-9-10 total disability. So, the other
22 position of the defendants is, basically, that
23 the positions of the claimant are contradictory
24 because we said he's not at MMI, but under
25 42-9-10, if he has a second body part injury,



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1 he is fully disabled, and Dr. Sanchez went back
2 and actually rated his hip after Dr. Sanchez's
3 deposition. Now, at the very least, he's is
4 42-9-10, and he's entitled Dodge Medical Care
5 for his hip and back condition.

6 **COMMISSIONER JAMES:** Was the issue -- if these other
7 body parts are added, was that really before
8 the Commissioner?

9 **MR. ROLLINS:** It was.

10 **COMMISSIONER JAMES:** Well, it seems to me from the
11 reading of the record that I was looking at, if
12 the other body parts were added -- even the
13 doctors testified -- Dr. Sanchez testified in
14 his deposition that he wouldn't be at MMI. So,
15 it seems like everybody was continuing with the
16 hearing on the preface of either he's at MMI
17 for the leg and he was to receive a rating
18 under 42-9-30, or there were additional body
19 members that needed to be addressed and he was
20 not at MMI. So, your relief you're seeking
21 today, it's my understanding, as part of that,
22 is you wish for him to be deemed at permanent
23 and total -- and the reading of the record
24 looks like everybody was going on the premise
25 that it was going to be one or the other.



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1 MR. ROLLINS: That is a little bit confusing in the
2 record, and that, I think, is because in
3 Dr. Sanchez's deposition testimony, he said the
4 claimant is not at MMI, and then he supplied a
5 rating to the hip after his deposition, which
6 would indicate MMI. Even if ---

7 COMMISSIONER JAMES: Now, I'm saying -- when I say a
8 record, I'm not just talking about Dr. Sanchez.
9 I'm also talking about the transcript. I
10 think, at one point, there was an objection,
11 and Commissioner Barden said, "Here's what
12 we're here for", is what her understanding was.
13 So, it looked like, when y'all were going
14 through this, that everybody had the
15 understanding that, if the additional body
16 parts were added, that there was not going to
17 be a finding in regards to permanency and MMI,
18 that they would have to go back for evaluation
19 and treatment.

20 MR. ROLLINS: If I could answer, that -- there -- I
21 think it was a little bit confusing in the
22 transcript, but if that is the case, and we are
23 talking about a case that is not at MMI, if
24 these other body parts are added, I think the
25 order would need to be that these body parts



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1 are added, and I suppose he would need to be
2 ordered to get medical treatment for those body
3 parts and get an official release note, but I
4 think that's really a technicality, if he has
5 the other body part, there's no conclusion
6 other than 42-9-10 disability. And our
7 position is basically that the defendant should
8 not be allowed to retry their case because they
9 did not present a vocational report, and they
10 did not submit a second opinion, and this case
11 should just be remanded to order the additional
12 medical treatment, but then, there's really on
13 a 42-9-10 conclusion possible from the
14 evidence. If there are no other questions, I
15 think that's the claimant's position.

16 **COMMISSIONER TAYLOR:** Thank you. Mr. Lewis.

17 **MR. LEWIS:** Good morning, may it please the
18 Commissioners. Of course, I'm South Lewis, and
19 I'm hear here on behalf of Timkin. And
20 starting out, Commissioner James, you made a
21 point about the scope of the hearing. It's
22 absolutely true that the only issue for the
23 hearing that is stipulated by the parties on
24 the record was compensability of the back and
25 the hip, and it was agreed, and you can look in



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1 the transcript, Pages 5 through 7, that if the
2 back and the hip were compensable, he's not at
3 MMI. So, permanency is premature. If the back
4 and hip is not compensable, then it was
5 appropriate for a permanent partial disability
6 award. So, it's totally improper to ask now to
7 get a relief for a permanent disability award
8 under the theory that we'd be trying to
9 re-litigate the case. That wasn't an issue
10 that was before the commission.

11 **COMMISSIONER JAMES:** Well, I've read the pages that
12 you're referring to. That was part of my
13 reference earlier.

14 **MR. LEWIS:** Okay. And you also pointed out, when we
15 tried to get into the issue about his
16 retirement, there was even an objection from
17 claimant's counsel saying, "Hey, we're limited
18 in our facts here and what we're going into",
19 so that clearly wasn't before the commission.
20 Now, with respect to the back and the hip, I
21 certainly don't agree with the claimant
22 counsel's contention that there were unrefuted
23 facts in the record. I think if there were
24 unrefuted facts, the hearing commissioner would
25 have found those unrefuted facts to be the



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1 case, and we wouldn't be here today. The
2 claimant has alleged that he injured his back
3 and/or his hip as a result of this accident.
4 Now, what's important is Dr. Sanchez saw the
5 claimant and treated him up until August 22nd
6 of 2012 at MMI. There was never one mention of
7 any back or hip problems in Dr. Sanchez's
8 records up until the date of MMI. In fact, the
9 first mention of any back or hip problems is in
10 January of 2013, which is some two-and-a-half,
11 almost pushing three years, after the work
12 injury. Now, on the record, the claimant's
13 counsel took the position that he had an
14 altered gait, that the claimant had an altered
15 gait, and this is what resulted in his back and
16 hip pain, and the claimant will take the
17 position that, you know, he's an uneducated
18 man, and he doesn't know the word "altered",
19 but he was asked specifically in the record,
20 "Are your back and hip problems from any kind
21 of limping or walking you did?" "No. I hurt
22 it on the day of the injury." Commissioner
23 Barden even asked him that, "When did you hurt
24 your back and your hip?" "I hurt it on the day
25 of the injury". So, they've actually --



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1 they've taken three different theories on the
2 back and the hip. The first one is an altered
3 gait, and secondly, the claimant has indicated
4 that he hurt it on the date of the injury.
5 Now, the mechanism of this injury is he was
6 stepping off of something, and he twisted his
7 right knee. So, this isn't a falling type
8 injury. This is purely a knee twisting injury,
9 and that's in the records from the get-go. And
10 then, finally, his last theory was, "Well, I
11 got it when I went back to work walking on
12 concrete floors". And I'll address this. The
13 claimant was a lead maintenance associate. He
14 was not a repairman. He assigned jobs out. He
15 sat at a computer. It did require him to go
16 out in the plant some, but their department had
17 golf carts. I think to kind of take the eye
18 off the ball, there was this big deal laid out
19 of, "Well, the golf cart number was reduced
20 from three to two". Well, the number of people
21 in the department had been reduced. The leases
22 on the golf carts had run out. That's kind of
23 a red herring. There was always a golf cart
24 right outside Mr. Osment's office, and that was
25 testified to by Mr. Osment and Mr. Surratt.



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1 And Mr. Surratt testified that Mr. Osment, the
2 claimant's job, he was put on some restrictions
3 of no walking over a hundred yards, but he was
4 able to do his regular duty job with those
5 restrictions. He simply continued working. If
6 he needed to walk over a hundred yards, he took
7 a golf cart.

8 **COMMISSIONER MCCASKILL:** And didn't he tell him
9 that, if a golf cart wasn't available, to wait
10 until one was?

11 **MR. LEWIS:** Absolutely, and that's what Mr. Surratt
12 testified to. And Commissioner Barden, as you
13 know, as the Hearing Commissioner, is in the
14 best position to make credibility findings, and
15 Mr. Surratt was very forthright. He really had
16 no dog in this fight. He said, "Look, we knew
17 what his restrictions were, he was a valued
18 employee, he was close to retirement, and we
19 wanted to keep him working, and so we told him,
20 'in the event there's not a golf cart
21 available, you wait until one gets back'". And
22 Mr. Surratt testified there might have been one
23 or two times that the claimant ever brought up
24 to him that he needed a golf cart and didn't
25 have one. So, I mean, there's no question but



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1 that Timkin bent over backwards and took care
2 of Mr. Osment, and the inference that -- the
3 inference from the claimant that they just left
4 this guy out wandering around the plant walking
5 a hundred yards at a time is simply absurd, and
6 it's not supported by the record. Now, also,
7 one of the issues we've heard from the claimant
8 today is, when Dr. Sanchez gave an opinion
9 about causation, and that's unrefuted. Well,
10 that's not true. Dr. Sanchez initially
11 completed a questionnaire, but I went and took
12 his deposition. That questionnaire opinion was
13 based on either misinformation provided by the
14 claimant or non-factual assumptions that
15 Dr. Sanchez made. For example, Dr. Sanchez
16 testified that when he did the questionnaire,
17 he believed the claimant had never had back
18 problems before. He had. He had had back
19 problems months before the injury in 2008 and
20 2009. Dr. Sanchez testified that he did not
21 know that claimant already had an altered gait.
22 I showed some records to Dr. Sanchez, and this
23 is in the order, and low and behold, Mr. Osment
24 already had an -- it's called an arthritic
25 gait, which Dr. Sanchez says is an altered



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1 gait, a limp, prior to this work injury, and he
2 testified that his back problems, to the extent
3 that they resulted all from an altered gait
4 certainly could be from the altered gait that
5 he had before the work injury. And
6 Dr. Sanchez, it's important that -- I think
7 it's real crucial that Dr. Sanchez did not know
8 about the claimant's prior back problems when
9 he filled out the causation questionnaire. In
10 fact, the claimant submitted a history form and
11 didn't report that he had any prior back
12 problems, and Dr. Sanchez, of course, treated
13 the claimant up until January of '13 when the
14 first mention of back problems were made, and
15 I asked Dr. Sanchez, "Had he mentioned back and
16 hip problems during the course of your
17 treatment for his knee, would you have noted
18 those", and he said, "Yes". So, you know, the
19 idea that this is just up uncontroverted
20 evidence from Dr. Sanchez that has nothing on
21 the opposite side is just not correct.
22 Commissioner Barden -- this is very extensive
23 record. There were multiple depositions
24 submitted, there were multiple witnesses that
25 testified with the claimant, and there were



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1 deposition transcripts submitted, and she did a
2 very thorough review of those records. So, it
3 certainly wasn't a situation where she just
4 discounted the medical opinion and said, "Well,
5 I'm going to go with nothing over on this
6 side". That doesn't really make any sense.
7 And finally, you know, one of the things the
8 claimant has appealed about is the TTD award.
9 Well, if, as the commissioner found, the
10 claimant was at maximum medical improvement as
11 to the knee in August of 2012, obviously, no
12 TTD would be due thereafter when the claimant
13 left work. So, again, I think the evidence is
14 -- it's a thick record, it's a complex record,
15 but I think the evidence is very much in
16 support of the commissioner's decision. She
17 reviewed every record in detail. She saw the
18 witnesses. She saw Mr. Osmont's testimony.
19 There were portions of it she certainly did not
20 find to be very believable, and I think that
21 the weight of the evidence is certainly on the
22 hearing commissioner's -- in the hearing
23 commissioner's favor in that decision. I'll
24 answer any questions you have. I know it's
25 kind of a complex and deep record.



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1 COMMISSIONER TAYLOR: No questions.

2 MR. LEWIS: Thank you very much.

3 COMMISSIONER TAYLOR: Mr. Rollins, you have three
4 minutes for rebuttal.

5 MR. ROLLINS: Briefly, Your Honors, the MMI question
6 -- MMI is a factual determination for the
7 commission, so, of course, it's within the
8 discretion of this commission. Based on the
9 subsequent rating of Dr. Sanchez gave to find
10 MMI -- of course, if it's the commission's
11 finding that the claimant is not at MMI, then
12 he would be entitled to TTD and medical
13 treatment for his hip and back. Now, as far as
14 the argument that there was no mention of hip
15 and back pain until MMI and Sanchez's records,
16 and that there are inconsistencies, it's very
17 clear in the record -- and this is Page 65.
18 The commissioner asked the claimant -- she
19 said, "It bothered you on the date of the
20 accident, but it eased off", and he answered,
21 "It did", and then she said, "Not from your
22 limp or not from your knee, but from walking on
23 the cement", and he said "From walking on it
24 and the pain that would run up into my back and
25 my hip and my groin". So, he's not rejecting



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1 any antalgic gait theory. It's just a very --
2 actually, it's a compound question on Lines 14
3 and 15 that she asked -- she asked both, "Is it
4 from the gait, or is it from walking on
5 concrete", and he just says again, "It hurt
6 from walking". So, that's a very -- you know,
7 that's a very ambiguous section of the record
8 on which to base an entire denial of the claim.
9 And Mr. Lewis is correct that the commission is
10 correct that the commissioner is in a position
11 to judge credibility. She found Mr. Surratt
12 very credible, and to the extent that that
13 matters, on Page 83 of the record, Mr. Surratt
14 says -- when he was asked if he complained
15 about not having a golf cart, quote -- Line 16
16 of Page 83, he says, "Sometimes there's not a
17 golf cart there". He needed to use a golf
18 cart, but there was not one there. So, Mr.
19 Surratt said he needed a golf cart. And he did
20 not have one. And Dr. Sanchez did not waffle
21 on his opinion. Mr. Lewis had the opportunity
22 to confront him with his records about a
23 previous antalgic -- or a arthritic gait, I
24 think is what Sanchez called it. He did
25 confront him with it, and Sanchez still said,



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1 "This accident caused or aggravated his
2 condition", and Dr. Sanchez more than anybody,
3 who gave him a 50 percent rating to his knee,
4 knows what the consequence of that knee
5 procedure and the extent to which it didn't
6 work and what that would cause in the claimant,
7 and Dr. Sanchez as a medical expert is the one
8 who best knows what that 50 percent impairment
9 rating he gave to the knee caused as far as his
10 hip and back would be concerned. So, at the
11 very least, a 50 percent rating to the knee is
12 not sufficient to account for a total loss of
13 earning capacity that the claimant has
14 sustained as a result of this injury. I don't
15 have anything else unless y'all have got
16 questions.

17 COMMISSIONER TAYLOR: All right. That concludes
18 this matter. Thank you.

19 (Whereupon, the hearing concluded at 11:12 a.m.)
20
21
22
23
24
25



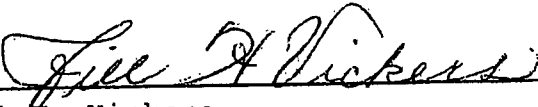
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CERTIFICATE

This is to certify that the within hearing consisting of twenty-two (22) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 14, 2015.


Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1008356

 COPY

EMPLOYEE/CLAIMANT: JAMES OSMENT

EMPLOYER: THE TIMKEN COMPANY

CARRIER: PHOENIX INSURANCE COMPANY.

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 26TH DAY
OF SEPTEMBER, 2014, COMMENCING AT THE HOUR OF 2:18
P.M., IN SPARTANBURG, SOUTH CAROLINA, BEFORE THE
HONORABLE SUSAN S. BARDEN, ATTENDED BY COUNSEL AS
FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
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ROEBUCK, SC 29376
864-921-8743

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ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MR. RICK POSTON

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

5 * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS SEPTEMBER 26TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1008356. THIS IS THE CASE OF THE CLAIMANT,
10 MR. JAMES OSMENT, WHO IS PRESENT TODAY AND
11 REPRESENTED BY ATTORNEY JOHN HAWKINS; VERSUS THE
12 EMPLOYER, TIMKEN COMPANY, AND ITS CARRIER, PHOENIX,
13 BOTH OF WHICH ARE REPRESENTED BY ATTORNEY SOUTH
14 LEWIS. THE PURPOSE OF TODAY'S HEARING IS TO
15 DETERMINE ISSUES RAISED IN FORMS 50 AND 51. THE
16 PARTIES AGREE AND STIPULATE THAT MR. OSMENT'S
17 AVERAGE WEEKLY WAGE IS \$1,079.46, YIELDING A
18 COMPENSATION RATE WHICH IS THE MAXIMUM FOR 2010, OR
19 \$689.71. THE DATE OF THIS ADMITTED ACCIDENT -- AND
20 WHEN I SAY ADMITTED, THAT IS TO THE RIGHT KNEE ONLY
21 -- WAS MAY 20TH, 2010. ARE THERE ANY OBJECTIONS TO
22 APAs, JURISDICTION, VENUE, OR ANY OTHER ITEMS?

23 BY MR. HAWKINS:

24 NO.

25 BY MR. LEWIS:

1 NONE FROM THE DEFENDANTS.

2 BY THE COMMISSIONER:

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

7 PRIOR TO GOING ON THE RECORD, WE HELD A
8 PREHEARING CONFERENCE. IT'S THE POSITION OF THE
9 CLAIMANT THAT NOT ONLY DID HE INJURE HIS KNEE IN
10 THIS WORK-RELATED ACCIDENT ON MAY 20TH, 2010, THAT
11 BECAUSE OF THE ANTALGIC GAIT THAT HE HAS SUSTAINED
12 OR EXPERIENCED BECAUSE OF HIS RIGHT KNEE INJURY AND
13 RESULTANT TOTAL KNEE REPLACEMENT, HIS RIGHT HIP AND
14 HIS BACK BECAME IMPLICATED AND COMPROMISED AND
15 INJURED THROUGH HIS ALTERED GAIT, ANTALGIC GAIT.
16 THE CLAIMANT WOULD CONCEDE THAT HE HAD SOME PRIOR
17 PROBLEMS OR PRIOR -- MAYBE SOME PATHOLOGY THAT WAS
18 ASYMPTOMATIC. I DON'T KNOW. THAT'S GOING TO BE
19 EXPLORED THROUGH THE TESTIMONY. BUT IN ANY EVENT,
20 THE CLAIMANT WOULD CONCEDE THAT ANY PRIOR PROBLEM
21 WITH REGARD TO HIS RIGHT KNEE AND BACK WERE
22 AGGRAVATED AND EXACERBATED BY HIS ANTALGIC GAIT FROM
23 THE ADMITTED RIGHT KNEE INJURY. THE CLAIMANT SEEKS
24 TEMPORARY TOTAL DISABILITY BENEFITS FROM SEPTEMBER
25 9TH, 2013, TO THE PRESENT AND CONTINUING. THE

1 CLAIMANT WOULD CONTEND THAT DR. SANCHEZ WROTE
2 CLAIMANT OUT OF WORK AND LIMITED HIM TO -- OR
3 LIMITED HIM TO SEDENTARY DUTY, AND NO JOB OFFER WAS
4 ACTUALLY MADE TO ACCOMMODATE HIM.

