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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel

W.C.C. No. 1301480

Ronnie McDonald, Employee..... Respondent,

v.

J Mac's Express, LLC, Direct Employer,

Gregg Blakely Logging, Inc., Statutory Employer Employers, and
WC Uninsured Employers Fund and Palmetto Timber Fund, Carriers, Defendants,

Of which Gregg Blakely Logging, Inc. and
Palmetto Timber Fund are the..... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
BEFORE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1301480

Ronnie McDonald,

Employee,

Claimant,

-vs-

J Mac's Express, LLC

Direct Employer,

Gregg Blakely Logging, Inc.

Statutory Employer
Employers,

AND

WC Uninsured Employers Fund and
Palmetto Timber Fund,

Carriers,

Defendants.

**ORDER OF APPELLATE
PANEL**

**Appellate Panel Review held in Columbia,
South Carolina on October 19, 2015 per
notices timely and properly served on all
parties of interest.**

Appellate Panel Decision and Order filed

February 11, 2016

APPEARANCES:

**Joe Ann Calvy, Esq. Defendant,
Gregg Blakely Logging, Inc., the
Statutory Employer, represented by
Walter H. Barefoot, Esq. of MGC
Insurance Defense. Defendant, J
Mac's Express, LLC, the Direct
Employer, is an uninsured employer
and did not appear for this hearing.**

PURPOSE OF THE HEARING:

**To determine issues as set forth on
the Form 30 filed timely on July 15,
2015 by Defendant, Gregg Blakely
Logging, Inc.**

PROCEDURAL HISTORY

This matter was first heard before the Single Commissioner, Honorable T. Scott Beck, on March 25, 2015, in Florence County, South Carolina. Claimant testified that he sustained an injury as a result of an accident arising out of and within the course and scope of his employment when a tree log being carried by a crane hit his person. This claim came before the Commission upon the Claimant filing a WCC Form 50 (Request for Hearing) asking for a determination of permanent total disability under §42-9-10, payment in lump sum with allocation language in the order, lifetime medical treatment which could include but is not limited to prescription medication, bracing, hardware replacement, hip replacement, etc.

The Defendant, Gregg Blakely Logging, Inc., accepted that the Claimant injured his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013. Gregg Blakely Logging, Inc. also contended that if it is found that the Claimant is found to be permanently and totally disabled under §42-9-10, then payment should not be paid in lump sum. That the carrier is entitled to credit for overpayment of benefits from the date of Maximum Medical Improvement (MMI). By Decision and Order dated July 15, 2015, Commissioner Beck made the following:

After due consideration of the claim, all defenses and after reviewing all the evidence and the records, the following findings of fact, as required under Section 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

FIRST: The South Carolina Workers' Compensation Commission has jurisdiction over this claim with venue being proper in Florence County, State of South Carolina. The Claimant's direct Employer was J Mac's Express, LLC at the time of the injury and Gregg Blakely Logging, Inc. is only a statutory employer.

SECOND: This claim was heard before Commissioner Beck on March 25, 2015, in accordance with notices timely and properly served upon all parties of interest.

THIRD: The Claimant sustained compensable injuries to his right hip, left hip, left knee, left thigh, and left ankle.

FOURTH: Claimant returned to work for 2 days in which he performed 13 hours of work but he was unable to perform the work provided to him as a truck driver because of his pain.

FIFTH: The Claimant reached Maximum Medical Improvement on December 9, 2014 based on the records of Dr. Rodney Alan.

SIXTH: Gregg Blakely Logging, Inc. is responsible for any medicals related to the Claimant's injuries for which he has paid.

SEVENTH: Claimant's injuries render him totally and permanently disabled pursuant to § 42-9-10, S.C. Code Ann.

EIGHTH: Pursuant to §42-9-301, S.C. Code Ann., Claimant has demonstrated a need for the monetary benefit of his claim to be paid in a lump sum amount with allocation language included consistent with Supreme Court decisions in Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). Claimant demonstrated that a lump sum award would be in his best interest in that he is a homeowner, he is able to manage his own finances and he has legal fees which he is not able to pay outside of an award in lump sum. Although they objected to a lump sum payment, Defendant, Gregg Blakely Logging, Inc. did not present any evidence that such a payment would be an undue hardship to them.

NINTH: Claimant is entitled to lifetime causally related care to include prescription medications, bracing, hip replacement surgery and lifetime repair, maintenance or replacement of causally related hardware.

On July 27, 2015, Defendant, Gregg Blakely Logging, Inc., requested a Full Commission review of the Single Commissioner's Decision and Order pursuant to WCC Form 30 Request for Commission Review. Gregg Blakely Logging, Inc. argued that the Commissioner Beck erred and made the following exceptions:

Defendant, Gregg Blakely Logging, Inc. raised ten exceptions to the Single Commissioner's Decision and Order in the Form 30 Request for Commission Review. While preserving all ten exceptions and incorporating them by reference, for clarity and brevity, the exceptions were consolidated into the following issue on appeal by the Defendant, Gregg Blakely Logging, Inc. Did the Single Commissioner err in finding that the Claimant demonstrated that a lump sum award would be in the best interest of the Claimant and his dependents, when such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record and is based on erroneous legal conclusion.

A hearing before the Full Commission was held on October 19, 2015, in Richland County, South Carolina. The Claimant was represented by Joe Ann Calvy, Esquire. The Defendant, Gregg Blakely Logging, Inc. was represented by Walter Barefoot, Esquire.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following medical reports and documents were submitted into evidence:

CLAIMANT'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	FI FI Jubran Vocational Specialist	08/08/14	1-9
2.	Drs. Alan and Watford McLeod Orthopaedics	02/01/13-06/23/14	10-49, 60-62
3.	Williamsburg Regional Hospital Physical Therapy	04/25/13-09/01/13	50-59,63-108

4.	McLeod Regional Medical Center	02/07/13	109-112
5.	Carolinas Rehabilitation Hospital	02/12/13	113-115
6.	Williamsburg Regional Hospital	01/07/13-01/29/13	116-150
7.	SCWCC Decision and Order	08/13/13	151-162

DEFENDANT BLAKELY LOGGING INC./EMPLOYER'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	Page Rehabilitation Services	11/06/14	6
2.	McLeod Orthopaedics	07/17/13-10/07/14	29
3.	McLeod Health	07/17/13-02/01/13	1

DEFENDANT J MAC'S EXPRESS/EMPLOYER'S SUBMISSIONS

No APAs were submitted on behalf of the employer.

STIPULATIONS

FIRST: Venue for this claim was properly set in Florence County, South Carolina pursuant to the parties' agreement. Jurisdiction in this matter is properly before this court.

SECOND: Claimant suffered a compensable injury to his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013.

THIRD: The required mediation was held by the parties on August 27, 2014 but the parties reached an impasse.

FOURTH: The Commission file, with the exception of unstipulated medical records and self-serving statements, was made a part of the record.

MOTIONS

Prior to the hearing of this case Samuel Brunson, Esquire moved to have the South Carolina Uninsured Employers' Fund dismissed as a party pursuant to §42-1-440 of the Workers' Compensation Act and the Court of Appeals ruling in Miller vs. Lawrence Robinson Trucking, reasoning that the Fund is no longer a necessary party. The Motion was granted and a separate Order was signed by the hearing Commissioner on the day of this hearing and served on the parties on April 3, 2015. Commissioner Susan S. Barden executed an Order on August 13, 2013 finding Gregg Blakely Logging, Inc. to be the Claimant's statutory employer of the Claimant with the Claimant being the statutory employee of Gregg Blakely Logging, Inc. Commissioner Barden also issued a finding in the

same Order that J Mac's Express, LLC is directly liable for benefits and if J Mac's Express, LLC is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Gregg Blakely Logging, Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act.