5 THE CLAIMANT'S POSITION IS THAT IF EITHER THE
6 BACK OR BOTH, WITH REGARD TO THE RIGHT HIP AND THE
7 BACK, IF EITHER ONE OF THOSE IS FOUND COMPENSABLE OR
8 BOTH ARE FOUND COMPENSABLE, THEN THE CLAIMANT HAS
9 NOT REACHED MAXIMUM MEDICAL IMPROVEMENT BECAUSE DR.
10 SANCHEZ RECOMMENDS A HIP INJECTION WITH FLUOROSCOPY
11 AND ALSO AN MRI OF THE BACK TO DETERMINE WHAT, IF
12 ANY, OTHER TREATMENT IS NECESSARY. I BELIEVE THAT
13 THE AUTHORIZED TREATING PHYSICIAN MAY HAVE OFFERED
14 SOME RATINGS ALTERNATIVELY WITH REGARD TO THESE BODY
15 PARTS, BUT BECAUSE DIAGNOSTIC TESTS HAVE BEEN
16 RECOMMENDED, THE CLAIMANT WOULD NOT BE AT M.M.I. IF
17 THE CLAIMANT IS AT M.M.I., WHICH WOULD MEAN THIS IS
18 A RIGHT KNEE ONLY CASE, HIS POSITION IS HE HAS
19 SIGNIFICANT PERMANENT PARTIAL DISABILITY WITH REGARD
20 TO HIS RIGHT KNEE AND THAT AN IMPAIRMENT RATING IS
21 JUST THAT, A MERE IMPAIRMENT RATING AND ONLY A
22 STARTING POINT IN DETERMINING PERMANENT PARTIAL
23 DISABILITY AND IN NO WAY A REFLECTIVE OR ACCURATE
24 INDICATOR OF THE CLAIMANT'S RESIDUAL CONDITION. BUT
25 THE CLAIMANT WOULD POINT TO MY ATTENTION THE FACT

1 THAT AN AUTHORIZED TREATING PHYSICIAN, DR. SANCHEZ,
2 DOES, IN FACT, LINK THE BACK AND THE RIGHT HIP TO
3 THE CLAIMANT'S ANTALGIC GAIT FROM THE ADMITTED RIGHT
4 KNEE INJURY. THE CLAIMANT WOULD CONTEND THAT
5 ALTHOUGH, PERHAPS, DR. SANCHEZ AT THE TIME HE
6 COMPLETED A WRITTEN QUESTIONNAIRE DID NOT HAVE ALL
7 THE FACTS, WHEN THEY WERE PRESENTED TO HIM -- OR
8 SOME ADDITIONAL FACTS THAT PERHAPS OF WHICH HE WAS
9 UNAWARE, BY THE TIME HE HAD HIS DEPOSITION ANY AND
10 ALL ADDITIONAL FACTS WERE PRESENTED TO HIM AND HE
11 DOES NOT RETREAT FROM HIS POSITION. SO, THEREFORE,
12 THE CLAIMANT WOULD CONTEND THAT HE READILY MEETS HIS
13 BURDEN, THAT HE WAS A 37-YEAR EMPLOYEE, NON-
14 MALINGERER, HAD AN OUTSTANDING WORK ETHIC, CONTINUED
15 TO WORK FOR THE EMPLOYER UNTIL HE WAS TAKEN OUT OF
16 WORK BY THE AUTHORIZED TREATING PHYSICIAN. THE
17 CLAIMANT DOES REQUEST HIS AWARD WITH ALLOCATION OR
18 JAMES V. ANNE'S, UTICA-MOHAWK, HOWEVER YOU WANT TO
19 PHRASE IT, LANGUAGE IN THE ORDER AND A LUMP SUM.

20 I WANT TO GO OFF THE RECORD ONE SECOND.

21 (OFF THE RECORD)

22 BY THE COMMISSIONER:

23 ALL RIGHT. WE'RE BACK ON THE RECORD. THE
24 DEFENDANTS HAVE NO OBJECTION TO THE CLAIMANT'S AWARD
25 BEING MADE IN LUMP SUM IF HE IS AT M.M.I.

1 CONVERSELY, IT IS THE POSITION OF THE
2 DEFENDANTS THAT THIS IS A RIGHT KNEE INJURY ONLY,
3 THAT THIS IS A 42-9-30, ITEM 16, CASE, THAT THE
4 CLAIMANT -- THERE HAVE BEEN NO COMPLAINTS OF RIGHT
5 HIP OR BACK UP THROUGH THE DATE OF M.M.I., AND, IN
6 FACT, THE FIRST BACK COMPLAINT, I BELIEVE, APPEARED
7 IN JANUARY OF 2013, AND THE HIP -- AND I MAY HAVE
8 THIS BACKWARDS, BUT ONE BEGAN IN JANUARY OF 2013 AND
9 ONE BEGAN IN JANUARY OF 2014. THE DEFENDANTS WOULD
10 CONTEND THAT THE CLAIMANT CANNOT MEET HIS BURDEN OF
11 PROOF WITH REGARD TO THESE ADDITIONAL INJURIES.
12 THAT DR. SANCHEZ DID NOT HAVE ALL THE FACTS WHEN HE
13 ISSUED HIS WRITTEN OPINION AND THAT HE DOES, IN
14 FACT, RETREAT FROM HIS INITIAL OPINION BASED UPON
15 FACTS SUPPLIED OR PROVIDED TO HIM AT THAT
16 DEPOSITION. IN ANY EVENT, THE ORIGINAL CAUSATION
17 STATEMENT IS SIGNIFICANTLY DILUTED SUCH THAT -- AND
18 DIMINISHED SUCH THAT IT CANNOT BE RELIED UPON, AND
19 THAT DR. SANCHEZ EVEN ADMITS THAT THERE WERE CERTAIN
20 FACTS OF WHICH HE WAS UNAWARE. SO -- AND, AGAIN,
21 THIS IS -- THE ATTORNEYS HAVE DONE A FABULOUS JOB IN
22 EXPLAINING THEIR RESPECTIVE POSITIONS TO ME AT THE
23 PREHEARING CONFERENCE, AND THEY HAVE CITED NUMEROUS
24 RECORDS, BUT IN THE INTEREST OF TIME THIS IS AN
25 ABBREVIATED SUMMARY.

1 AS FAR AS T.T.D. IS CONCERNED, THE DEFENDANTS
2 WOULD CONTEND THAT THE CLAIMANT IS NOT ENTITLED TO
3 ANY; THAT HE WOULD -- HE REACHED MAXIMUM MEDICAL
4 IMPROVEMENT PER THE AUTHORIZED TREATING PHYSICIAN,
5 DR. SANCHEZ, ON AUGUST 22ND, 2010; THAT THE CLAIMANT
6 CONTINUED TO WORK, I BELIEVE, FOR APPROXIMATELY A
7 YEAR AFTER THAT; THAT ANY PROBLEM WITH WORKING WOULD
8 GO TO HIS LOSS OF USE OR RESIDUAL PERMANENT PARTIAL
9 DISABILITY AWARD. THE -- AND I WANT TO REVERT AS
10 FAR AS DR. SANCHEZ'S OPINION. THE DEFENDANTS WOULD
11 CONTEND THAT DR. SANCHEZ WAS UNAWARE ABOUT THE
12 CLAIMANT'S -- THE EXTENT OF THE CLAIMANT'S PRIOR
13 PROBLEMS. AS FAR AS THE KNEE IS CONCERNED, THE
14 DEFENDANTS WOULD CONTEND THAT THERE IS NO PERMANENT
15 PARTIAL DISABILITY BEYOND THE 50 PERCENT IMPAIRMENT
16 RATING, AND IF THERE IS IT WOULD BE STRICTLY DE
17 MINIMIS. THE DEFENDANTS BELIEVE THAT THERE IS NO
18 PERMANENT PARTIAL DISABILITY BEYOND THAT IMPAIRMENT
19 RATING.

20 AS TO FUTURE MEDICALS, BOTH PARTIES AGREE THAT
21 THE CLAIMANT IS ENTITLED TO LIFETIME HARDWARE
22 MAINTENANCE AND ANY CORRESPONDING OFFICE VISITS,
23 YEARLY X-RAYS, WHAT HAVE YOU. THE DEFENDANTS
24 CONCEDE THAT ANYTHING THAT DR. SANCHEZ -- THE
25 CLAIMANT REQUIRES WITH REGARD TO THE KNEE WOULD BE A

1 FUTURE MEDICAL TO WHICH THE CLAIMANT WOULD BE
2 ENTITLED. BUT THE CLAIMANT'S POSITION IS THAT HE
3 HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT, AND, OF
4 COURSE, THE DEFENDANTS' POSITION IS THAT HE, IN
5 FACT, HAS AND THAT THIS IS A RIGHT KNEE ONLY CASE.

6 ALL RIGHT, GENTLEMEN, YOU ALL SAID IT A LOT
7 BETTER THAN I DID. IF THERE'S ANYTHING THAT I NEED
8 TO CORRECT OR THAT YOU WOULD LIKE TO CORRECT OR
9 CLARIFY, OR IF YOU'RE SATISFIED WITH THAT SUMMARY,
10 ALTERNATIVELY, THAT'S GREAT, TOO. MR. HAWKINS, YOU
11 REPRESENT THE MOVING PARTY; SIR, SO IF YOU'RE
12 SATISFIED WITH THAT, WE'LL LEAVE IT AT -- YOU ARE?

13 BY MR. HAWKINS:

14 YES.

15 BY THE COMMISSIONER:

16 MR. LEWIS?

17 BY MR. LEWIS:

18 SATISFIED.

19 BY THE COMMISSIONER:

20 ALL RIGHT. GREAT. ALL RIGHT, MR. HAWKINS,
21 YOUR FIRST WITNESS IS MR. OSMENT, CORRECT?

22 BY MR. HAWKINS:

23 YES. MR. TAYLOR IS GOING TO DIRECT.

24 BY MR. TAYLOR:

25 COMMISSIONER, FOR THE RECORD ---

1 BY THE COMMISSIONER:

2 OH, MR. TAYLOR, I APOLOGIZE.

3 BY MR. TAYLOR:

4 FOR THE RECORD, MY NAME IS RANDY TAYLOR. I'M

5 ---

6 BY THE COMMISSIONER:

7 MR. TAYLOR.

8 BY MR. TAYLOR:

9 I'M WORKING WITH JOHN ON THIS CASE, AND I'M ONE
10 OF MR. OSMENT'S ATTORNEYS.

11 BY THE COMMISSIONER:

12 WELL, TERRIFIC, AND I APOLOGIZE, SIR. I
13 CERTAINLY DIDN'T MEAN TO BE RUDE AND EXCLUDE YOU.

14 BY MR. TAYLOR:

15 IT'S A PLEASURE TO BE HERE BEFORE YOU.

16 BY THE COMMISSIONER:

17 WELL, I'M GLAD YOU'RE HERE, TOO. SO, MR.
18 TAYLOR IS GOING TO QUESTION MR. OSMENT. SO, MR.
19 OSMENT, IF YOU'LL RAISE YOUR RIGHT HAND, PLEASE.

20 * * * * *

21 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
22 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
23 MATTER HEREIN:

24 JAMES JUNIOR OSMENT

25 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS

FOLLOWS:

BY THE COMMISSIONER:

PLEASE STATE YOUR FULL NAME FOR THE RECORD.

BY THE WITNESS:

JAMES JUNIOR OSMENT.

BY THE COMMISSIONER:

ALL RIGHT. I'M GOING TO ASK YOU SOMETHING,
SIR, THAT'S A LITTLE BIT AWKWARD. THE QUESTIONS ARE
GOING TO BE COMING FROM OVER TO YOUR RIGHT. I'M
GOING TO ASK AS BEST YOU CAN THAT YOU DIRECT YOUR
RESPONSES TO ME, AND THAT'S WHY I HAD YOU TURN THAT
CHAIR THAT WAY, TO MAKE IT EASIER. JUST DO THE BEST
YOU CAN, ALL RIGHT? ALL RIGHT. MR. TAYLOR?

DIRECT EXAMINATION BY MR. TAYLOR:

Q. MR. OSMENT, WOULD YOU PLEASE STATE YOUR NAME FOR THE
RECORD.

A. JAMES JUNIOR OSMENT.

Q. AND WHAT IS YOUR DATE OF BIRTH?

A. NOVEMBER 13TH, 1949.

Q. AND HOW OLD ARE YOU PRESENTLY?

A. I'M 64.

Q. AND WHERE DO YOU LIVE?

A. I LIVE AT 205 FORTANBERRY ROAD, GAFFNEY, SOUTH
CAROLINA.

Q. AND HOW LONG HAVE YOU LIVED AT THAT ADDRESS?

1 A. I'VE LIVED AT THAT FOR ABOUT 44 YEARS.

2 Q. AND WHAT WAS THE HIGHEST GRADE YOU COMPLETED IN
3 SCHOOL?

4 A. I WENT THROUGH THE 12TH GRADE.

5 BY THE COMMISSIONER:

6 YOU GRADUATED?

7 BY THE WITNESS:

8 I GRADUATED IN ADULT EDUCATION AT GAFFNEY HIGH
9 SCHOOL.

10 BY THE COMMISSIONER:

11 SO YOU WENT TO THE 12TH GRADE BUT DIDN'T GET A
12 DIPLOMA RIGHT THEN, IS THAT RIGHT?

13 BY THE WITNESS:

14 I WENT OUT TO WORK WHEN I WAS IN THE TENTH
15 GRADE. THEN I WENT BACK TO ADULT SCHOOL, AND I GOT
16 A DIPLOMA THROUGH ADULT SCHOOL.

17 BY THE COMMISSIONER:

18 I'VE GOT YOU. THANK YOU.

19 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

20 Q. MR. OSMENT, DO YOU HAVE ANY EDUCATION BEYOND THE
21 HIGH SCHOOL LEVEL?

22 A. I TOOK A COURSE OUT AT TECHNICAL SCHOOL IN GAFFNEY
23 ON MASONRY.

24 Q. OKAY. DID YOU ---

25 BY THE COMMISSIONER:

1 ON WHAT?

2 BY THE WITNESS:

3 MASONRY.

4 BY THE COMMISSIONER:

5 OH, MASONRY.

6 BY THE WITNESS:

7 LAYING BRICK.

8 BY THE COMMISSIONER:

9 I'VE GOT YOU. OKAY.

10 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

11 Q. DID YOU GET A CERTIFICATE IN MASONRY, SIR?

12 A. NO, SIR; I DIDN'T.

13 Q. DO YOU HAVE ANY OTHER POST HIGH SCHOOL EDUCATION OR
14 TRAINING?

15 A. NO, SIR; I DON'T.

16 Q. DO YOU READ AND WRITE AND UNDERSTAND THE ENGLISH
17 LANGUAGE?

18 A. I DO.

19 Q. AND ARE YOU MARRIED?

20 A. I AM.

21 Q. AND WHAT IS YOUR WIFE'S NAME?

22 A. PEGGY ANN OSMENT.

23 Q. AND WHAT -- YOU MENTIONED THAT YOU LEFT HIGH SCHOOL
24 AT ABOUT AGE 15; IS THAT CORRECT?

25 A. IT IS.

1 Q. AND YOU STARTED WORKING. WOULD YOU TELL US, PLEASE,
2 WHERE YOU STARTED WORKING?

3 A. I STARTED WORKING FOR MILLIKEN COMPANY, GAFFNEY
4 MANUFACTURING, WHEN I WAS ABOUT 15 1/2.

5 BY THE COMMISSIONER:

6 AND WHAT DID YOU DO FOR MILLIKEN? I'M SORRY;
7 GO AHEAD. WHAT DID YOU DO FOR MILLIKEN?

8 BY THE WITNESS:

9 I WAS A DUFFER. I DUFFED IN THE SPINNING ROOM.

10 BY THE COMMISSIONER:

11 OKAY. ALL RIGHT.

12 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

13 Q. AND WHERE DID YOU GO TO WORK AFTER YOU LEFT
14 MILLIKEN, SIR?

15 A. I WENT TO WORK AT THE KOHLER COMPANY IN SPARTANBURG,
16 SOUTH CAROLINA.

17 Q. AND WHAT DID YOU DO THERE?

18 A. I WORKED IN THE CASTING DEPARTMENT.

19 BY THE COMMISSIONER:

20 AND TELL ME WHAT THAT INVOLVED.

21 BY THE WITNESS:

22 THAT'S WHERE THEY MAKE ---

23 BY THE COMMISSIONER:

24 CASTING LIKE TUBS AND STUFF?

25 BY THE WITNESS:

1 TUBS AND HOUSEHOLD FIXTURES FOR BATHROOMS AND
2 STUFF.

3 BY THE COMMISSIONER:

4 OKAY; ALL RIGHT.

5 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

6 Q. AND WHERE DID YOU GO AFTER KOHLER?

7 A. AFTER I LEFT KOHLER I WENT DOWN THE ROAD TO MILLIKEN
8 EXOPACK. THEY MADE STUFF FOR THE HOSPITALS AND
9 STUFF AND FOR THE DAIRIES TO PUT MILK AND STUFF AND
10 LIKE THAT ALL IN THEM. IT WAS A PACKAGING -- THEY
11 MADE PACKAGING FOR THE DAIRIES AND DIFFERENT DRUG
12 PEOPLE THAT THEY PUT MEDICINE, STUFF LIKE THAT IN.

13 BY THE COMMISSIONER:

14 SO PACKAGING AND DAIRIES AND DRUGS?

15 BY THE WITNESS:

16 YEAH.

17 BY THE COMMISSIONER:

18 OKAY..

19 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

20 Q. AND WHEN DID YOU LEAVE THAT JOB APPROXIMATELY?

21 A. I WORKED DOWN THERE PROBABLY FOR ABOUT A YEAR AND A
22 HALF OR A LITTLE BETTER.

23 Q. OKAY. AND WHERE DID YOU GO AFTER THAT JOB?

24 A. I WENT TO LIMESTONE MANUFACTURING COMPANY. IT'S A
25 LOWENSTEIN PLANT IN GAFFNEY.

1 Q. AND WHAT DID YOU DO AT THAT LOCATION?
2 A. I TRAINED DOFFERS.
3 Q. AND HOW LONG DID YOU WORK IN THAT OCCUPATION?
4 A. I TRAINED DOFFERS 'TIL I TRANSFERRED OUT IN THE SHOP
5 AT THE LIMESTONE PLANT.
6 Q. OKAY. AND SO YOU'VE GONE BACK TO DOFFING, WHICH IS
7 WHAT YOU STARTED OUT DOING WITH GAFFNEY
8 MANUFACTURING?
9 A. RIGHT; I WAS TRAINING DOFFERS.
10 Q. AND THEN YOU WENT INTO MAINTENANCE AT LIMESTONE
11 MANUFACTURING?
12 A. I DID.
13 Q. AND HOW LONG DID YOU STAY AT LIMESTONE
14 MANUFACTURING?
15 A. I STAYED OUT AT LIMESTONE MANUFACTURING 'TIL
16 NOVEMBER OF '76.
17 Q. OKAY. AND WHAT DID YOU DO IN NOVEMBER OF 1976?
18 A. I WENT TO WORK FOR THE TIMKEN COMPANY.
19 Q. AND WHAT DID YOU GO TO WORK DOING AT TIMKEN?
20 A. I WENT IN THE MAINTENANCE DEPARTMENT AT TIMKEN.
21 Q. AND WHAT WAS YOUR JOB TITLE?
22 A. I WAS A MAINTENANCE MECHANIC.
23 Q. AND DID YOU GET ANY JOB TRANSFER OR PROMOTIONS
24 WITHIN THE MAINTENANCE DEPARTMENT OVER THE YEARS?
25 A. I DID.