BIOGRAPHICAL INFORMATION

<u>Name:</u>	Ronnie McDonald
<u>Age/DOB:</u>	47; August 24, 1967
<u>Marital Status/Family:</u>	Married; 26 years
<u>Education:</u>	High School Graduate
<u>Military Experience:</u>	N/A
<u>Prior Work Experience:</u>	J Mac's Express –Truck Driver

STATEMENT OF THE CASE

This claim comes before the Commission upon the Claimant filing a WCC Form 50 (Request for Hearing) asking for a determination of permanent total disability under §42-9-10, payment in lump sum with allocation language in the order, lifetime medical treatment which could include but is not limited to prescription medication, bracing, hardware replacement, hip replacement, etc.

The Defendant, Gregg Blakely Logging, Inc. accepts that the Claimant injured his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013. The Defendant, Gregg Blakely Logging, Inc., also contends that if it is found that the Claimant is found to be permanently and totally disabled under §42-9-10, then payment should not be paid in lump sum. That the carrier is entitled to

credit for overpayment of benefits from the date of Maximum Medical Improvement (MMI).

EVIDENCE OF THE CASE

The Claimant testified before the Single Commissioner that he is 47 years old having been born August 24, 1967. He is married and has been for the past 26 years to Sharon McDonald and is the father of four children three of which are with his wife. He is a truck driver and has been for about 28-29 years. At the time of his injury, he was working as a truck driver for J. Mac's Express when the driver of a crane dropped a tree log on his person. Claimant testified that as a result of this injury, he experienced severe pain to his body which resulted in a right hip fracture, a crushed left hip, and a torn ACL. This resulted in hip surgery with retained hardware, knee surgery with ACL brace in place and knee replacement suspected in the very near future. Claimant has been unable to return to work since his injury of January 7, 2013. He testified that the authorized treating physician returned him back to work and that he was only able to work 13 hours because of his hip and knee pain. He testified that his left hip is where he experiences the most pain. In addition to the pain he feels a pinching sensation and he has pain to his hip at least 5 days a week. He also continues to

have pain and swelling in his left leg and knee and that he can only stand for about 10 minutes at a time.

Claimant stated that his current source of income is his workers' compensation check. He has applied for Social Security Disability Benefits but his case is pending.

Claimant stated that if he is found to be totally and permanently disabled that he would like to receive his money in a lump sum. Claimant testified that prior to his injury he was able to physically pay all of his bills but because of his physical condition, his wife, to whom he has been married for over 26 years, has to physically pay all the bills. He is buying his home. He testified that he is not currently in bankruptcy. At one point he owned his own tractor trailer truck and was able to prepare his own paperwork. He has a son that still lives with him and one that visits him and stays over regularly. Prior to his injury, he was able to pay his bills but now that he is not working his bills are behind and he has to borrow money to pay his bills and in most cases has to do without.

The Defendants presented no witnesses in the case.

MEDICAL EVIDENCE OF THE CASE

Claimant's APA 1- (FI FI Jubran, Vocational Specialist) On July 14, 2014, Claimant was assessed by Ms. Jubran for the purpose of determining whether he is employable. Ms. Jubran noted that Mr. McDonald's prior work history consist of being a truck driver, janitor, machine operator and bus driver. She also noted that his prior work history involved heavy lifting, up to 70 pounds constantly, prolonged

standing and walking, frequent stooping, kneeling, and handling. She noted that the authorized treating physician, Dr. Rodney Alan, has limited the Claimant to sedentary work. The vocational consultant concluded that when his significant physical limitations are considered, it is highly unlikely he will be able to find or sustain employment. That based on his physical limitation, he is not a reasonable vocational rehabilitation candidate and a reasonable stable market does not exist for the type of services the Claimant is physically, educationally, or vocationally capable of performing/sustaining.