1 Q. AND TELL US, PLEASE, ABOUT THOSE PROMOTIONS.

2 A. I WAS AN L.M.A. I WAS PROMOTED TO THE L.M.A. IN THE
3 MAINTENANCE DEPARTMENT.

4 BY THE COMMISSIONER:

5 AND TELL ME WHAT THE L.M.A. IS.

6 BY THE WITNESS:

7 L.M.A. IS ASSISTANT TO THE SUPERVISORS. I WENT
8 THROUGH THE JOBS THAT WAS CALLED IN, PRIORITY THEM
9 OUT, AND I ASSIGNED JOBS. AND I WOULD ORDER PARTS
10 AND -- STEEL AND STUFF FOR DIFFERENT PEOPLE IN THE
11 PLANT.

12 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

13 Q. AND YOU REMAINED AT TIMKEN FOR QUITE SOME TIME, DID
14 YOU NOT?

15 A. I DID.

16 Q. TELL US ABOUT HOW LONG YOU WORKED THERE.

17 A. THIRTY-SEVEN YEARS AND ONE MONTH.

18 Q. AND ARE YOU CURRENTLY WORKING?

19 A. NO.

20 Q. AND WHAT WAS THE APPROXIMATE LAST DATE THAT YOU
21 WORKED?

22 A. SEPTEMBER OF LAST YEAR.

23 Q. OKAY. AND WHAT -- YOU SAY IN SEPTEMBER OF 2013,
24 CORRECT?

25 A. CORRECT.

1 Q. OKAY. ALL RIGHT. WOULD YOU DESCRIBE WHAT HAPPENED
2 TO YOU WHEN YOU WERE WORKING ON THE JOB AND YOU WERE
3 INJURED, WHICH IS THE REASON WE'RE HERE TODAY.
4 WOULD YOU TELL THE COMMISSIONER WHAT HAPPENED TO YOU
5 AND WHAT YOU WERE DOING,

6 A. WE WERE CHANGING A CHIP CAR OUT IN THE GREEN
7 DEPARTMENT, AND WE PUSHED OUT A FULL ONE AND PUSHED
8 IN AN EMPTY ONE. I WAS STANDING ON THE CAR TO PUT
9 THE BRAKES ON IT. WHEN I STEPPED OFF THE CAR ON THE
10 RAIL, IT HAD SHAVING -- METAL SHAVINGS ON IT. MY
11 RIGHT FOOT SLIPPED OUT AND FELL DOWN BETWEEN THE
12 CONCRETE AND THE THING AND TWISTED MY RIGHT KNEE.

13 Q. OKAY. DID YOU HAVE ANY OTHER BODY PARTS INJURED AT
14 THAT TIME?

15 A. RIGHT THEN THEY WAS FOCUSING ON MY KNEE ONLY.

16 BY THE COMMISSIONER:

17 WELL, WHAT DID YOU EXPERIENCE ON THE DATE OF
18 THE ACCIDENT; ANY OTHER BODY PARTS?

19 BY THE WITNESS:

20 THE DAY THAT I FELL, I TWISTED MY RIGHT KNEE,
21 AND I WAS HAVING SOME HIP AND BACK PROBLEMS, AND IN
22 MY GROIN.

23 BY THE COMMISSIONER:

24 OKAY. SO HIP, BACK, AND GROIN ON THE DATE OF
25 THE ACCIDENT OR ON THE NEXT FEW DAYS, OR WHEN DID IT

1 APPEAR?

2 BY THE WITNESS:

3 IT HAPPENED THAT DAY I FELL. IT HAPPENED THEN.

4 BY THE COMMISSIONER:

5 THAT DAY.

6 BY THE WITNESS:

7 YES.

8 BY THE COMMISSIONER:

9 DID IT EVER -- DID THEY EVER GO AWAY?

10 BY THE WITNESS:

11 THEY -- THEY EASED OFF SOME, BUT FAR AS GOING

12 ALL THE WAY AWAY, THEY DIDN'T.

13 BY THE COMMISSIONER:

14 OKAY. DID YOU HAVE ANY PRIOR BACK OR HIP

15 PROBLEMS BEFORE THIS ACCIDENT OCCURRED?

16 BY THE WITNESS:

17 I DID..

18 BY THE COMMISSIONER:

19 OKAY. ALL RIGHT; THANK YOU. GO AHEAD, MR.

20 TAYLOR.

21 BY MR. TAYLOR:

22 THANK YOU, COMMISSIONER.

23 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

24 Q. OKAY. MR. OSMENT, DID YOU REPORT THE INJURY TO YOUR
25 EMPLOYER?

- 1 A. I DID.
- 2 Q. OKAY. TELL US WHAT HAPPENED. HOW WERE YOU TREATED
3 AFTER THIS ACCIDENT HAPPENED, AND WHAT DID THE
4 EMPLOYER DO FOR YOU?
- 5 A. THEY WAS SOME BOYS OUT THERE WHERE I WAS AT. THEY
6 HELPED ME GET ON A GOLF CART AND TOOK ME TO THE
7 NURSE'S OFFICE. SHE LOOKED AT IT, AND THEN SHE HAD
8 ONE OF THE ASSOCIATES TO -- I WAS IN A WHEELCHAIR --
9 ROLL ME OUT TO THE CAR AND TAKE ME TO DR. MORGAN'S
10 OFFICE.
- 11 Q. OKAY. SO THE PLANT NURSE TOOK FIRST INFORMATION
12 ABOUT THIS ACCIDENT ---
- 13 A. SHE DID.
- 14 Q. --- ON BEHALF OF THE COMPANY?
- 15 A. SHE DID.
- 16 Q. OKAY. AND YOU SAW DR. MORGAN, AND HE'S LOCATED
17 WHERE?
- 18 A. HE'S LOCATED ON HYATT STREET IN GAFFNEY, SOUTH
19 CAROLINA.
- 20 Q. ALL RIGHT. AND WHAT DID DR. MORGAN DO FOR YOU?
- 21 A. DR. MORGAN, HE X-RAYED IT AND LOOKED AT IT AND GAVE
22 ME SOME PAIN PILLS AND SENT ME HOME.
- 23 Q. OKAY. AND DID YOU STAY OUT OF WORK FOR ANY PERIOD
24 OF TIME AT THIS POINT?
- 25 A. FOR THE REST OF THAT DAY AND THE NEXT DAY, AND I

1 WENT BACK TO WORK THE FIRST OF THE NEXT WEEK.

2 Q. OKAY. AND HOW DID THINGS GO FOR YOU?

3 A. MY KNEE WAS STILL SWOLE SOME AND HURTING SOME, BUT I
4 WAS ABLE TO MANAGE.

5 Q. HOW LONG WERE YOU ABLE TO WORK WHEN YOU WENT BACK AT
6 THIS JUNCTURE?

7 A. I WORKED 'TIL THAT KNEE GOT TO SWELLING AND HURTING
8 ON ME, AND THEN I WENT BACK TO THE NURSE AND TOLD
9 HER MY KNEE WAS GIVING ME A LOT OF TROUBLE. SHE
10 SENT ME BACK TO DR. MORGAN. DR. MORGAN SENT ME TO
11 DR. GRADY.

12 Q. ALL RIGHT. AND HE'S IN WHAT TOWN?

13 A. SPARTANBURG, SOUTH CAROLINA.

14 Q. OKAY. SO DR. GRADY -- AND HE IS IN WHAT AREA OF
15 MEDICAL PRACTICE?

16 A. HE'S AN ORTHOPEDIC SURGEON.

17 Q. ALL RIGHT. AND SO DR. GRADY TOOK OVER YOUR
18 TREATMENT. TELL US ABOUT THAT BRIEFLY, IF YOU WILL.

19 A. DR. GRADY X-RAYED IT. HE SAID I HAD ---

20 BY MR. LEWIS:

21 COMMISSIONER, I WOULD OBJECT TO HIM TESTIFYING
22 TO WHAT THE DOCTOR TOLD HIM.

23 BY THE COMMISSIONER:

24 SUSTAINED. AND LET ME JUST EXPLAIN THAT TO
25 YOU, BECAUSE HE'S GOING TO KEEP OBJECTING AND I'M

1 GOING TO HAVE TO KEEP SUSTAINING THE OBJECTION.
2 WHAT THAT MEANS IS THE DOCTOR IS NOT HERE FOR HIM TO
3 CROSS EXAMINE. SO YOU CAN'T SAY WHAT THE DOCTOR
4 SAID. WE'RE NOT PICKING ON YOU; WE'VE JUST GOT TO
5 KEEP THE RECORD -- GO AHEAD.

6 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

7 Q. AND JUST SAY -- MR. OSMENT, JUST SAY WHAT HE DID.

8 BY THE COMMISSIONER:

9 YOU CAN TELL US ANYTHING THAT YOU SAID TO THE
10 DOCTOR:

11 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

12 Q. SAY WHAT HE DID TO TREAT YOU BUT NOT WHAT HE TOLD
13 YOU.

14 BY THE COMMISSIONER:

15 WHAT HE TOLD YOU, RIGHT. OKAY.

16 WITNESS ANSWERS:

17 A. I TOLD HIM THE PROBLEM I HAD, HOW I GOT HURT, AND HE
18 X-RAYED IT AND ALL AND SAID I HAD TORE UP SOME
19 CARTILAGE AND STUFF IN THAT KNEE.

20 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

21 Q. OKAY. AND WHAT DID -- WHAT TREATMENT DID HE SUGGEST
22 AT THAT POINT?

23 A. THAT HE WOULD HAVE TO DO SOME ARTHROSCOPIC SURGERY.

24 Q. AND WAS THAT ARTHROSCOPIC SURGERY PERFORMED?

25 A. IT WAS.

1 BY THE COMMISSIONER:

2 AND WHO DID THAT; DR. GRADY?

3 BY THE WITNESS:

4 DR. GRADY.

5 BY THE COMMISSIONER:

6 OKAY.

7 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

8 Q. AND DO YOU RECALL ABOUT WHEN THAT WAS IN TIME?

9 A. THAT WAS PROBABLY IN 2011. I'M JUST GUESSING. I'M
10 NOT ---

11 Q. YOU DON'T KNOW?

12 A. ON ALL THE DATES, I'M NOT SURE.

13 Q. YOU MAY NOT REMEMBER. THAT'S ALL RIGHT.

14 BY THE COMMISSIONER:

15 THAT'S GOOD ENOUGH. I HAVE THE OPERATIVE
16 NOTES. THANK YOU, SIR.

17 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

18 Q. OKAY; ALL RIGHT. SO, DR. GRADY DID AN ARTHROSCOPIC
19 PROCEDURE. WERE YOU OUT OF WORK AT THIS POINT?

20 A. I WAS.

21 Q. FOR ABOUT HOW LONG?

22 A. SIX -- PROBABLY SIX TO EIGHT WEEKS.

23 Q. OKAY. AND DID YOU GO BACK TO FULL DUTY OR LIGHT
24 DUTY?

25 A. WHEN I WENT BACK TO WORK, I WAS ON LIGHT DUTY.

1 Q. OKAY. AND HOW LONG WERE YOU ABLE TO WORK AT THAT
2 POINT BEFORE YOU HAD ANY FURTHER PROBLEMS?

3 A. I WORKED -- I WORKED UP 'TIL I WENT BACK TO DR.
4 GRADY, AND DR. GRADY RE-EXAMINED IT AND HE SAID THAT
5 THE OPERATION ---

6 BY MR. LEWIS:

7 COMMISSIONER, I OBJECT.

8 BY THE COMMISSIONER:

9 SUSTAINED.

10 WITNESS RESUMES:

11 A. HE -- THE OPERATION ---

12 BY THE COMMISSIONER:

13 TELL ME HOW YOU FELT. DID YOU FEEL LIKE IT
14 DIDN'T ---

15 BY THE WITNESS:

16 (TESTIMONY STRICKEN FROM THE RECORD PER
17 COMMISSIONER BARDEN.)

18 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

19 Q. OKAY. SO YOU ---

20 BY THE COMMISSIONER:

21 WELL, YOU'RE -- YOU'VE GOT A RUNNING OBJECTION
22 TO WHAT DR. GRADY SAID. THAT'S STRICKEN FROM THE
23 RECORD. ALL RIGHT.

24 DIRECT EXAMINATION RESUME BY MR. TAYLOR:

25 Q. MR. OSMENT, PLEASE -- JUST WHAT -- WHAT DR. GRADY OR

1 ANY TREATING PHYSICIAN DID, NOT WHAT THEY SAID.

2 OKAY?

3 A. OKAY.

4 Q. THANK YOU, SIR.

5 BY THE COMMISSIONER:

6 I KNOW THAT'S HARD TO ---

7 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

8 Q. IT'S HARD TO DO. AND AT THIS POINT DID DR. GRADY
9 TURN YOU OVER TO ANOTHER DOCTOR, OR DID YOU GET A
10 SECOND OPINION?

11 A. AT THAT POINT DR. GRADY GAVE ME A PRESCRIPTION TO
12 PICK UP SOME MEDICINE AT THE DRUG STORE, AND HE GIVE
13 ME A SHOT IN THAT KNEE EVERY WEEK FOR FOUR WEEKS.

14 Q. AND HOW DID THAT WORK?

15 A. IT DIDN'T WORK.

16 Q. OKAY. AND WHAT WAS THE NEXT STEP IN YOUR TREATMENT?

17 A. THE NEXT STEP WAS I ASKED FOR A SECOND OPINION, AND
18 THEY SENT ME TO DR. SANCHEZ.

19 Q. ALL RIGHT. AND DR. SANCHEZ IS HERE IN SPARTANBURG.
20 AS WELL?

21 A. HE IS.

22 Q. ALL RIGHT. AND WHAT DID DR. SANCHEZ DO FOR YOU, AND
23 ABOUT WHEN DID YOU GO TO DR. SANCHEZ THE FIRST TIME?

24 A. IT WAS PROBABLY SOMETIME IN 2011, 2012, RIGHT IN
25 THERE.

1 Q. OKAY. AND WHAT DID DR. SANCHEZ DO FOR YOU?

2 A. DR. SANCHEZ X-RAYED IT, TOLD ME TO -- WHAT MY
3 OPTIONS ---

4 BY THE COMMISSIONER:

5 HE'S GOT AN OBJECTION TO ANYTHING THE DOCTOR
6 SAID. SO, LET'S CUT TO THE CHASE. DR. SANCHEZ DID
7 A TOTAL KNEE ON YOU?

8 BY THE WITNESS:

9 HE DID A TOTAL KNEE REPLACEMENT.

10 BY THE COMMISSIONER:

11 ALL RIGHT. LET'S MOVE ON.

12 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

13 Q. AND THAT WAS DONE WHEN, MR. OSMENT?

14 A. THAT WAS DONE IN --- I BELIEVE IT WAS OCTOBER.

15 BY THE COMMISSIONER:

16 DO YOU REMEMBER THE YEAR? IF YOU DON'T, THAT'S

17 OKAY.

18 BY THE WITNESS:

19 NOT RIGHT OFF, I DON'T.

20 BY THE COMMISSIONER:

21 WOULD THAT BE 2012 OR '13?

22 BY THE WITNESS:

23 YEAH, 2012.

24 BY MR. TAYLOR:

25 I THINK THAT MIGHT BE 2011, YOUR HONOR.

1 BY THE COMMISSIONER:

2 OH, WAS IT 2011? OKAY.

3 BY MR. TAYLOR:

4 I THINK IT WAS.

5 BY THE COMMISSIONER:

6 I HAVEN'T READ ANYTHING YET BECAUSE I JUST ---

7 BY THE WITNESS:

8 IT WAS IN OCTOBER.

9 BY MR. TAYLOR:

10 I THINK IT WAS OCTOBER 2011.

11 BY THE COMMISSIONER:

12 THANK YOU SO MUCH.

13 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

14 Q. ALL RIGHT. DR. SANCHEZ DID A TOTAL KNEE
15 REPLACEMENT. WERE YOU OUT OF WORK FOR A SIGNIFICANT
16 PERIOD OF TIME NOW FOR THIS KNEE REPLACEMENT?

17 A. I WAS OUT OF WORK SIX TO EIGHT WEEKS.

18 Q. OKAY. AND WHEN DO YOU THINK YOU WENT BACK TO WORK?

19 A. AFTER I GOT THROUGH MY THERAPY AND ALL. IT WAS, I'M
20 GONNA SAY, AFTER THE FIRST OF THE YEAR, 2012.

21 Q. OKAY. AND DID YOU GO BACK LIGHT DUTY OR FULL DUTY
22 AT THAT POINT?

23 A. I WENT BACK AT LIGHT DUTY.

24 Q. AND WHAT DID -- WERE YOU DOING YOUR REGULAR JOB
25 EXCEPT FOR WHAT RESTRICTIONS?

1 A. I COULDN'T CRAWL, I COULDN'T BEND, COULDN'T SQUAT,
2 AND I COULDN'T CLIMB LADDERS AND STUFF LIKE THAT.

3 Q. AND SO, YOU WERE -- YOU'RE STILL UNDER DR. SANCHEZ'S
4 CARE AT THIS POINT IN 2012. HOW LONG WERE YOU ABLE
5 TO MAINTAIN YOUR WORK STATUS AT THIS POINT WHEN YOU
6 WENT BACK?

7 A. I WORKED -- I WORKED IN THE SHOP UP 'TIL SEPTEMBER
8 OF LAST YEAR.

9 Q. OKAY. WERE YOU ALWAYS ON LIGHT OR RESTRICTED DUTY
10 FROM THE TIME YOU WENT BACK AFTER THE KNEE
11 REPLACEMENT?

12 A. I WAS.

13 Q. ALL THE WAY UP UNTIL SEPTEMBER OF LAST YEAR?

14 A. YES.

15 Q. IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. NOW, WHEN DID YOU START HAVING PROBLEMS WITH
18 OTHER BODY PARTS, AND WHEN DID YOU NOTICE YOU WERE
19 HAVING PROBLEMS, MORE PROBLEMS WITH YOUR KNEE?

20 A. UP AROUND 2013, PROBABLY IN JANUARY, AROUND THERE,
21 MY BACK AND HIP GOT TO BOTHERING ME A WHOLE LOT
22 'CAUSE I WAS WALKING MORE ON THE CEMENT FLOORS.

23 Q. AND WHY WAS THAT?

24 A. THEY CUT BACK ON OUR GOLF CARTS IN THE PLANT, AND I
25 DIDN'T HAVE ACCESS TO THEM LIKE I DID BEFORE THEY

1 CUT BACK.

2 Q. AND WHAT ARE THE FLOORS MADE OF AT THE TIMKEN PLANT?

3 A. ALL THE FLOORS IN TIMKEN COMPANY IS CONCRETE.

4 Q. AND HOW BIG IS THE FACILITY THERE AT TIMKEN?

5 A. THE FACILITY IS 15 TO 16 ACRES.

6 Q. AND YOU'RE IN THE MAINTENANCE DEPARTMENT. DID YOU
7 HAVE TO GO TO OTHER AREAS OF THE PLANT IN THE COURSE
8 OF PERFORMING YOUR JOB?

9 A. I DID.

10 Q. AND HOW OFTEN WOULD YOU HAVE TO GO FROM THE
11 MAINTENANCE DEPARTMENT TO OTHER AREAS OF THE
12 FACILITY?

13 A. IT WAS A PROCESS, OFF AND ON ALL DAY, EIGHT HOURS.

14 Q. HOW MUCH TIME DID YOU SPEND IN A SEDENTARY POSITION,
15 JUST SITTING IN FRONT OF A COMPUTER OR SOME OTHER
16 WORKSTATION WHERE YOU DIDN'T HAVE TO BE ON YOUR
17 FEET?

18 A. I'D SAY THREE HOURS OR SO.

19 Q. OUT OF AN EIGHT HOUR DAY?

20 A. TRUE.

21 Q. AND THEN THE -- ARE YOU SAYING THE REST OF THE TIME
22 YOU WERE ON YOUR FEET?

23 A. I WAS OUT CHECKING ON JOBS, ASSIGNING JOBS, CHECKING
24 ON METAL AND STUFF LIKE THAT, AND HELPING OTHER
25 SUPERVISORS THROUGHOUT THE PLANT.

1 Q. ALL RIGHT. AND HOW MANY GOLF CARTS WERE -- WHEN YOU
2 WENT BACK IN JANUARY OF 2012, HOW MANY GOLF CARTS
3 WERE AVAILABLE FOR YOUR MAINTENANCE DEPARTMENT?

4 A. TO START WE HAD THREE, AND THEN THEY CUT THEM BACK,
5 AND WE HAD TWO.

6 Q. DO YOU REMEMBER WHEN THEY CUT THEM BACK TO TWO?

7 A. IT WAS -- I DON'T REMEMBER THE EXACT DATE, NO.

8 Q. OKAY. AT SOME POINT DID YOU -- WHEN YOU WENT BACK
9 AFTER THE KNEE REPLACEMENT, DID THEY HAVE THREE
10 CARTS AT THAT TIME FOR YOUR DEPARTMENT?

11 A. RIGHT THEN THEY DID.

12 Q. AND WAS IT -- WAS IT BETTER FOR YOU WHEN YOU HAD
13 THREE GOLF CARTS IN YOUR DEPARTMENT?

14 A. IT WAS.

15 Q. OKAY. AND THAT'S WHY?

16 A. SIR?

17 Q. WHY WAS IT BETTER FOR YOU WITH THREE GOLF CARTS?

18 A. 'CAUSE I HAD MORE ACCESS TO THE GOLF CARTS WHEN WE
19 HAD THREE THAN I DID WHEN WE HAD TWO.

20 Q. AND SO, IT MADE IT POSSIBLE TO GET AROUND BETTER TO
21 GO TO OTHER PARTS OF THE PLANT FASTER AND WITH LESS
22 STRAIN ON YOU; WOULD THAT BE FAIR TO SAY?

23 A. YES.

24 Q. ALL RIGHT. WHEN DID THEY CUT BACK, DO YOU REMEMBER,
25 ON THE GOLF CARTS?

1 A. I DON'T REMEMBER THE ---

2 BY THE COMMISSIONER:

3 HE SAYS HE DOESN'T KNOW.

4 WITNESS RESUMES:

5 A. --- EXACT DATE.

6 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

7 Q. ALL RIGHT. BUT AT SOME POINT DID THEY REDUCE THE
8 GOLF CARTS?

9 A. THEY DID.

10 BY THE COMMISSIONER:

11 HE'S ALREADY SAID THEY DID, SO WE CAN MOVE ON.

12 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

13 Q. WHAT HAPPENED THEN WHEN THEY CUT BACK TO TWO?

14 A. I DIDN'T HAVE ACCESS TO A GOLF CART AT ALL TIMES.

15 Q. OKAY. AND WHEN YOU DIDN'T HAVE ACCESS TO A GOLF
16 CART, WHAT WOULD YOU BE DOING?

17 A. IF I GOT A CALL FROM A SUPERVISOR TO COME CHECK ON A
18 LINE THAT WAS DOWN OR A MACHINE THAT WAS DOWN AND:
19 THERE WASN'T A GOLF CART IN THE SHOP, I WOULD HAVE
20 TO WALK.

21 Q. AND, AGAIN, ABOUT HOW FAR WOULD YOU HAVE TO WALK IN
22 THOSE SITUATIONS?

23 A. IT DEPENDS ON WHAT DEPARTMENT I WAS GOING TO FROM
24 THE SHOP.

25 Q. WOULD IT BE MORE WALKING THAN WHAT DR. SANCHEZ HAD

1 YOU RESTRICTED TO?

2 A. IT WOULD.

3 Q. DID YOU -- WHEN YOU DID NOT HAVE ENOUGH GOLF CARTS
4 IN THE DEPARTMENT TO ACCOMMODATE YOU, DID YOU TRY TO
5 CALL ANYONE OR GET ANOTHER CART FROM ANOTHER PART OF
6 THE PLANT?

7 A. THERE WASN'T NO' -- ANOTHER CART AVAILABLE FOR ME.
8 EXCEPT THOSE TWO IN THE SHOP, AND TWO OF THE
9 MAINTENANCE MEN HAD ONE OF THEM WORKING IN THE
10 GREEN.

11 Q. AND WHO ELSE HAD THE OTHER CART?

12 A. THE OTHER CART WAS SHARED BETWEEN RAYMOND SARRATT,
13 JOHN WHITE, AND STEVEN OWENS.

14 Q. OKAY. AND YOU DID NOT HAVE A CART THAT WAS
15 ESPECIALLY ASSIGNED FOR YOU TO ACCOMMODATE YOU IN
16 YOUR WORK?

17 A. I DID NOT.

18 Q. WHEN DID YOU EXPERIENCE PROBLEMS WITH OTHER PARTS OF
19 YOUR BODY?

20 A. I STARTED EXPERIENCING THEM WHEN I HAD TO DO A LOT
21 OF WALKING ON THE CEMENT FLOORS.

22 Q. WOULD YOU DESCRIBE THAT FOR US.

23 A. I WOULD HAVE TO WALK TO DIFFERENT DEPARTMENTS AND
24 DIFFERENT PLACES THROUGH THE PLANT TO CHECK WITH
25 SUPERVISORS WHEN THEY'D CALL ME NEEDING SOME

- 1 ASSISTANCE IN THAT DEPARTMENT.
- 2 Q. AND HOW DID THAT AFFECT YOUR KNEE?
- 3 A. MY KNEE, WHEN I WALKED A GOOD DISTANCE, IT WOULD
- 4 SWELL AND START STIFFENING UP.
- 5 Q. AND DID THAT AFFECT YOUR PAIN LEVEL?
- 6 A. IT DID.
- 7 Q. HOW -- TELL US, PLEASE, HOW THAT AFFECTED YOUR PAIN.
- 8 A. IT WOULD AFFECT IT FROM -- ON A SCALE OF TEN, FROM
- 9 EIGHT TO NINE.
- 10 Q. IS THAT WITH YOUR KNEE OR WITH OTHER PARTS, TOO?
- 11 A. MOSTLY MY KNEE, BUT I'D HAVE PAIN IN MY BACK AND
- 12 HIP, TOO.
- 13 Q. AND DID YOU REPORT THAT TO DR. SANCHEZ AT ANY TIME?
- 14 A. I DID.
- 15 Q. AND WHAT DID DR. SANCHEZ DO FOR YOU?
- 16 A. DR. SANCHEZ WAS WANTING ME TO TAKE AN MRI TO HELP
- 17 HIM DETERMINE WHAT MY PROBLEM WAS AND WHAT WAS
- 18 CAUSING ALL MY PROBLEM, AND HE WAS GONNA GIVE ME A
- 19 SHOT IN MY BACK TO SEE IF THAT WOULD HELP. HE
- 20 TURNED IT IN TO WORKMAN'S COMP. THEY DENIED IT.
- 21 Q. AND WHAT HAPPENED NEXT?
- 22 A. THEN I WENT BACK TO WORK.
- 23 Q. STILL ON LIGHT DUTY?
- 24 A. STILL ON LIGHT DUTY.
- 25 Q. BUT STILL HAVING TO WALK A LOT?

- 1 A. TRUE.
- 2 Q. OKAY. AT SOME POINT YOU STOPPED WORKING AT TIMKEN.
- 3 WOULD YOU TELL US, PLEASE, HOW AND WHEN THAT
- 4 HAPPENED.
- 5 A. IT HAPPENED PROBABLY IN SEPTEMBER OF LAST YEAR.
- 6 Q. AND WHAT HAPPENED TO CAUSE THAT?
- 7 A. MY KNEE AND BACK AND HIP WAS GIVING ME SO MUCH
- 8 PROBLEM THAT IN THE EVENINGS WHEN I GOT HOME FROM
- 9 WORK IT WAS ALL I COULD DO -- I WAS THROUGH. MY DAY
- 10 WAS THROUGH TIME I GOT HOME, AND I'D JUST HAVE TO
- 11 SIT DOWN AND ICE MY KNEE AND STUFF LIKE THAT.
- 12 Q. AND DID YOU HAVE ANY MEDICATION TO TRY TO HELP WITH
- 13 THIS?
- 14 A. I TOOK MEDICATION 'TIL I HAD THAT HEART PROBLEM AND
- 15 THEY PUT THEM STENTS IN, AND THEY TOLD ME THAT THE
- 16 MEDICINE DR. SANCHEZ GAVE ME I COULD NOT TAKE WITH
- 17 THE DOCTOR -- THE MEDICINE THAT DR. CHERRY GAVE ME.
- 18 Q. ALL RIGHT. AND THE HEART CONDITION DEVELOPED THIS
- 19 YEAR, I BELIEVE; IS THAT CORRECT?
- 20 A. THAT'S TRUE.
- 21 Q. AND SO YOU WERE ABLE TO TAKE THE MEDICINES THAT DR.
- 22 SANCHEZ PRESCRIBED UP UNTIL THE HEART CONDITION CAME
- 23 TO LIGHT?
- 24 A. THAT'S TRUE.
- 25 Q. OKAY. BUT YOU'VE HAD TO GO OFF OF THE PAIN MEDS AND

1 THE ANTI-INFLAMMATORIES AND THINGS LIKE THAT; IS
2 THAT CORRECT?
3 A. THAT'S TRUE.
4 Q. OKAY. AND SO, WHAT DID DR. SANCHEZ ULTIMATELY DO
5 FOR YOU BECAUSE OF YOUR PHYSICAL CONDITION AND THE
6 PAIN YOU WERE EXPERIENCING?
7 A. HE WROTE ME OUT OF WORK.
8 Q. AND ABOUT WHEN DID HE DO THAT?
9 A. THAT WAS IN SEPTEMBER OF LAST YEAR.
10 Q. ALL RIGHT. AND WHAT HAPPENED AT THAT POINT IN TIME?
11 A. I -- I WAS OUT OF WORK 'CAUSE OF MY BACK AND HIP AND
12 LEG, KNEE.
13 Q. ALL RIGHT. WHEN HE WROTE YOU OUT OF WORK, DID YOU
14 TAKE A NOTICE OR A SLIP OF PAPER FROM DR. SANCHEZ'S
15 OFFICE TO ANYONE AT TIMKEN?
16 A. I DID.
17 Q. AND TELL US ABOUT THAT.
18 A. WHEN HE WROTE ME OUT OF WORK, HE GAVE ME A NOTE, A
19 PIECE OF PAPER WITH RESTRICTIONS SAYING THAT HE HAD
20 TOOK ME OUT OF WORK, THAT THE FLOORS AND STUFF WAS
21 AGGRAVATING THAT KNEE.
22 Q. OKAY. AND ---
23 A. I TOOK IT TO THE NURSE'S OFFICE.
24 Q. ALL RIGHT. AND THEN WHAT DID YOU DO?
25 A. THEN I WENT HOME.

1 Q. ALL RIGHT. AND DID YOU VISIT DR. SANCHEZ AGAIN IN
2 THE NEAR FUTURE AFTER THAT DATE IN SEPTEMBER?

3 A. I DID.

4 Q. AND WHAT WAS THE RESULT OF THAT OFFICE VISIT WITH
5 DR. SANCHEZ?

6 A. THE LAST TIME I WENT TO DR. SANCHEZ'S OFFICE, I SEEN
7 HIS ASSISTANT. THAT WAS LAST WEEK AND LAST MONTH.

8 Q. OKAY. ARE YOU TALKING ABOUT THIS YEAR?

9 A. YES, SIR.

10 Q. I'M TALKING ABOUT -- I WANT TO GO BACK TO LAST YEAR,
11 IN 2013.

12 A. YES, SIR.

13 Q. ALL RIGHT. WHEN HE GAVE YOU THE NOTE THAT PUT YOU
14 OUT OF WORK IN SEPTEMBER 2013, DID YOU GO BACK
15 SHORTLY AFTER THAT AND GET ANOTHER NOTE FROM HIM?

16 A. I WENT BACK TO HIM TO SEE HIM AND HE RECHECKED MY
17 KNEE AND ALL, BUT I DON'T REMEMBER GETTING A NOTE.

18 Q. OKAY. YOU DON'T KNOW IF YOU DID OR NOT?

19 A. I DON'T.

20 BY THE COMMISSIONER:

21 I'LL REVIEW THE RECORDS.

22 BY MR. TAYLOR:

23 OKAY.

24 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

25 Q. ALL RIGHT. AT THIS POINT YOU WERE OUT OF WORK AT

1 TIMKEN. WHAT DID -- WHAT DID YOU DO NEXT? YOU HAD.
2 NO INCOME, I TAKE IT? YOU HAD NO -- YOU HAD NO
3 INCOME FROM TIMKEN, NO TEMPORARY TOTAL DISABILITY,
4 AND YOU WERE WRITTEN OUT OF WORK BY YOUR DOCTOR.
5 WHAT DID YOU DO FOR INCOME?

6 A. AFTER I WAS OUT OF WORK SO LONG, I APPLIED FOR MY
7 SOCIAL SECURITY.

8 Q. RETIREMENT OR DISABILITY?

9 A. RETIREMENT.

10 Q. OKAY. AND DID THAT GO THROUGH FOR YOU?

11 A. IT DID.

12 Q. ALL RIGHT. AND YOU WERE HOW OLD WHEN YOU APPLIED
13 LAST YEAR?

14 A. SIXTY-THREE.

15 Q. AND SO YOU WERE BASICALLY GIVEN A REDUCED BENEFIT
16 BECAUSE OF YOUR AGE?

17 A. I WAS.

18 Q. AND DID YOU EVER -- OR WERE YOU EVER ADVISED THAT
19 YOU COULD GET DISABILITY BENEFITS TO GO WITH THAT?

20 BY MR. LEWIS:

21 COMMISSIONER, I OBJECT. HE'S BEING ASKED TO
22 TESTIFY ABOUT WHAT SOMEBODY ELSE TOLD HIM.

23 BY THE COMMISSIONER:

24 WELL, THAT'S TRUE. SUSTAINED.

25 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

1 Q. DID YOU EVER APPLY OR PUT IN FOR ANY ADDITIONAL
2 BENEFITS, SUCH AS DISABILITY?

3 A. I DID.

4 Q. AND WAS IT GRANTED?

5 A. IT WAS.

6 BY MR. TAYLOR:

7 CAN WE MARK THIS, PLEASE?

8 BY MR. LEWIS:

9 NO OBJECTION.

10 BY THE COMMISSIONER:

11 ALL RIGHT. THIS WILL BE CLAIMANT'S NUMBER ONE.
12 BEFORE YOU ASK HIM ABOUT IT, IF YOU'LL LET HER MARK
13 IT.

14 (COURT REPORTER MARKS LETTER CLAIMANT'S EXHIBIT NUMBER
15 ONE, RETAINED IN COMMISSION FILE.)

16 BY THE COMMISSIONER:

17 ALL RIGHT, SIR.

18 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

19 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, MR. OSMENT,
20 ABOUT THIS. I MAY ASK YOU A FEW PRELIMINARY BEFORE
21 WE GET TO IT, BUT I'LL HAND YOU CLAIMANT'S EXHIBIT
22 NUMBER ONE. YOU HAVE -- AT THIS POINT YOU'RE OUT OF
23 WORK. IN SEPTEMBER OF 2013 YOU'RE OUT OF WORK AND
24 YOUR DOCTOR HAS TOLD YOU, YOU CAN'T WORK AT TIMKEN.
25 DID YOU RECEIVE AT SOME POINT IN TIME, I GUESS IN

1 SEPTEMBER OF 2013, THE DOCUMENT THAT I HAVE HANDED
2 YOU THAT'S MARKED AS CLAIMANT'S EXHIBIT ONE?

3 A. I DID.

4 Q. YOU DID RECEIVE THAT? AND HOW DID YOU RECEIVE IT?

5 A. THROUGH THE MAIL.

6 Q. AND WHAT DID YOU DO UPON RECEIPT OF THAT?

7 BY THE COMMISSIONER:

8 I DON'T KNOW WHAT IT IS. CAN YOU JUST TELL ME

9 WHAT ---

10 BY MR. TAYLOR:

11 I CAN, COMMISSIONER.

12 BY THE COMMISSIONER:

13 HE'S GOT MY COPY, SO I DON'T KNOW WHAT WE'RE

14 TALKING ABOUT.

15 BY MR. TAYLOR:

16 OKAY, COMMISSIONER; I'M SORRY.

17 BY THE COMMISSIONER:

18 THAT'S ALL RIGHT. I JUST WANT TO FOLLOW ALONG

19 WITH YOU. SO, THANK YOU.

20 BY MR. TAYLOR:

21 THIS IS A LETTER, COMMISSIONER, FROM ---

22 BY THE COMMISSIONER:

23 I GOT IT.

24 BY MR. TAYLOR:

25 --- THE ADJUSTER.