Claimant's APA 2 - (McLeod Orthopaedics –Rodney Alan, M.D. and Kyle E. Watford, M.D.) Claimant crushed his right hip which required open reduction internal fixation surgery, fractured his left hip, and tore his left knee, which required ACL reconstruction surgery, and injured his left ankle. On May 7, 2014 Dr. Alan released Claimant at Maximum Medical Improvement and indicated that he will eventually need a right hip replacement, probably in the next 5-10 years, will need continued use of a knee brace, and continued use of anti-inflammatories as needed for pain. Claimant also has hardware in his left hip. Dr. Alan indicated that he does not think the Claimant will be able to return to his previous job as a truck driver, and restricted him to sedentary to light physical exertion as defined by Social Security. Dr. Alan assigned a 20% impairment rating to right hip based on hip radiographic estimate based on the Fifth Edition of the AMA Guides, and 7% impairment rating to the left knee based on the diagnosis-related estimate of cruciate ligament tear with mild instability based on the Fifth Edition of the AMA Guides. Prior to these final ratings, on December 9, 2014 Dr. Alan assigned a 9.25% rating to the left thigh from femoral

nerve weakness based on the Fifth Edition of the AMA Guides and on June 28, 2013 Dr. Alan assigned a 5% permanent impairment rating to the left ankle based on the Fifth Edition of the AMA Guides.

Defendant/Employer APA 1 (George H. Page, Page Rehabilitation Services)- Defendant, Gregg Blakely Logging, Inc. submitted a vocational report from George H. Page dated August 6, 2014. In his report Mr. Page opined that physically Claimant will not be able to return to the type of truck driving he has done in the past in his current condition but that there are lighter duty work options that may work for Claimant, including escort driver and school bus driver. Mr. Page admitted that the bus driver job he mentions is identified by the Department of Labor as a medium duty job, yet he concludes this is a job the Claimant could perform at this time despite Mr. Page's acknowledgement that Dr. Alan has restricted the Claimant to sedentary or light work.

FULL COMMISSION FINDINGS OF FACT

After due consideration of the claim, all defenses and after reviewing all the evidence and the records, the following findings of fact, as required under Section 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

FIRST: The South Carolina Workers' Compensation Commission has jurisdiction over this claim with venue being proper in Florence County, State of South Carolina. The Claimant's direct Employer was J Mac's Express, LLC at the time of the injury and Greg Blakely Logging, Inc. is only a statutory employer.

SECOND: This claim was heard before Commissioner Beck on March 25, 2015, in accordance with notices timely and properly served upon all parties of interest.

THIRD: The Claimant sustained compensable injuries to his right hip, left hip, left knee, and left thigh, and left ankle.

FOURTH: Claimant returned to work for 2 days in which he performed 13 hours of work but he was unable to perform the work provided to him as a truck driver because of his pain.

FIFTH: The Claimant reached Maximum Medical Improvement on December 9, 2014 based on the records of Dr. Rodney Alan.

SIXTH: The Defendant, Gregg Blakely Logging, Inc. is responsible for any medicals related to the Claimant's injuries for which has not been paid.

SEVENTH: Claimant's injuries render him totally and permanently disabled pursuant to § 42-9-10, S.C. Code Ann.

EIGHTH: Pursuant to §42-9-301, S.C. Code Ann., Claimant has demonstrated a need for the monetary benefit of his claim to be paid in a lump sum amount with allocation language included consistent with Supreme Court decisions in Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). Claimant demonstrated that a lump sum award would be in his best interest in that he is a homeowner, he is able to manage his own finances and he has legal fees which he is not able to pay outside of an award in lump sum. Although they objected to a lump sum payment, Employer, Gregg Blakely Logging, Inc., did not present any evidence that such a payment would be an undue hardship to the company.

NINTH: Claimant is entitled to lifetime causally related care to include prescription medications, bracing, hip replacement surgery and lifetime repair, maintenance or replacement of causally-related hardware.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of this Commission as follows:

FIRST: Under §42-1-130, the Claimant was a covered employee at the time in question.

SECOND: Under §42-1-140, the Defendant/Employer, J Mac's Express, LLC, was a covered Employer under the Act and the Defendant/Employer, Gregg Blakely Logging, Inc., was a Statutory Employer under §42-1-420.

THIRD: Under §42-1-40, average weekly wage is defined.

FOURTH: Under §42-1-160, the Claimant sustained a compensable injury by accident to his right hip, left hip, left knee, left thigh, and left ankle.

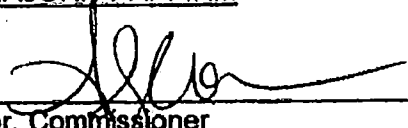
FIFTH: Under §42-15-20, proper notice was provided to the Employers, Gregg Blakely Logging, Inc. and J Mac Express, LLC.

SIXTH: Under §42-9-10, §42-9-20, §42-1-160 and §42-15-60, the Claimant is totally and permanently disabled resulting from the injuries by accident arising out of and in the course of and scope of employment.

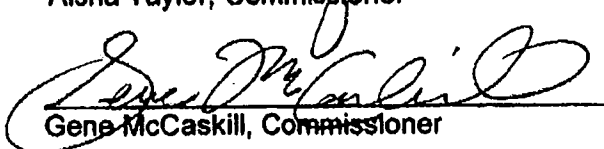
AND IT IS SO ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as set forth verbatim.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION.

MAJORITY AFFIRM



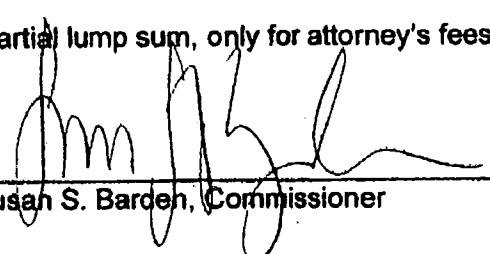
Aisha Taylor, Commissioner



Gene McCaskill, Commissioner

DISSENT

Respectfully, I dissent from the majority opinion in this appeal. The Claimant does not have a bank account; nor is he on his wife's account. The Claimant has tax difficulties, too. I would not order a total lump sum payment for the Claimant. I would order a partial lump sum, only for attorney's fees.



Susan S. Barden, 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 Eugenia Hollmon on February 11, 2016

ORDER OF THE
S.C. WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1301480

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF FLORENCE	)	
	)	
RONNIE MCDONALD,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	<u>ORDER</u>
	)	
J MAC'S EXPRESS LLC, DIRECT	)	
EMPLOYER/GREG	)	
BLAKELY LOGGING, INC.,	)	
STATUTORY EMPLOYER	)	
	)	
and	)	
	)	
WC UNINSURED EMPLOYERS FUND	)	
PALMETTO TIMBER FUND	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

HEARING: Held in Florence, South Carolina, on
March 25, 2015.

APPEARANCES: Employee/Claimant represented by
Joe Ann Calvy, Esq. Defendant, Blakely
Logging, Inc., the Statutory Employer,
represented by Walter H. Barefoot, Esq. of
MGC Insurance Defense. Defendant, J
Mac's Express, the Direct Employer, is an
uninsured employer and did not appear for
this hearing. Samuel Brunson, Esq.,
appeared on behalf of the South Carolina
Uninsured Employers' Fund.

PURPOSE OF THE HEARING: To determine issues as set forth on
Workers' Compensation Forms 50 and 51
and all issues arising under the rules and
regulations of the South Carolina Workers'
Compensation Commission.

OPINION AND AWARD: T. Scott Beck, Commissioner

FILE:

June ____, 2015

APA SUBMISSIONS

Under the Administrative Procedures Act, the following medical reports and documents were submitted into evidence:

CLAIMANT'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
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6.	Williamsburg Regional Hospital	01/07/13-01/29/13	116-150
7.	SCWCC Decision and Order	08/13/13	151-162

DEFENDANT BLAKELY LOGGING INC./EMPLOYER'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
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DEFENDANT J MAC'S EXPRESS/EMPLOYER'S SUBMISSIONS

No APAs were submitted on behalf of the employer.

STIPULATIONS

FIRST: Venue for this claim was properly set in Florence County, South Carolina, pursuant to the parties' agreement. Jurisdiction in this matter is properly before this court.