1 BY THE COMMISSIONER:

2 YOU GO AHEAD AND ASK HIM QUESTIONS.

3 BY MR. TAYLOR:

4 OKAY.

5 BY THE COMMISSIONER:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

8 Q. MR. OSMENT, WHEN YOU RECEIVED THIS LETTER, WHAT WAS
9 YOUR RESPONSE TO IT?

10 A. MY RESPONSE WHEN I READ IT, LOOKED OVER IT, THAT
11 THIS LETTER WAS SENT TO DR. SANCHEZ STATING THAT I
12 COULD DO SEDENTARY WORK AT THE PLANT.

13 Q. OKAY. ALL RIGHT. AND DID YOU CONTACT ANYONE AT
14 TIMKEN AT THAT TIME?

15 A. I DID NOT.

16 Q. OKAY. WOULD YOU HAVE WANTED TO DO SEDENTARY WORK IF
17 YOU COULD HAVE GOTTEN SEDENTARY WORK AT THAT TIME?

18 A. I WOULD HAVE.

19 Q. DID ANYONE AT TIMKEN EVER CONTACT YOU, EITHER BY
20 PHONE, BY MAIL, BY FAX, OR IN PERSON TO SAY THAT
21 THEY HAD ANY TYPE OF SEDENTARY WORK AVAILABLE FOR
22 YOU TO DO?

23 A. THEY DID NOT.

24 Q. NOW, YOU CONTINUED ON TREATING WITH DR. SANCHEZ,
25 CORRECT?

1 A. I DID.

2 Q. AND YOU WERE DRAWING -- SOMETIME IN THE LATTER PART
3 OF 2013 YOU BEGAN DRAWING BENEFITS FROM SOCIAL
4 SECURITY; IS THAT CORRECT?

5 A. I DID.

6 Q. BOTH RETIREMENT AND ---

7 BY THE COMMISSIONER:

8 WE'VE ALREADY GONE THROUGH THAT. WE CAN MOVE
9 ON TO -- LET'S TALK ABOUT THE KNEE.

10 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

11 Q. WHAT WAS -- WHAT WAS GOING ON WITH YOUR KNEE FROM
12 THE LATTER PART OF 2013 UNTIL THE PRESENT?

13 A. MY KNEE WAS SWELLING, AND MY KNEE WAS STIFFENING UP,
14 AND I WAS HAVING PAIN SHOOTING UP MY LEG INTO MY HIP
15 AND BACK AND DOWN MY LEG INTO MY FOOT, EVEN INTO MY
16 GROIN.

17 Q. AND THAT -- WHAT TIME FRAME ARE WE TALKING ABOUT?

18 A. THAT'S AFTER -- I'M TALKING ABOUT IN 2013 WHEN IT
19 GOT -- THE PAIN GOT SO BAD THAT I HAD TO DO
20 SOMETHING.

21 Q. OKAY. AND AFTER YOU LEFT WORK, DID THE PAIN
22 CONTINUE?

23 A. AFTER I LEFT WORK, GOT OFF THE CEMENT FLOOR, IT GOT
24 BETTER.

25 Q. HAS IT IMPROVED ANY IN THE PAST -- DURING 2014?

1 A. IT HAS IT'S NOT AS BAD AS IT WAS WHEN I WAS
2 WORKING ON THOSE CONCRETE FLOORS. BUT OCCASIONALLY
3 I STILL HAVE -- I STILL HAVE PAIN SHOOTING UP MY LEG
4 AND INTO MY GROIN.

5 Q. OKAY. AND YOU'RE NOT -- RIGHT NOW YOU'RE NOT ABLE
6 TO TAKE THE MEDS TO RELIEVE THE PAIN. HOW DO YOU
7 GET PAIN RELIEF NOW, MR. OSMENT?

8 A. WHEN I GET UP I'LL ICE MY KNEE. IF IT GETS
9 BOTHERING ME REAL BAD OR IF IT GETS BAD ENOUGH, I
10 HAVE TO TAKE TYLENOL OR SOMETHING LIKE THAT.

11 BY THE COMMISSIONER:

12 WOULD YOU SAY THAT YOUR BACK AND HIP, ONCE YOU
13 GOT OFF THAT CONCRETE FLOOR, RETURNED TO THE WAY
14 THEY WERE BEFORE ALL THIS HAPPENED TO YOU, OR
15 THEY'RE STILL ---

16 BY THE WITNESS:

17 NO, MA'AM; THEY STILL BOTHER ME.

18 BY THE COMMISSIONER:

19 THEY'RE WORSE THAN THEY WERE BEFORE THIS
20 ACCIDENT?

21 BY THE WITNESS:

22 YES.

23 BY THE COMMISSIONER:

24 OKAY.

25 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

1 Q. DO YOU EVER EXPERIENCE ANY NUMBNESS OR TINGLING IN
2 ANY PARTS OF YOUR BODY?

3 A. I DID IN MY FEET AND IN MY ANKLES.

4 Q. DOES THAT CONTINUE NOW, OR HAS THAT ---

5 A. YES, SIR.

6 Q. --- RESOLVED?

7 A. OCCASIONALLY I'LL STILL HAVE IT. IT DEPENDS ON HOW
8 I'M SITTING AND HOW LONG I SIT.

9 BY THE COMMISSIONER:

10 IF YOU NEED TO STAND UP ANYTIME, SIR, YOU'RE
11 WELCOME TO DO THAT.

12 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

13 Q. MR. OSMENT, WHO WAS YOUR FAMILY DOCTOR BEFORE YOU
14 EVER HAD THIS INJURY AT TIMKEN?

15 A. MY FAMILY DOCTOR WAS DR. MCELHANEY.

16 Q. OKAY. DID YOU EVER HAVE ANY PRIOR TREATMENT WITH
17 DR. MCELHANEY THAT INVOLVED YOUR BACK OR HIPS?

18 A. YES, I DID.

19 Q. OKAY. AND WOULD YOU DESCRIBE THAT FOR US.

20 A. I HAD SOME BACK AND SOME KNEE PAIN BACK IN ---

21 Q. KNEE PAIN IN WHICH KNEE?

22 A. IN MY LEFT KNEE AND THEN I HAD SOME IN MY RIGHT, BUT
23 THAT'S WHERE WE WAS MOVING MACHINERY IN THE PLANT,
24 TAKING OUT OLD MACHINERY, PUTTING IN NEW MACHINERY,
25 AND I WORKED ON MY KNEES A GOOD BIT.

1 BY THE COMMISSIONER:

2 DID YOU EVER HAVE PRIOR HIP PROBLEMS OR JUST
3 BACK PROBLEMS?

4 BY THE WITNESS:

5 I'VE HAD BACK -- IT WAS IN MOSTLY MY BACK AND
6 DOWN IN THE BACK -- BACK PART OF IT.

7 BY THE COMMISSIONER:

8 SO DID YOU -- I'M NOT UNDERSTANDING THE ANSWER.
9 DID YOU HAVE HIP PROBLEMS PRIOR TO THIS, TOO, OR
10 JUST BACK?

11 BY THE WITNESS:

12 JUST BACK.

13 BY THE COMMISSIONER:

14 OKAY.

15 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

16 Q. DID YOU HAVE ANY PROBLEMS IN YOUR -- IN YOUR PELVIC
17 AREA?

18 A. NO, SIR.

19 BY THE COMMISSIONER:

20 PRIOR TO THIS, YOU'RE SAYING, FOR THE RECORD,
21 TO MAKE IT CLEAR? YOU'RE TALKING ABOUT PRIOR, MR.
22 TAYLOR, RIGHT?

23 BY MR. TAYLOR:

24 YES, YOUR HONOR.

25 BY THE COMMISSIONER:

1 ANY PRIOR -- OKAY.

2 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

3 Q. DID YOU HAVE PROBLEMS WITH YOUR GAIT AT SOME POINT
4 IN TIME BACK IN 2008 AND 2009?

5 A. I DID.

6 Q. AND WHAT WAS THE CAUSE OF THAT?

7 A. IT WAS WHERE I HAD THE PAIN IN MY BACK, WHERE I WAS
8 -- WE WAS MOVING MACHINERY AND STUFF.

9 Q. WOULD YOU SHOW US WHERE THE PAIN WAS?

10 A. IT WAS IN -- IT WOULD GO ACROSS THE BOTTOM PART OF
11 MY BACK, RIGHT THROUGH THERE.

12 BY THE COMMISSIONER:

13 WHERE YOUR BELT LINE -- BELOW YOUR BELT LINE,
14 WOULD YOU SAY?

15 BY THE WITNESS:

16 YES.

17 BY THE COMMISSIONER:

18 YOUR BELT LINE, OKAY.

19 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

20 Q. AND YOUR KNEE PAIN THAT YOU TALKED ABOUT, YOUR PRIOR
21 KNEE PAIN, WAS MOSTLY CONFINED TO YOUR LEFT KNEE, IS
22 THAT RIGHT?

23 A. TRUE.

24 Q. BUT YOU ALSO HAD SOME IN YOUR RIGHT KNEE?

25 A. TRUE.

1. Q. NOW, DID THOSE -- THOSE PRIOR PAIN ISSUES OR PRIOR
2 PROBLEM AREAS OF YOUR BODY THAT YOU TREATED WITH
3 YOUR FAMILY DOCTOR, WERE THOSE MOSTLY OR COMPLETELY
4 RESOLVED BEFORE YOU HAD THE ACCIDENT AT TIMKEN IN
5 MAY OF 2010?

6 A. THEY WAS.

7 BY MR. TAYLOR:

8 I HAVE NO FURTHER QUESTIONS AT THIS TIME.

9 BY THE COMMISSIONER:

10 MR. LEWIS?

11 BY MR. LEWIS:

12 THANK YOU, COMMISSIONER.

13 CROSS EXAMINATION BY MR. LEWIS:

14 Q. MR. OSMENT, I WANT TO TALK WITH YOU FOR A MINUTE
15 ABOUT YOUR JOB.

16 BY MR. LEWIS:

17 MAY I STAND UP?

18 BY THE COMMISSIONER:

19 ABSOLUTELY.

20 CROSS EXAMINATION RESUMED BY MR. LEWIS:

21 Q. YOU'VE TESTIFIED THAT YOU WERE THE -- AN L.M.A. IN
22 THE MAINTENANCE DEPARTMENT. THAT BASICALLY MEANS
23 LEAD MAINTENANCE ASSOCIATE, DOESN'T IT?

24 A. THAT DOES.

25 Q. OKAY. AND THE MAJORITY OF YOUR JOB, THOUGH, WAS A

1 SITTING JOB, WAS IT NOT?

2 A. THE MAJORITY OF MY JOB WAS -- IN THERE WAS I WOULD
3 ASSIGN JOBS, I WOULD PRIORITY JOBS, I WOULD GO HELP
4 OTHER PEOPLE THROUGHOUT THE PLANT, SUPERVISORS OR
5 WHOEVER CALLED UPON ME.

6 Q. OKAY. AND THE MAJORITY OF YOUR JOB WAS SITTING IN
7 AN OFFICE AND ENTERING THINGS IN COMPUTERS AND
8 SCHEDULING AND ORDERING PARTS AND SUCH, WASN'T IT?

9 A. I DID.

10 Q. WELL, THAT'S NOT MY QUESTION. WASN'T THAT THE
11 MAJORITY OF YOUR JOB?

12 A. PROBABLY, I'D SAY, FOUR HOURS A DAY.

13 Q. OKAY. SO, HALF THE DAY?

14 A. HALF THE DAY.

15 Q. OKAY. AND YOU DIDN'T ACTUALLY --- DID YOU HAVE A
16 TOOLBOX ANYMORE AT THE PLANT?

17 A. I DID.

18 BY MR. TAYLOR:

19 YOUR HONOR, I OBJECT. I THINK MR. LEWIS NEEDS
20 TO SPECIFY A TIME PERIOD TO ORIENT US TO WHEN WE'RE
21 -- WHAT PERIODS WE'RE TALKING ABOUT.

22 BY THE COMMISSIONER:

23 I AGREE WITH THAT. THANK YOU, SIR.

24 BY MR. LEWIS:

25 ALL RIGHT. THANK YOU.

CROSS EXAMINATION RESUMED BY MR. LEWIS:

Q. PRIOR TO YOUR INJURY -- OKAY, LET'S TALK ABOUT PRIOR TO YOUR INJURY IN 2010. YOU WERE DOING THE L.M.A. JOB, CORRECT?

A. I WAS.

Q. OKAY. AND TODAY YOU'VE TESTIFIED THAT APPROXIMATELY 50 PERCENT OR SO OF YOUR TIME WAS SITTING DOWN, CORRECT?

A. TRUE.

Q. OKAY. AND IS IT YOUR TESTIMONY THAT THE OTHER 50 PERCENT OF THE TIME YOU WERE OUT AND ABOUT IN THE PLANT FLOOR?

A. I WAS.

Q. OKAY. NOW, YOU'VE TALKED ABOUT THE GOLF CARTS THAT YOU'VE HAD THAT WERE IN THE MAINTENANCE DEPARTMENT. YOU SAID THERE WERE THREE PREVIOUSLY AND THEN AT SOME POINT THE GOLF CART NUMBER WAS REDUCED TO TWO, CORRECT?

A. THAT'S TRUE.

Q. AND YOU HAD AN OFFICE -- YOUR OFFICE WAS IN THE SHOP, WASN'T IT?

A. MY OFFICE WAS IN THE SHOP.

Q. EARLIER YOUR ATTORNEY HAD ASKED YOU WHAT YOU WERE DOING WHEN YOU WENT BACK ON LIGHT DUTY, AND I THINK YOU SAID YOU WERE IN THE SHOP, BUT THAT WAS ACTUALLY

1 YOUR REGULAR OFFICE, WASN'T IT?

2 A. IT WAS.

3 Q. OKAY. AND THE GOLF CARTS IN THE MAINTENANCE
4 DEPARTMENT, ONE OF THEM WAS PARKED RIGHT OUTSIDE
5 YOUR OFFICE DOOR, WASN'T IT?

6 A. WHEN IT WAS AVAILABLE IT WAS.

7 Q. OKAY. BUT THERE WERE TWO GOLF CARTS IN THE ENTIRE
8 DEPARTMENT, AND WHEN THEY WERE NOT IN USE ONE OF
9 THEM WAS PARKED, WHAT, WITHIN 20 FEET OF YOUR
10 OFFICE, WASN'T IT?

11 A. IT WAS.

12 Q. OKAY. AND IF YOU NEEDED TO GO OUT ON THE PLANT
13 FLOOR IN ONE OF THESE TIMES WHEN THE -- WHEN A GOLF
14 CART WASN'T AVAILABLE, YOU COULD CALL THEM AND THEY
15 WOULD -- YOU COULD WAIT 'TIL THE GOLF CART GOT BACK,
16 COULDN'T YOU?

17 A. I COULD NOT CALL RAYMOND AND THEN IF RAYMOND WAS ON
18 IT, OR ONE OF THE SUPERVISORS, 'CAUSE I WOULD CALL
19 THEM SOMETIMES AND THEY WOULD BE IN MEETINGS AND
20 DIDN'T ANSWER THE PHONE.

21 Q. WASN'T IT HIGHLY UNUSUAL ALL THE CARTS WERE OUT AT
22 THE SAME TIME?

23 A. NO, SIR.

24 Q. HOW COMMON WAS THAT?

25 A. 'CAUSE TWO OF THE MAINTENANCE MEN GOT ON ONE OF THEM

1. EVERY MORNING AT 7:00. THEY WENT TO THE GREEN.
2. THEY USED IT MOST OF THE DAY. RAYMOND McCRAW, STEVE
3. OWENS, AND JOHN WHITE, ELECTRICIANS IN THE SHOP AND
4. MAINTENANCE MEN IN THE SHOP ALL USED THAT CART.

5. Q. DID YOU EVER GO TO RAYMOND SARRATT AND COMPLAIN TO
6. HIM THAT YOU NEEDED A GOLF CART AND IT WASN'T
7. AVAILABLE?

8. A. RAYMOND WAS AWARE OF THAT.

9. Q. I DIDN'T -- THAT'S NOT MY QUESTION. DID YOU EVER GO
10. TO RAYMOND AND TELL HIM, MAKE A COMPLAINT TO HIM
11. THAT, "HEY, I NEED THE GOLF CART AND I'M NOT -- I'M
12. HAVING TROUBLE GETTING ONE AVAILABLE"?

13. A. I DID. I MENTIONED IT TO HIM SOMETIMES THAT IT WAS
14. ---

15. Q. HOW MANY TIMES DID YOU MENTION IT TO HIM?

16. A. WELL, SOMETIMES HE WOULD COME BACK IN, THE GOLF CART
17. WOULD BE GONE FOR A WHILE, AND I'D ASK HIM, I'D SAY,
18. "RAYMOND, WHERE'S THE GOLF CART?" AND HE WOULD
19. THINK; HE'D SAY, "I LEFT IT AT THE COMPLEX. I
20. FORGOT ABOUT TAKING IT DOWN THERE." AND THEN
21. SOMEBODY WOULD GO GET IT ONCE I ASKED IF IT WAS
22. THERE -- SOMETIMES HE'D TAKE IT TO THE GUARD SHACK
23. AND HE'D COME BACK. I'D SAY, "SI, WHERE'S THE GOLF
24. CART?" HE'D SAY -- HE'D GET TO THINKING WHERE HE
25. TOOK IT, AND HE'D SAY, "I THINK IT'S OUT AT THE MAIN

1 GATE."

2 Q. NOW, THE TIME PERIOD YOU'RE TALKING ABOUT, WOULD
3 THIS HAVE BEEN AFTER YOU ALREADY HAD YOUR TOTAL KNEE
4 REPLACEMENT?

5 A. YES.

6 Q. OKAY. NOW, AFTER YOU HAD YOUR TOTAL KNEE
7 REPLACEMENT, YOU WENT BACK TO WORK; YOU WERE ON A
8 RESTRICTION OF NO WALKING OVER 100 YARDS, WEREN'T
9 YOU?