SECOND: Claimant suffered a compensable injury to his left ankle, left knee, left thigh, bilateral hips on January 7, 2013.

THIRD: The required Mediation was held by the parties on August 27, 2014 but the parties reached an impasse.

FOURTH: The Commission file with the exception of unstipulated medical records and self-serving statements were made a part of the record.

MOTIONS

Prior to hearing this case Samuel Brunson, Esquire moved to have the South Carolina Uninsured Employers' Fund dismissed as a party pursuant to §42-1-440 of the Workers' Compensation Act and the Court of Appeals ruling in Miller vs. Lawrence Robinson Trucking, reasoning that the Fund is no longer a necessary party. The Motion was granted and a separate Order was signed by this Commissioner on the day of this hearing and filed on the parties on April 3, 2015. Commissioner Susan S. Barden

executed an Order on August 13, 2013 finding Blakely Logging Inc. to be the Claimant's statutory employer of the Claimant with the Claimant being the statutory employee of Blakely Logging Inc. Commissioner Barden also issued a finding in the same Order that J Mac's Express is directly liable for benefits and if J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Blakely Logging Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act .

BIOGRAPHICAL INFORMATION

<u>Name:</u>	Ronnie McDonald
<u>Age/DOB:</u>	47; August 24, 1967
<u>Marital Status/Family:</u>	Married; 26 years
<u>Education:</u>	High School Graduate
<u>Military Experience:</u>	N/A
<u>Prior Work Experience:</u>	J Mac's Express –Truck Driver

STATEMENT OF THE CASE

This claim comes before the Commission upon the Claimant filing a WCC Form 50 (Request for Hearing) asking for a determination of permanent total disability under §42-9-10, payment in lump sum with allocation language in the order, lifetime medical treatment which could include but is not limited to prescription medication, bracing, hardware replacement, hip replacement, etc.

The Defendant accepts that the Claimant injured his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013. The Defendants also contend that if it is found that

the Claimant is found to be permanently and totally disabled under §42-9-10, then payment should not be paid in lump sum. That the carrier is entitled to credit for overpayment of benefits from the date of Maximum Medical Improvement (MMI).

EVIDENCE OF THE CASE

The Claimant testified that he is 47 years old having been born August 24, 1967. He is married and has been for the past 26 years to Sharon McDonald and is the father of four children three of which is with his wife. He is a truck driver and has been for about 28-29 years. At the time of his injury, he was working as a truck driver for J. Mac's Express when the driver of a crane dropped a tree log on his person. Claimant testified that as a result of this injury, he experienced severe pain to his body which resulted in a right hip fracture, a crushed left hip, and a torn ACL. This resulted in hip surgery with retained hardware, knee surgery with ACL brace in place and knee replacement suspected in the very near future. Claimant has been unable to return to work since his injury of January 7, 2013. He testified that the authorized treating physician returned him back to work and that he was only able to work 13 hours because of his hip and knee pain. He testified that his left hip is where he experiences the most pain. In addition to the pain he feels a pinching sensation and he has pain to his hip at least 5 days a week. He also continues to have pain and swelling in his left leg and knee and that he can only stand for about 10 minutes at a time.

Claimant stated that his current source of income is his workers' compensation check. He has applied for Social Security Disability Benefits but his case is pending.

Claimant stated that if he is found to be totally and permanently disabled that he would like to receive his money in a lump sum. Claimant testified that prior to his injury he was able to physically pay all of his bills but because of his physical condition, his wife, who he has been married to for over 26 years, has to physically pay all the bills. That he is buying his home. He testified that he is not currently in bankruptcy. That at one point he owned his own tractor trailer truck and was able to prepare his own paperwork. That he has a son that still lives with him and one that visits him and stays over regularly.

The Defendants presented no witnesses in the case.