10 A. I WAS.

11 Q. DIDN'T RAYMOND TELL YOU DON'T EVER DO ANYTHING TO
12 VIOLATE YOUR RESTRICTIONS?

13 A. THEY TOLD ME ---

14 Q. WHO'S THEY? I'M ASKING ABOUT RAYMOND.

15 A. MY SUPERVISORS TOLD ME NOT TO OVERDO IT.

16 BY THE COMMISSIONER:

17 RAYMOND IS RAYMOND SARRATT?

18 BY MR. LEWIS:

19 YES, MA'AM.

20 BY THE COMMISSIONER:

21 OKAY.

22 WITNESS RESUMES:

23 A. THEY DID NOT TELL ME NOT TO WALK OR GO TO WHEREVER I
24 WAS CALLED TO -- THEY NEEDED ASSISTANCE.

25 CROSS EXAMINATION RESUMED BY MR. LEWIS:

1 Q. SO IT'S YOUR TESTIMONY THAT EVEN THOUGH YOU WERE ON
2 RESTRICTION OF NOT WALKING OVER A HUNDRED YARDS THAT
3 YOU DIDN'T ALWAYS FOLLOW THAT?

4 A. MY TESTIMONY IS WHEN THEY CALLED ME, A SUPERVISOR
5 CALLED ME AND SAID, "I NEED SOMEBODY OUT HERE TO
6 LOOK AT THIS JOB," THE GOLF CART WAS GONE, I COULD
7 NOT LET THAT LINE STAND AN HOUR OR TWO WAITING ON A
8 GOLF CART TO COME BACK TO THE SHOP.

9 Q. AND DID YOU EVER GO TO RAYMOND AND TELL HIM, "I WAS
10 JUST NEEDING A GOLF CART AND NOW I'M HAVING TO WALK
11 MORE THAN MY RESTRICTIONS ARE TELLING ME TO"?

12 A. THEY WERE AWARE OF THAT.

13 Q. DID YOU TELL RAYMOND THAT?

14 A. RAYMOND AND THEM WAS AWARE OF THAT.

15 Q. NOW, YOU WERE BACK AT WORK UP UNTIL DR. SANCHEZ
16 WROTE YOU OUT IN SEPTEMBER OF 2013, AND DURING THAT
17 TIME YOU WERE UNDER THESE RESTRICTIONS OF NO WALKING
18 OVER A HUNDRED YARDS, CORRECT?

19 A. I WAS.

20 Q. AND YOU TOOK THE NOTE BACK TO TIMKEN INDICATING THAT
21 YOU HAD BEEN WRITTEN OUT OF WORK, CORRECT?

22 A. I DID.

23 Q. THE NOTE, DID IT SAY ANYTHING ON THERE ABOUT YOU
24 HAVING TROUBLE WITH CONCRETE FLOORS?

25 A. I DON'T REMEMBER WHAT ALL HE HAD WROTE ON THAT NOTE.

1 HE GAVE IT TO ME. I TOOK IT BACK TO THE NURSE'S
2 OFFICE. THAT WAS MY RESPONSIBILITY.

3 Q. OKAY. NOW, YOU GOT THIS LETTER FROM TIMKEN. YOU
4 WERE COPIED ON THAT. YOU DON'T DENY RECEIVING THAT,
5 DO YOU?

6 A. I DO NOT.

7 Q. OKAY. AND THE LETTER WAS ADDRESSED TO DR. SANCHEZ,
8 NOT TO YOU?

9 A. THAT'S RIGHT.

10 Q. OKAY. AFTER YOU RECEIVED THAT LETTER, I THINK YOUR
11 TESTIMONY IS YOU DIDN'T CALL ANYONE AT TIMKEN, IS
12 THAT RIGHT?

13 A. I DID NOT. I WAS WAITING AT THE HOUSE FOR A CALL
14 FROM TIMKEN TO TELL ME THEY HAD A POSITION THEY
15 WOULD LIKE TO OFFER ME, BUT I NEVER GOT IT.

16 Q. NOW, YOU HAD BEEN AT TIMKEN FOR, GOSH, 30-PLUS
17 YEARS?

18 A. I WAS.

19 Q. OKAY. YOU KNEW THEM UP THERE PRETTY WELL, DIDN'T
20 YOU?

21 A. I DID VERY WELL.

22 Q. YOU'VE KNOWN RAYMOND SARRATT FOR 25-PLUS YEARS,
23 HAVEN'T YOU?

24 A. PROBABLY SO.

25 Q. SAME WITH MR. POSTON?

1. A. I KNOW MR. POSTON. I DID.
2. Q. OKAY. AND YOUR TESTIMONY IS THAT YOU WANTED TO GO
3. BACK TO WORK?
4. A. I WOULD LOVE TO BE BACK TO WORK.
5. Q. SO YOU THINK IF ---
6. A. I WOULD LOVE TO BE BACK TO WORK.
7. Q. YOU THINK IF TIMKEN HAD PROVIDED A JOB FOR YOU WHERE
8. YOU WERE SITTING DOWN THAT YOU WOULD HAVE BEEN ABLE
9. TO DO THAT?
10. A. I WOULD HAVE BEEN MORE HAPPY THAN TO DO THAT. I
11. WOULD HAVE.
12. Q. OKAY. AND DESPITE THAT, YOU NEVER CALLED TIMKEN AND
13. TALKED TO THEM ABOUT THIS?
14. A. I DID NOT CALL NO ONE AT TIMKEN. THAT LETTER WAS
15. SENT TO DR. SANCHEZ. HE WOULD HAVE HAD TO RELIEVE
16. MY RESTRICTIONS AND GIVE ME PERMISSION BEFORE I
17. COULD GO BACK TO WORK.
18. Q. WELL, DID YOU EVER CALL DR. SANCHEZ AND SAY ---
19. A. I ---
20. Q. LET ME FINISH. DID YOU EVER CALL DR. SANCHEZ AND
21. SAY, "HEY, I GOT THIS LETTER. THEY MIGHT HAVE
22. SOMETHING FOR ME SIT-DOWN. WILL YOU LET ME GO BACK
23. TO WORK?"
24. A. I DID NOT CALL DR. SANCHEZ. I WENT TO HIS OFFICE,
25. AND DR. SANCHEZ NEVER MENTIONED TO ME ABOUT

RECEIVING THIS LETTER.

Q. AND DID YOU BRING IT UP TO HIM, IF YOU WERE SO ANXIOUS TO GET BACK TO WORK?

A. I DON'T REMEMBER BRINGING IT UP TO HIM.

Q. AND YOU WERE -- YOU WERE ALREADY PLANNING TO RETIRE AT THE END OF 2013, WEREN'T YOU?

A. NO, SIR. ME AND MY WIFE TALKED IT OVER AND DISCUSSED IT AND WE CAME UP WITH THAT IT WOULD BE BEST FOR ME AND HER AND MY BENEFITS AND STUFF IF I WORKED 'TIL I WAS 67 AND GOT IN MY 40 YEARS.

Q. OKAY. SO THE LATEST YOU WOULD HAVE WORKED WOULD HAVE BEEN AGE 67, IS THAT RIGHT?

A. WHEN I GOT AGE 67 I WOULD RETIRE AND I'D HAVE 40 YEARS IN WITH THE TIMKEN COMPANY.

Q. AND WHEN WOULD YOU HAVE TURNED 67?

A. I'LL BE 65 THIS NOVEMBER, SO IT WOULD BE -- THAT WOULD BE '14 AND -- ABOUT 2017, SOMEWHERE IN THERE.

Q. YOU WILL BE 65 THIS NOVEMBER?

A. THIS NOVEMBER.

Q. OKAY. SO IN NOVEMBER OF 2016 YOU'LL BE 67, IS THAT RIGHT? OKAY. NOW, HADN'T YOU PUT IN SOME 'QUOTES' WITH TIMKEN IN THE YEARS PAST ABOUT RETIREMENT DATES AND THEY'D ALWAYS BEEN IN 2012 OR '13?

A. I SENT SOME -- ALL OF US AT WORK IN THE SHOP SENT IN -- CALLED -- WE'D CALL CANTON AND THEY WOULD SEND US

1 A PRINTOUT HOW MUCH WE COULD DRAW IF WE RETIRED AT
2 62 OR HOW MUCH WE WOULD DRAW IF WE WOULD STAY 'TIL
3 FULL RETIREMENT AGE.
4 Q. AND WHEN YOU'RE SAYING CANTON, YOU'RE TALKING ABOUT
5 THE CORPORATE OFFICE AT TIMKEN, RIGHT?
6 A. TRUE.
7 Q. NOW, AFTER YOU HAD GONE OUT OF WORK, YOU BECAME
8 AWARE THAT THEY HAD A MEETING AT TIMKEN AFTER DR.
9 SANCHEZ HAD TAKEN YOU OUT ABOUT YOUR PENSION PLANS,
10 WEREN'T YOU?
11 A. THEY SENT WORD BY MY SON THAT IF I WAS PLANNING ON
12 RETIRING SOON I MIGHT WANT TO CHECK ON THAT, THAT
13 THE GOVERNMENT WAS CHANGING THE RULES AND STUFF AT
14 THE -- AFTER NOVEMBER OF LAST YEAR.
15 Q. OKAY. SO, YOUR SON WORKS AT TIMKEN AS WELL,
16 CORRECT?
17 A. HE DOES.
18 Q. YOU WERE OUT OF WORK PER DR. SANCHEZ, CORRECT?
19 A. RIGHT.
20 Q. TIMKEN -- THE CORPORATE PEOPLE CAME DOWN FROM OHIO,
21 HAD A MEETING AND TOLD ALL THE EMPLOYEES ABOUT A
22 CHANGE IN INTEREST RATES, CORRECT?
23 A. I DON'T KNOW ABOUT A MEETING THEY HAD WITH THEM, BUT
24 THEY -- RAYMOND CALLED ME AND TOLD ME THAT -- WHAT
25 WAS GOING ON AND IF I WAS PLANNING ON RETIRING IN

1 THE NEAR FUTURE I MIGHT WANT TO CHECK IN ON IT.

2 Q. AND AT THAT TIME YOU HAD BEEN PLANNING TO RETIRE AT
3 THE END OF DECEMBER OF 2013 WHEN THEY CALLED YOU,
4 CORRECT?

5 A. I HADN'T BEEN PLANNING ON IT, BUT UNDER MY
6 CONDITIONS, MY WORKING CONDITIONS, THEY HADN'T
7 OFFERED ME ANOTHER JOB AND I KNEW I COULDN'T GO BACK
8 DOING THE WORK THAT I WAS DOING.

9 Q. DIDN'T THEY CALL YOU, THOUGH, AND TELL YOU, "HEY,
10 THESE INTEREST RATES ARE GOING UP." ---

11 BY MR. HAWKINS:

12 COMMISSIONER ---

13 CROSS EXAMINATION RESUMED BY MR. LEWIS:

14 Q. --- "IT'S GOING TO TAKE YOU -- IT'S GOING TO SAVE
15 YOU 20, \$25,000 IF YOU RETIRE AT THE END OF
16 NOVEMBER"?

17 A. THEY DIDN'T TELL ---

18 BY MR. HAWKINS:

19 COMMISSIONER, LET ME INTERRUPT HERE.

20 BY THE COMMISSIONER:

21 WAIT A MINUTE. I'VE GOT AN OBJECTION.

22 BY MR. HAWKINS:

23 LET ME INTERPOSE AN OBJECTION TO THIS LINE OF
24 QUESTIONING AS BEING IRRELEVANT, LEGALLY IRRELEVANT,
25 FACTUALLY IRRELEVANT AS TO WHETHER OR NOT --- WHEN HE

1 INTENDED TO RETIRE OR NOT. IT DOES NOT GO TO THE
2 ISSUE OF PERMANENCY. IT'S NOT AN ISSUE IN THIS CASE
3 ANYWAY ON THE LIMITED FACTS THAT WE'RE ON.

4 BY THE COMMISSIONER:

5 WELL, I DID KIND OF THINK THAT THE RETIREMENT
6 ISSUE WAS GOING TO BE DEFERRED TO ANOTHER HEARING
7 BASED ON, IF THESE OTHER BODY PARTS COME IN, WHETHER
8 IT'S ---

9 BY MR. LEWIS:

10 OKAY. I THOUGHT -- I MIS -- I THOUGHT YOU
11 WANTED US TO GO AHEAD AND PUT EVERYTHING IN, THOUGH.

12 BY THE COMMISSIONER:

13 NO, AND I PROBABLY DIDN'T COMMUNICATE THAT
14 WELL, OBVIOUSLY, NO. I DON'T SEE THE NEED BECAUSE
15 IT'S EITHER A KNEE INJURY OR HE'S NOT AT M.M.I.

16 BY MR. LEWIS:

17 OKAY.

18 BY THE COMMISSIONER:

19 OKAY?.

20 BY MR. LEWIS:

21 ALL RIGHT.

22 BY THE COMMISSIONER:

23 SO YOU CAN MOVE ON. THANK YOU.

24 BY MR. LEWIS:

25 OKAY. I'LL MOVE ON.

CROSS EXAMINATION RESUMED BY MR. LEWIS:

Q. NOW, LET'S TALK ABOUT YOUR BACK. AND YOU TESTIFIED ON YOUR DIRECT EXAMINATION -- I BELIEVE THE COMMISSIONER ASKED YOU -- YOU SAID THAT YOU INJURED YOUR BACK -- YOU ACTUALLY INJURED YOUR BACK AND YOUR HIP IN THIS ACCIDENT THAT HAPPENED IN 2010, CORRECT?

A. I DID.

Q. OKAY. AND I ASSUME YOU WERE TELLING DR. -- ALL THE DOCTORS THAT YOU SAW ABOUT IT, INCLUDING DR. GRADY?

A. I TOLD DR. GRADY I WAS HAVING HIP PROBLEMS AND BACK PROBLEMS TO AN EXTENT.

Q. OKAY. SO, I MEAN, YOU EITHER TOLD HIM OR YOU DIDN'T.

A. I DID.

Q. OKAY. SO, WHEN YOU WERE SEEING HIM IN 2010, LIKE FOR EXAMPLE IN JUNE OF 2010 ---

BY MR. LEWIS:

PAGE 33, COMMISSIONER, IN THE CLAIMANT'S APAs.

BY THE COMMISSIONER:

RIGHT. I'M JUST GOING BACK TO MY ORIGINAL NOTES, WHERE HE SAID HE DID INJURE IT BUT IT EASED OFF.

BY MR. LEWIS:

OKAY..

BY THE COMMISSIONER:

1 OKAY.

2 CROSS EXAMINATION RESUMED BY MR. LEWIS:

3 Q. AND YOU WERE -- BUT YOU WERE TELLING -- YOU'RE
4 SAYING YOU WERE TELLING -- IF YOU INJURED IT BUT IT
5 EASED OFF, THEN THERE WOULD BE -- YOU WOULD THINK
6 DR. GRADY WOULD HAVE MENTIONED IT IN HIS NOTES?

7 A. HE SHOULD HAVE. HE SHOULD HAVE.

8 Q. SO YOUR POSITION ISN'T THAT YOU HURT YOUR BACK BY
9 LIMPING AROUND; YOUR POSITION IS THAT YOU ACTUALLY
10 HURT YOUR BACK IN THIS ACCIDENT, CORRECT?

11 A. I DID. I TWISTED IT WHEN I FELL.

12 Q. OKAY. SO IT'S NOT YOUR THEORY THAT YOU WERE LIMPING
13 AND THAT CAUSED YOUR BACK PROBLEMS; IT'S THAT YOU
14 HURT IT THE DAY YOU FELL, CORRECT?

15 BY MR. TAYLOR:

16 OBJECTION, YOUR HONOR. HE'S ALREADY SAID THAT
17 HE HURT IT -- IT GOT WORSE AS HE WAS WALKING ON THE
18 CONCRETE FLOORS AT TIMKEN AFTER THE KNEE
19 REPLACEMENT.

20 BY THE COMMISSIONER:

21 HE DID SAY THAT, AT LEAST MY RECOLLECTION AND
22 MY NOTES.

23 CROSS EXAMINATION RESUMED BY MR. LEWIS:

24 Q. SO YOUR -- LET ME MAKE SURE I UNDERSTAND:

25 BY THE COMMISSIONER:

BUT YOU CAN CERTAINLY ASK IT. GO AHEAD.

CROSS EXAMINATION RESUMED BY MR. LEWIS:

Q. SO DID YOU -- WERE YOU LIMPING AND THAT CAUSED YOUR
BACK TO GIVE YOU PROBLEMS?

A. IT WAS FROM WALKING. I GOT THE NOTION THAT IT WAS
FROM WALKING ON THE CEMENT THAT I WAS WORKING ON.

Q. SO IT WASN'T FROM LIMPING; IT WAS JUST WALKING ON
THE CEMENT?

A. IT WAS WALKING ON THE CEMENT OR HARD SURFACES.

Q. OKAY. NOW, YOU HAD SOME PROBLEMS WITH YOUR BACK
JUST A FEW MONTHS BEFORE THIS INCIDENT, DIDN'T YOU?

A. I HAD SOME BACK PROBLEMS, YEAH.

Q. I MEAN, YOUR INJURY WAS ON MAY THE 20TH OF 2010,
CORRECT, WHEN YOU HURT YOUR KNEE?

A. CORRECT.

Q. HAD YOU BEEN TOLD THAT YOU HAD ARTHRITIS IN YOUR
BACK BEFORE THAT TIME?

A. I HAD NOT.

Q. YOU HADN'T BEEN TOLD BY YOUR FAMILY PHYSICIAN THAT
YOU HAD ARTHRITIS IN YOUR BACK?

A. DR. MCELHANEY TOLD ME WHEN I WENT TO HIM ---

BY MR. TAYLOR:

OBJECTION.

WITNESS RESUMES:

A. --- THAT I COULD HAVE SOME ARTHRITIS ---

BY THE COMMISSIONER:

SUSTAINED. WE'VE GOT TO KEEP HEARSAY OUT OF
HERE. YOU'VE OPENED THE DOOR FOR IT INADVERTENTLY.

CROSS EXAMINATION RESUMED BY MR. LEWIS:

Q. NOW, WHAT WERE YOU TAKING LORTAB FOR IN DECEMBER OF
2009?

A. DR. MCELHANEY GAVE IT TO ME FOR SOME PAIN I WAS
HAVING.

Q. OKAY. AND WASN'T THAT BACK PAIN?

A. I GOT -- I HAD SOME -- I HAD AN INFECTION, A SINUS
INFECTION AND ALL, AND I HAD SOME SWELLING IN ONE OF
MY EARS. I COULDN'T HEAR OUT OF IT. AND HE ASKED
ME WAS I STILL HAVING SOME BACK PAIN, AND I TOLD HIM
I WAS.

Q. SO YOUR TESTIMONY IS YOU WENT FOR AN EAR EVALUATION,
HE ASKED YOU ABOUT YOUR BACK PAIN AND THEN GAVE YOU
LORTAB?

A. AND AN EXAMINATION. HE GAVE ME AN EXAMINATION THAT
DAY.

Q. BECAUSE YOU DON'T DENY YOU WENT TO YOUR DOCTOR ON
DECEMBER 28TH, 2009, WITH COMPLAINTS OF LOW PAIN
DOWN IN YOUR -- I MEAN, BACK PAIN IN YOUR LOWER PART
OF YOUR BACK, WEREN'T YOU?

A. I HAD SOME PAIN DOWN THERE. I DID.

Q. AND YOU WERE ALSO LIMPING AT THAT TIME; WEREN'T YOU?

1 A. I WAS.

2 Q. NOW, SINCE YOU'VE BEEN OUT OF WORK YOU'VE TOLD US
3 ABOUT GETTING ON SOCIAL SECURITY AND SUCH. WHAT
4 TYPES OF THINGS HAVE YOU BEEN DOING TO KEEP YOURSELF
5 OCCUPIED? HAVE YOU GOT HOBBIES AND SUCH?

6 A. I -- I HELP MY WIFE A LITTLE BIT IN THE HOUSE AND
7 JUST OUT WALKING, AND SOMETIMES I'LL CRANK THE
8 LAWNMOWER UP AND I'LL RIDE ON IT TEN OR FIFTEEN
9 MINUTES. WHEN THAT LEG GETS NUMB AND GETS HURTING,
10 I HAVE TO GET OFF.

11 Q. ARE YOU ABOUT TO DO ANY ---

12 BY THE COMMISSIONER:

13 WHICH LEG ARE YOU SPEAKING OF; YOUR RIGHT?

14 BY THE WITNESS:

15 MY RIGHT LEG.

16 BY THE COMMISSIONER:

17 OKAY. WHAT PART OF YOUR LEG?

18 BY THE WITNESS:

19 IN MY KNEE AND DOWN MY LEG IT'LL GET TO --
20 IT'LL GET TO BUILDING UP PAIN AND ALL, AND I HAVE TO
21 GET OFF TO MOVE. I HAVE TO DO SOMETHING TO RELIEVE
22 IT.

23 BY MR. LEWIS:

24 ARE YOU FINISHED, COMMISSIONER, OR DO YOU WANT
25 ME TO WAIT?

1 BY THE COMMISSIONER:

2 YES. I JUST WANT TO MAKE SURE I UNDERSTAND.
3 THE BACK AND THE HIP PROBLEM GOT WORSE FROM -- I
4 KNOW YOU SAID IT BOTHERED YOU ON THE DATE OF THE
5 ACCIDENT BUT IT EASED OFF.

6 BY THE WITNESS:

7 IT DID.

8 BY THE COMMISSIONER:

9 AND I'M TRYING TO MAKE SURE I UNDERSTAND YOUR
10 TESTIMONY. IT BECAME WORSE FROM WALKING ON THE
11 CEMENT?

12 BY THE WITNESS:

13 IT DID.

14 BY THE COMMISSIONER:

15 NOT FROM YOUR LIMP -- OR NOT FROM YOUR KNEE BUT
16 FROM WALKING ON THE CEMENT?

17 BY THE WITNESS:

18 FROM WALKING ON IT AND THE PAIN THAT WOULD RUN
19 UP THAT KNEE INTO MY BACK AND HIP AND MY GROIN.

20 BY THE COMMISSIONER:

21 OKAY.

22 BY THE WITNESS:

23 WHEN IT WOULD GO UP INTO MY GROIN, IT WOULD
24 ALMOST PULL YOU OVER LIKE YOU HAD A KIDNEY STONE OR
25 SOMETHING.

1 BY THE COMMISSIONER:

2 AND YOU FEEL LIKE THAT CAME FROM YOUR KNEE?

3 BY THE WITNESS:

4 IT DID. IT DOES.

5 BY THE COMMISSIONER:

6 OKAY. GO AHEAD, SIR.

7 BY MR. LEWIS:

8 THANK YOU. I'M ALMOST FINISHED, COMMISSIONER.

9 CROSS EXAMINATION RESUMED BY MR. LEWIS:

10 Q. I WAS ASKING YOU ABOUT SOME OF THE THINGS THAT YOU
11 DO NOW THAT YOU'RE OUT OF WORK, AND JUST IN SUMMARY
12 YOU SAID YOU HELP YOUR WIFE SOME AROUND THE HOUSE,
13 YOU MIGHT CRANK THE LAWNMOWER, AND YOU DO SOME
14 WALKING?

15 A. THAT'S TRUE.

16 Q. DO YOU DO -- DO YOU DO ANY KIND OF LIFTING OR ANY
17 KIND OF PHYSICAL ACTIVITY?

18 A. I DON'T DO NO HEAVY LIFTING.

19 Q. AND YOU HAVEN'T SINCE YOU'VE BEEN OUT OF WORK?

20 A. I HAVEN'T.

21 Q. CAN YOU EXPLAIN THE REFERENCE IN YOUR FAMILY
22 DOCTOR'S NOTES ON MARCH THE 19TH, 2014 ---

23 BY MR. LEWIS:

24 AND, COMMISSIONER, THAT'S PAGE 333.

25 CROSS EXAMINATION RESUMED BY MR. LEWIS:

1 Q: DID YOU TELL DR. ---

2 BY THE COMMISSIONER:

3 OF YOUR APAs, SIR?

4 BY MR. LEWIS:

5 YES, MA'AM. TAB 15. IT'S THE ONLY ONE WE
6 HAVE.

7 BY THE COMMISSIONER:

8 HANG ON ONE SECOND. I'VE GOT SO MUCH STUFF
9 HERE. I'M SORRY; COULD YOU REPEAT THAT PAGE NUMBER?

10 BY MR. LEWIS:

11 YES, MA'AM. IT'S TAB 15, PAGE 333 ---

12 BY THE COMMISSIONER:

13 THANK YOU, SIR.

14 BY MR. LEWIS:

15 --- THROUGH 336 IS THE FULL NOTE.

16 BY THE COMMISSIONER:

17 I'VE GOT IT. THANK YOU.

18 CROSS EXAMINATION RESUMED BY MR. LEWIS:

19 Q. MR. OSMENT, THERE'S A NOTE FROM YOUR FAMILY DOCTOR
20 AND I'LL BE -- IF YOU'D LIKE ME TO APPROACH AND SHOW
21 IT TO YOU, I WILL.

22 BY THE COMMISSIONER:

23 PLEASE DO SO HE KNOWS WHAT YOU'RE TALKING
24 ABOUT.

25 BY MR. LEWIS:

1 OKAY.

2 CROSS EXAMINATION RESUMED BY MR. LEWIS:

3 Q. TAKE A MINUTE TO REVIEW THAT AND LET ME KNOW WHEN...

4 A. YES, I'M AWARE OF THIS.

5 Q. OKAY. SO YOU WERE LIFTING SOME WOOD?

6 A. I LIFTED A LITTLE OL' -- LIKE A 2X4 WAS LAYING OUT
7 DOWN THERE, AND I PICKED IT UP, AND WHEN I BENT OVER
8 TO PICK IT UP, I HAD PAIN IN MY CHEST, AND WHEN I
9 RAISED BACK UP I HAD TO -- I WAS ON MY LITTLE OL'
10 BUGGY, CART, AND I HAD TO GO BACK TO THE HOUSE. I
11 RODE IT BACK TO THE HOUSE AND TOOK ME AN ASPIRIN.

12 Q. BECAUSE YOU WERE HAVING CHEST PAIN AT THAT TIME,
13 CORRECT?

14 A. I WAS.

15 Q. ALL RIGHT. SO THE ATV, IS THAT AN ALL TERRAIN
16 VEHICLE?

17 A. IT'S SOMETHING ABOUT LIKE A GOLF CART.

18 Q. AND THAT'S YOURS?

19 A. THAT'S MINE.

20 Q. AND THEN YOU WERE LIFTING WOOD TO PUT ONTO THE
21 VEHICLE?

22 A. IT WAS JUST A PIECE LAYING OUT DOWN BEHIND THE HOUSE
23 DOWN THERE THAT IT WAS LAYING, AND I STOPPED TO PICK
24 IT UP TO GET IT OUT OF -- OUT OF THE YARD.

25 Q. SO YOU STOPPED TO PICK IT UP AND LOAD IT INTO THE

1 BED OF THE ATV?

2 A. I JUST -- IT WAS PROBABLY ABOUT TWO FOOT, ABOUT TWO
3 FOOT -- ABOUT 2X4 AND IT WAS ABOUT TWO FOOT. I
4 DON'T KNOW WHETHER IT FELL OFF MY SON'S FOUR-WHEELER
5 OR WHERE IT CAME FROM, BUT I JUST STOPPED TO MOVE IT
6 OUT.

7 Q. AND IS THAT ON YOUR PIECE OF PROPERTY?

8 A. IT IS.

9 Q. HOW BIG A PIECE OF PROPERTY DO YOU OWN?

10 A. I OWN 23 ACRES IN THERE, BUT I -- ALL OF IT'S IN
11 PASTURE EXCEPT WHERE MY DAUGHTER'S HOUSE IS AT, MY
12 SON'S HOUSE, AND AN ACRE THAT MY HOUSE IS ON.

13 Q. AND DO YOU RIDE AROUND THAT PROPERTY ON THAT ATV?

14 A. I DO OCCASIONALLY, NOT OFTEN.

15 Q. I'M SORRY?

16 A. OCCASIONALLY.

17 Q. NOT OFTEN?

18 A. I DON'T RIDE THAT MUCH 'CAUSE I'VE HAD THAT THING
19 PROBABLY OVER A YEAR AND I'VE NOT USED A HALF A TANK
20 OF GAS IN IT.

21 Q. OKAY. AND YOU ENDED UP HAVING A HEART
22 CATHETERIZATION, I GUESS, A FEW MONTHS AGO, DIDN'T
23 YOU?

24 A. I DID.

25 Q. HAVE YOU HAD ANY COMPLICATIONS FROM THAT?

1 A. I HAVE NOT.

2 BY MR. LEWIS:

3 I DON'T HAVE ANY FURTHER QUESTIONS,
4 COMMISSIONER.

5 BY THE COMMISSIONER:

6 ALL RIGHT. ANYTHING ON REDIRECT, MR. TAYLOR OR
7 MR. HAWKINS?

8 BY MR. TAYLOR:

9 NOTHING, COMMISSIONER.

10 BY THE COMMISSIONER:

11 ALL RIGHT. THAT'S THE CLAIMANT'S CASE?

12 BY MR. HAWKINS:

13 THAT'S THE CLAIMANT'S CASE EXCEPT WE'D MOVE TO
14 AMEND THE ISSUES IN THE HEARING TO CONFORM WITH THE
15 EVIDENCE THAT HE TESTIFIED HIS FOOT'S TINGLING AND
16 THAT HE IS HAVING SOME ISSUES IN HIS -- I DON'T KNOW
17 IF IT'S THE RIGHT OR LEFT FOOT.

18 BY THE WITNESS:

19 IN MY RIGHT FOOT.

20 BY MR. HAWKINS:

21 RIGHT FOOT. WE'D MOVE TO AMEND ---

22 BY THE COMMISSIONER:

23 WELL, YOU ACTUALLY HAD THE FOOT ON YOUR ---

24 BY MR. HAWKINS:

25 RIGHT. I MISSPOKE.

1 BY THE COMMISSIONER:

2 AND I ASKED YOU ABOUT AND THEN WE TOOK IT OFF.

3 BY MR. HAWKINS:

4 I MISSPOKE.

5 BY THE COMMISSIONER:

6 IT'S A RADICULAR PROBLEM?

7 BY MR. HAWKINS:

8 THAT'S CORRECT..

9 BY THE COMMISSIONER:

10 IT'S NOT A SEPARATE RIGHT FOOT INJURY?

11 BY MR. HAWKINS:

12 IT'S AN AFFECTATION FROM ---

13 BY THE COMMISSIONER:

14 RIGHT.

15 BY MR. HAWKINS:

16 --- THE INJURY.

17 BY THE COMMISSIONER:

18 SO I WILL -- DO YOU HAVE ANY OBJECTION?

19 BY MR. LEWIS:

20 I DON'T HAVE ANY OBJECTION.

21 BY THE COMMISSIONER:

22 OKAY. I WILL ALLOW YOUR AMENDMENT, SIR. THANK
23 YOU. I'LL PUT THE RIGHT FOOT BACK ON THERE AS A
24 RADICULAR COMPONENT.

25 BY MR. HAWKINS:

1 AND THAT'S OUR ONLY WITNESS.

2 BY THE COMMISSIONER:

3 ALL RIGHT.. THANK YOU, SIR. YOU MAY GO SIT
4 NEXT TO MR. HAWKINS. ALL RIGHT, MR. LEWIS?

5 BY MR. LEWIS:

6 I'M GOING TO CALL -- THEY'RE GOING TO BE BRIEF.

7 BY THE COMMISSIONER:

8 RAYMOND SARRATT?

9 BY MR. LEWIS:

10 I'M GOING TO CALL MR. SARRATT.

11 BY THE COMMISSIONER:

12 ALL RIGHT. IF YOU'LL GO GET HIM, PLEASE, SIR.

13 (OFF THE RECORD)

14 BY THE COMMISSIONER:

15 MR. SARRATT, WE APPRECIATE YOUR PATIENCE IN
16 WAITING OUTSIDE, SIR. IF YOU'LL BE SEATED IN THAT
17 CHAIR AND FACE ME AND RAISE YOUR RIGHT HAND.

18 BY MR. HAWKINS:

19 I THOUGHT HE WAS GOING TO CALL HIM FIRST. THAT
20 WAY THEY COULDN'T LISTEN TO EACH OTHER'S TESTIMONY.

21 BY THE COMMISSIONER:

22 NO, HE ANNOUNCED IT. I.---

23 BY MR. LEWIS:

24 I THOUGHT I SAID I WAS GOING TO CALL HIM FIRST.

25 BY THE COMMISSIONER:

1 NO, HE DID SAY HE WAS GOING TO CALL HIM.

2 BY MR. HAWKINS:

3 WELL, I OBJECT TO THAT.

4 BY THE COMMISSIONER:

5 WELL, IT'S ---

6 BY MR. HAWKINS:

7 I MEAN, THAT'S THE WHOLE PURPOSE OF
8 SEQUESTERING THE WITNESSES. I MIGHT HAVE GOTTEN
9 CONFUSED AS TO WHICH GENTLEMAN WAS WHO.

10 BY MR. LEWIS:

11 YOU ASKED HE BE SEQUESTERED AND HE WAS. I GET
12 A COMPANY REPRESENTATIVE IN HERE.

13 BY MR. HAWKINS:

14 I AGREE, BUT HE SHOULD TESTIFY FIRST SO THAT
15 THEY DON'T GET TO ENJOY THE BENEFIT OF HEARING EACH
16 OTHER'S TESTIMONY.

17 BY THE COMMISSIONER:

18 AND HE DOES GET A REP IN HERE, AND YOU DIDN'T
19 OBJECT DURING THE PREHEARING, AND I REALIZE, AND I
20 HATE THAT, THAT YOU MAY HAVE BEEN CONFUSED ABOUT WHO
21 WAS WHAT, BUT YOU -- BUT HE DID MAKE IT -- HE SAID
22 I'M GOING TO CALL MR. SARRATT FIRST, BUT I WANT MY
23 REP IN HERE. HE DID SAY THAT.

24 BY MR. HAWKINS:

25 WELL, I OBJECT.

1 BY THE COMMISSIONER:

2 WELL, AND YOU HAVE A RUNNING OBJECTION TO THIS
3 ISSUE AND THE FACT THAT -- JUST THE WHOLE
4 CIRCUMSTANCES, WHICH IS -- WE'RE ON THE RECORD,
5 CORRECT? YOU'RE PRESERVING THIS? OKAY. IT WAS
6 DISCUSSED IN THE PREHEARING CONFERENCE, SO I WILL
7 OVERRULE YOUR OBJECTION, BUT YOU HAVE A RUNNING
8 OBJECTION AND IT'S PRESERVED.

9 SIR, IF YOU'LL RAISE YOUR RIGHT HAND, PLEASE.

10 * * * * *

11 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
12 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
13 MATTER HEREIN:

14 RAYMOND SARRATT.

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

17 BY THE COMMISSIONER:

18 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

19 BY THE WITNESS:

20 RAYMOND SARRATT.

21 BY THE COMMISSIONER:

22 THANK YOU. IS THAT S-U-R-R-A-T-T?

23 BY THE WITNESS:

24 S-A-R-R-A-T-T.

25 BY THE COMMISSIONER:

1 S-A-R-R -- THANK YOU SO MUCH. ALL RIGHT. MR.
2 LEWIS?

3 BY MR. LEWIS:

4 COMMISSIONER, DO YOU MIND IF I COME UP THIS
5 WAY?

6 BY THE COMMISSIONER:

7 I DO NOT. GO AHEAD, SIR. IF YOU NEED TO
8 SPREAD ANYTHING OUT HERE, YOU'RE WELCOME TO USE THE
9 ---

10 BY MR. LEWIS:

11 OKAY.

12 BY THE COMMISSIONER:

13 --- AREA.

14 DIRECT EXAMINATION BY MR. LEWIS:

15 Q. ALL RIGHT. MR. SARRATT, THANK YOU FOR BEING HERE.
16 TODAY. YOU UNDERSTAND YOU'RE UNDER OATH, DON'T YOU?

17 A. YES.

18 Q. OKAY. AND THIS IS ---

19 BY THE COMMISSIONER:

20 AND IF YOU'LL DIRECT YOUR RESPONSES, AS BEST
21 YOU CAN, TO ME EVEN THOUGH THE QUESTIONS WILL BE ---

22 BY THE WITNESS:

23 OKAY.

24 BY THE COMMISSIONER:

25 I KNOW IT'S A LITTLE WEIRD.

DIRECT EXAMINATION RESUMED BY MR. LEWIS:

Q. THAT'S WHAT I WAS GOING TO TELL YOU. THIS IS COMMISSIONER BARDEN, AND SHE'S GOING TO BE THE ONE REALLY TAKING YOUR TESTIMONY. SO I'M GOING TO ASK YOU SOME QUESTIONS, BUT IF YOU WOULD LOOK TOWARD HER AND ADDRESS THOSE TO HER. OKAY?

A. OKAY.

BY THE COMMISSIONER:

BEST YOU CAN.

BY THE WITNESS:

OKAY.

DIRECT EXAMINATION RESUMED BY MR. LEWIS:

Q. NOW, MR. SARRATT, YOU KNOW MR. OSMENT OVER HERE, DON'T YOU?

A. YES.

Q. OKAY. WHAT DO YOU DO WITH TIMKEN?

A. I'M THE FACILITIES MANAGER, AND THE MAINTENANCE SUPERVISORS REPORT TO ME, SO HIS SUPERVISORS WOULD HAVE REPORTED TO ME.

Q. OKAY. AND HOW LONG HAVE YOU BEEN WITH THE COMPANY?

A. A LITTLE OVER 25 YEARS.

Q. HAVE YOU KNOWN MR. OSMENT THAT ENTIRE TIME?

A. YES.

Q. AND MR. OSMENT, IS HE A VALUABLE EMPLOYEE OF TIMKEN, OR WAS HE A VALUABLE EMPLOYEE?

1 A. YES.

2 Q. NOW, IF YOU WOULD, JUST BRIEFLY FOR THE
3 COMMISSIONER, LET'S TALK ABOUT BEFORE MR. OSMENT WAS
4 INJURED IN 2010. DESCRIBE HIS JOB TO THE
5 COMMISSIONER.

6 A. HE WAS A LEAD MANUFACTURING ASSOCIATE. HE HAD BEEN
7 A MAINTENANCE MECHANIC, AND THEN WE MADE LEADERS FOR
8 EACH OF OUR CRAFTS, AND HE WAS THE LEADER FOR THE
9 MAINTENANCE MECHANICS.

10 Q. AND IF YOU WOULD, DESCRIBE THE TYPICAL JOB FUNCTIONS
11 THAT THAT REQUIRES OF HIM.

12 A. SCHEDULING THE WORK OF THE OTHER MAINTENANCE
13 MECHANICS ON HIS SHIFT. I THINK THERE WAS ABOUT
14 NINE MAINTENANCE MECHANICS. DOING ANY OTHER
15 COMMUNICATIONS WITH THEM, LIKE SCHEDULING VACATION;
16 COMMUNICATING WITH THE SUPERVISORS FROM THE OTHER
17 DEPARTMENTS IF THEY CALLED AND REQUESTED A PRIORITY
18 JOB; SCHEDULING P.M. WORK; ORDERING PARTS. MOST OF
19 THE MAINTENANCE MECHANICS COME TO JAMES AND SAY,
20 "HEY, I NEED THIS PART." HE ALSO KEPT SUPPLIES IN
21 THE SHOP, LIKE OUR WELDING SUPPLIES.

22 Q. AND WAS HIS OFFICE IN THE SHOP?

23 A. YES.

24 Q. AND DID HE HAVE A COMPUTER?

25 A. YES.

- 1 Q. WHAT WOULD YOU SAY IN TERMS OF PERCENTAGE OF TIME IN
2 HIS JOB WAS SPENT ACTUALLY IN THE SHOP AT HIS
3 COMPUTER AND SUCH?
- 4 A. PROBABLY ABOUT HALF.
- 5 Q. OKAY. AND DID HE HAVE MAINTENANCE MEN UNDER HIM?
- 6 A. YES.
- 7 Q. AND WHAT WAS THE ROLE OF THE MAINTENANCE GUYS UNDER
8 HIM?
- 9 A. THEY DID WELDING, FABRICATION, WORKED ON MATERIAL
10 HANDLING, WORKED ON FORKLIFTS, DID SETUPS OUT ON THE
11 LINES.
- 12 Q. DID MR. OSMENT DO ANY OF THAT WORK?
- 13 A. HE -- NO. BUT, I MEAN, IF SOMEBODY NEEDED SOME
14 ASSISTANCE ON SOMETHING THEY MAY SAY, "HEY, GIVE ME
15 A HAND," BUT HE GENERALLY DID NOT CATCH JOBS LIKE
16 THAT.
- 17 Q. NOW, THAT'S A BIG PLANT OUT THERE. THAT'S COME OUT
18 SOME EARLIER. DID -- AND THIS ISSUE ABOUT THE GOLF
19 CART HAS COME UP. EXPLAIN TO THE COMMISSIONER THE
20 GOLF CART SITUATION IN THE MAINTENANCE DEPARTMENT.
- 21 A. IN MAINTENANCE I THINK WE HAD -- WE HAD --
22 ORIGINALLY HAD TWO GOLF CARTS AND THEN WE PICKED UP
23 ONE WHENEVER WE COMBINED SOME AREAS, SO WE HAD
24 THREE, AND THE LEASE RAN OUT ON THOSE CARTS, AND AS
25 THEY WERE BEING REPLACED WE REDUCED THE NUMBER BY

1 ONE IN THE SHOP. ONE OF THE REASONS WHY WE DID THAT
2 REDUCTION WAS TO TRY TO REDUCE SOME OF THE GOLF CART
3 TRAFFIC IN THE PLANT FOR SAFETY REASONS, AND THEN WE
4 HAD SOME ISSUES WITH SOME OF THE MAINTENANCE AND
5 ELECTRICAL PEOPLE CONSTANTLY RIDING THE CARTS TO ALL
6 THEIR JOBS RATHER THAN ACTUALLY PUSHING THEIR
7 TOOLBOX AND TAKING THEIR TOOLS OUT AND A LOT OF
8 DOUBLING UP ON JOBS. SO WE REDUCED ONE OF THE
9 CARTS, AND WE PUT IN SOME RULES ON THE CARTS THAT
10 THEY WERE ONLY TO BE USED IN CASE THEY HAD TO GO
11 HAUL SOMETHING TO A JOB OR GO A LONG DISTANCE TO
12 CHECK ON PARTS OR CHECK ON A JOB, AND THAT WAS FOR
13 THE MAINTENANCE MECHANICS AND THE ELECTRICIANS.

14 Q. WAS THERE A CAR IN THE PROXIMITY OF MR. OSMENT'S
15 OFFICE?

16 A. THERE WERE TWO CARTS IN THAT -- THAT WERE PARKED IN
17 THAT AREA. THEY WEREN'T ALWAYS THERE; IT JUST
18 DEPENDED ON, YOU KNOW, IF SOMEBODY HAD TO USE ONE
19 FOR SOMETHING.

20 Q. OKAY. AND DID MR. OSMENT, WAS HE A REGULAR USER OF
21 THE GOLF CARTS?

22 A. YES.

23 Q. WAS THIS BEFORE HIS INJURY AS WELL AS AFTER?

24 A. YES.

25 Q. NOW, AFTER HE HAD HIS KNEE REPLACED AND HE WAS

1 WORKING, WAS HE STILL DOING THE SAME JOB?

2 A. YES.

3 Q. WHAT DID YOU KNOW ABOUT HIS WORK RESTRICTIONS?

4 A. I THINK IT WAS NO WALKING OVER -- AFTER HE HAD THE
5 KNEE REPLACEMENT?

6 Q. YES, SIR.

7 A. I BELIEVE IT WAS NO WALKING OVER A HUNDRED YARDS, NO
8 BENDING, CRAWLING, STOOPING.

9 Q. AND DID TIMKEN ACCOMMODATE THOSE RESTRICTIONS FOR
10 HIM?

11 A. YES, WE ACCOMMODATED RESTRICTIONS.

12 Q. DID -- DID HE CONTINUE DOING THE SAME JOB THAT HE
13 HAD DONE BEFORE, JUST WITH THOSE RESTRICTIONS BUILT
14 IN, OR DID HIS JOB CHANGE?

15 A. SAME JOB.

16 Q. OKAY. AND DID HE EVER COME TO YOU AND VOICE
17 COMPLAINTS THAT HE NEEDED TO GO OUT IN THE PLANT
18 SOMEWHERE AND HE WAS UNABLE TO BECAUSE THERE WEREN'T
19 GOLF CARTS AVAILABLE?

20 A. I THINK HE PROBABLY SAID THAT THERE WAS TIMES WHEN
21 THE GOLF CARTS WERE GONE.

22 Q. AND WHAT DID YOU TELL HIM TO DO?

23 A. JUST WAIT 'TIL ONE CAME BACK IN OR CALL.

24 Q. NOW, WAS ---

25 BY THE COMMISSIONER:

1 WHAT WOULD HAPPEN IF HE HAD A SITUATION HE
2 NEEDED TO ADDRESS AND NO CART CAME IN DURING THE
3 REST OF THE DAY?

4 BY THE WITNESS:

5 THEY WERE NEVER OUT FOR A FULL DAY. AFTER WE
6 CHANGED THE RULES ON THE CARTS WHERE NOBODY WAS
7 SUPPOSED TO BE ON ONE ALL THE TIME, THEY WERE IN AND
8 OUT.

9 DIRECT EXAMINATION RESUMED BY MR. LEWIS:

10 Q. AND UP UNTIL THE -- YOU RECALL WHEN HE WENT OUT OF
11 WORK IN SEPTEMBER OF '13, DON'T YOU?

12 A: YES.

13 Q. OKAY. WAS THIS SITUATION WITH RESPECT TO HIS JOB
14 THAT YOU'VE TESTIFIED ABOUT TODAY, THE GOLF CART
15 AVAILABILITY AND SUCH, WAS THAT ALL THE SAME ALL THE
16 WAY UP UNTIL THE TIME HE WENT OUT?

17 A. YES.

18 Q. DID HE EVER COME TALK TO YOU BEFORE HE WENT OUT OF
19 WORK SAYING, "I'M HAVING TROUBLE EITHER WALKING TOO
20 MUCH ON THESE FLOORS OR GETTING AROUND, AND I NEED
21 TO GO..." -- ANYTHING LIKE THAT?

22 A. NO. I MEAN, HE SAID HIS KNEE WAS BOTHERING HIM, AND
23 HE HAD HAD THIS ISSUE WITH, I THINK THEY SAID,
24 SOMETHING WITH ALLERGY TO THE POSSIBLE -- POSSIBLE.
25 ALLERGY TO THE METALS IN HIS KNEE AND SAID IT WAS

1 HOT AND SWELLED.

2 Q. WERE YOU SURPRISED WHEN YOU FOUND OUT HE HAD GONE
3 OUT OF WORK?

4 A. YEAH.. I THOUGHT IT WAS PRETTY SUDDEN. I THINK
5 MEDICAL CALLED US AND SAID THAT HIS DOCTOR HAD TAKEN
6 HIM OUT OF WORK.

7 BY MR. LEWIS:

8 JUST A MINUTE, COMMISSIONER.

9 BY THE COMMISSIONER:

10 YES, SIR.

11 BY MR. LEWIS:

12 OKAY. I DON'T HAVE ANYTHING ELSE,
13 COMMISSIONER.

14 BY THE COMMISSIONER:

15 ALL RIGHT.

16 BY MR. LEWIS:

17 THANK YOU.

18 BY THE COMMISSIONER:

19 MR. HAWKINS?

20 CROSS EXAMINATION BY MR. HAWKINS:

21 Q. IS IT YOUR TESTIMONY, MR. SARRATT, THAT YOU ARE NOT
22 AWARE OF MR. OSMENT EVER HAVING TO WALK TO SOMEWHERE
23 IN THE PLANT TO HANDLE A SITUATION BECAUSE THERE WAS
24 NO GOLF CART?

25 A. NOT FURTHER THAN HIS RESTRICTIONS. I MEAN, WE TOLD

1 HIM TO ABIDE BY HIS RESTRICTIONS.

2 Q. RIGHT. I KNOW YOU DID TELL HIM TO ABIDE BY HIS
3 RESTRICTIONS, BUT -- SO YOU ARE AWARE THAT THERE
4 WERE TIMES WHEN A NECESSITY AROSE WHICH REQUIRED HIM
5 TO WALK BECAUSE THERE WAS NO GOLF CART AVAILABLE?

6 A. IF HE DID IT, HE DID IT VOLUNTARILY BECAUSE HE
7 DIDN'T -- WAS NOT SUPPOSED TO BREAK HIS
8 RESTRICTIONS.

9 Q. MY QUESTION IS, SIR, ARE YOU AWARE OF TIMES WHEN HE
10 WENT TO SOMEWHERE IN THE PLANT THAT EXCEEDED HIS
11 RESTRICTIONS TO HANDLE A SITUATION THAT AROSE
12 BECAUSE THERE WAS NO GOLF CART AVAILABLE?

13 A. I DON'T RECALL A PARTICULAR EVENT ABOUT THAT.

14 Q. WHAT DID HE COMPLAIN TO YOU ABOUT THEN? YOU SAID HE
15 COMPLAINED ABOUT NOT HAVING A GOLF CART.

16 A. HE JUST SAID SOMETIMES THERE'S NOT A GOLF CART IN
17 THERE.

18 Q. RIGHT. SO, IS HE JUST SAYING THAT -- I MEAN, HE'S
19 SITTING ON A COMPUTER AND HE'S COMPLAINING THAT HE
20 CAN'T LOOK OUT HIS WINDOW AND SEE THE GOLF CART, OR
21 HE'S COMPLAINING BECAUSE HE HAS TO GO SOMEWHERE AND
22 HE CAN'T USE THE GOLF CART BECAUSE THERE'S ONE NOT
23 THERE? WHICH IS IT?

24 A. I GUESS HE NEEDED TO USE A GOLF CART BUT THERE
25 WASN'T ONE THERE.

- 1 Q. RIGHT. TO GO TO BURGER KING OR TO GO SOMEWHERE IN
2 THE PLANT TO DO SOMETHING?
- 3 A. TO GO SOMEWHERE IN THE PLANT TO DO SOMETHING.
- 4 Q. RIGHT. WAS HE MUCH OF A COMPLAINER IN THE 25 YEARS
5 YOU KNEW HIM?
- 6 A. NO.
- 7 Q. OKAY. AND WAS HE THE KIND OF GUY THAT IF THERE WAS
8 A JOB TO BE DONE HE WOULD GO DO IT?
- 9 A. YES.
- 10 Q. I ASSUME THAT'S WHY YOU ALL MADE HIM LEADER, RIGHT?
- 11 A. YES.
- 12 Q. RIGHT. AND WHEN THERE'S A PROBLEM IN THE PLANT,
13 ESPECIALLY WHEN THE LINE GOES DOWN, IT'S ALL HANDS
14 ON DECK, ISN'T IT?
- 15 A. IN HIS SITUATION WE TOLD HIM WHEN HE CAME BACK THAT
16 HE NEEDED TO ABIDE BY HIS RESTRICTIONS. WE DIDN'T
17 PRESSURE HIM TO DO ANYTHING THAT WAS BEYOND THE
18 RESTRICTIONS.
- 19 Q. BUT YOU'RE AWARE ALSO OF HIS WORK ETHIC, ARE YOU
20 NOT?
- 21 A. YES.
- 22 Q. AND IT'S A STRONG WORK ETHIC, IS IT NOT?
- 23 A. YES.
- 24 Q. AND HE WOULD FEEL THAT IF THERE WAS A PROBLEM IN THE
25 PLANT, SUCH AS A LINE GOING DOWN OR SOMETHING THAT

1 REQUIRED MAINTENANCE'S ATTENTION, HE WOULD WANT TO.
2 GO -- HE WOULD WANT TO GO ADDRESS THE PROBLEM AS
3 SOON AS POSSIBLE, CORRECT?

4 A. I THINK SO.

5 Q. AND YOU ALL WOULD ACTUALLY EXPECT THAT, NOT
6 NECESSARILY HE WITH HIS RESTRICTION, BUT YOU WOULD
7 EXPECT THAT OF AN ABLE-BODIED PERSON IN THAT
8 POSITION, RIGHT?

9 A. YES.

10 Q. TO HOP TO IT, RIGHT?

11 A. YES.

12 Q. BECAUSE WHEN A MACHINE GOES DOWN AND A LINE GOES
13 DOWN, THAT MEANS THAT IT IS A SERIOUS ISSUE IN THE
14 PLANT, CORRECT?

15 A. YES.

16 Q. AND THAT IS OF THE MOST SERIOUS ISSUES, CORRECT?

17 A. YES.

18 Q. AND HOW BIG IS THIS FACILITY, TIMKEN HERE?

19 A. IT'S 660,000 SQUARE FEET.

20 BY MR. HAWKINS:

21 THANK YOU. THAT'S ALL.

22 BY THE COMMISSIONER:

23 ANYTHING ON REDIRECT?

24 REDIRECT EXAMINATION BY MR. LEWIS:

25 Q. MR. SARRATT, DO YOU REMEMBER HOW MANY TIMES HE WOULD

1 HAVE COME TO YOU, MR. OSMENT THAT IS, AND COMPLAINED
2 ABOUT, "I NEED A GOLF CART AND THERE WASN'T ONE
3 AVAILABLE"?

4 A. NOT MANY. I'D SAY ONE OR TWO TIMES. AND NOT REALLY
5 A COMPLAINT. I MEAN, IT WAS JUST A STATEMENT,
6 SAYING, "HEY, THE CARTS ARE GONE."

7 Q. HAD HE EVER MADE ANY REQUEST TO YOU TO GET HIM A
8 DEDICATED CART JUST FOR HIM BECAUSE HE'S BEEN HAVING
9 TROUBLE GETTING ONE?

10 A. NO.

11 BY MR. LEWIS:

12 ALL RIGHT. NOTHING ELSE.

13 BY THE COMMISSIONER:

14 CAN WE EXCUSE THIS WITNESS?

15 BY MR. HAWKINS:

16 NO MORE QUESTIONS. EXCUSE THE WITNESS.

17 BY THE COMMISSIONER:

18 ALL RIGHT. UNLESS YOU RODE WITH SOMEONE. YOU
19 MAY HAVE.

20 BY THE WITNESS:

21 NO.

22 BY THE COMMISSIONER:

23 ALL RIGHT. YOU'RE FREE TO LEAVE, SIR. ALL
24 RIGHT. AND YOU HAVE ---

25 BY MR. LEWIS:

1 MR. POSTON.

2 BY THE COMMISSIONER:

3 MR. POSTON, IF YOU'LL COME SIT IN THIS GREEN
4 CHAIR, PLEASE.

5 BY MR. LEWIS:

6 LET ME ---

7 BY THE COMMISSIONER:

8 DO YOU WANT TO CHECK TO SEE IF YOU'RE CALLING
9 HIM?

10 BY MR. LEWIS:

11 YES, MA'AM.

12 BY THE COMMISSIONER:

13 ALL RIGHT. SURE. TAKE A MINUTE. WE'LL TAKE A
14 MINUTE.

15 BY MR. LEWIS:

16 WE'RE NOT GOING TO -- WE DON'T NEED TO CALL MR.
17 POSTON.

18 BY THE COMMISSIONER:

19 OKAY. THAT CONCLUDES THIS MATTER.

20 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
21 CONCLUDED AT THE HOUR OF 3:33 P.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1008356

EMPLOYEE/CLAIMANT: JAMES OSMENT

EMPLOYER: THE TIMKEN COMPANY

CARRIER: PHOENIX INSURANCE COMPANY

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 87 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF JAMES OSMENT, TAKEN ON THE 26TH DAY OF SEPTEMBER, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 24TH DAY OF OCTOBER, 2014.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.