MEDICAL EVIDENCE OF THE CASE

Claimant's APA 1- (FI FI Jubran, Vocational Specialist) On July 14, 2014, Claimant was assessed by Ms. Jubran for the purpose of determining whether he is employable. Ms. Jubran noted that Mr. McDonald's prior work history consist of being a truck driver, janitor, machine operator and bus driver. She also noted that his prior work history involved heavy lifting, up to 70 pounds constantly, prolonged standing and walking, frequent stooping, kneeling, and handling. She noted that the authorized treating physician, Dr. Rodney Alan, has limited the Claimant to sedentary work. The vocational consultant concluded that when his significant physical limitations are considered, it is highly unlikely he will be able to find or sustain employment. That based on his physical limitation, he is not a reasonable vocational rehabilitation candidate and a reasonable stable market does not exist for the type of services the Claimant is physically, educationally or vocationally capable of performing/sustaining.

Claimant's APA 2 - (McLeod Orthopaedics –Rodney Alan, M.D. and Kyle E. Watford, M.D.) Claimant crushed his right hip which required open reduction internal fixation surgery, fractured his left hip, and tore his left knee, which required ACL reconstruction surgery, and

injured his left ankle. On May 7, 2014 Dr. Alan released Claimant at Maximum Medical Improvement and indicated that he will eventually need a right hip replacement, probably in the next 5-10 years, will need continued use of a knee brace, and continued use of anti-inflammatories as needed for pain. Claimant also has hardware in his left hip. Dr. Alan indicated that he does not think the Claimant will be able to return to his previous job as a truck driver and restricted him to sedentary to light physical exertion as defined by Social Security. Dr. Alan assigned a 20% impairment rating to right hip based on hip radiographic estimate based on the Fifth Edition of the AMA Guides, and 7% impairment rating to the left knee based on the diagnosis-related estimate of cruciate ligament tear with mild instability based on the Fifth Edition of the AMA Guides. Prior to these final ratings, on December 9, 2014 Dr. Alan assigned a 9.25% rating to the left thigh from femoral nerve weakness based on the Fifth Edition of the AMA Guides and on June 28, 2013 Dr. Alan assigned a 5% permanent impairment rating to the left ankle based on the Fifth Edition of the AMA Guides.

Defendant/Employer APA 1 (George H. Page, Page Rehabilitation Services)-

Defendant/Employer submitted a vocational report from George H. Page dated August 6, 2014. In his report Mr. Page opined that physically Claimant will not be able to return to the type of truck driving he has done in the past in his current condition but that there are lighter duty work options that may work for Claimant, including escort driver and school bus driver. Mr. Page admitted that the bus driver job he mentions is identified by the Department of Labor as a medium duty job but yet he concludes this is a job the Claimant could perform at this time despite Mr. Page's acknowledgement that Dr. Alan has restricted the Claimant to sedentary or light work.

FINDINGS OF FACT

After due consideration of the claim, all defenses and after reviewing all the evidence and the records, the following findings of fact, as required under Section 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

FIRST: The South Carolina Workers' Compensation Commission has jurisdiction over this claim with venue being proper in Florence County, State of South Carolina. The Claimant's direct Employer was J Mac's Express at the time of the injury and Greg Blakely Logging, Inc. is only a statutory employer.

SECOND: This claim was heard before the undersigned Commissioner on March 25, 2015, in accordance with notices timely and properly served upon all parties of interest.

THIRD: The Claimant sustained compensable injuries to his right hip, left hip, left knee, left thigh, and left ankle.

FOURTH: Claimant returned to work for 2 days in which he performed 13 hours of work but he was unable to perform the work provided to him as a Truck Driver because of his pain.

FIFTH: The Claimant reached Maximum Medical Improvement on December 9, 2014 based on the records of Dr. Rodney Alan.

SIXTH: The Defendants are responsible for any medicals related to the Claimant's injuries for which they have not paid.

SEVENTH: Claimant's injuries render him totally and permanently disabled pursuant to § 42-9-10, S.C. Code Ann.

EIGHT: Pursuant to §42-9-301, S.C. Code Ann., Claimant has demonstrated a need for the monetary benefit of his claim to be paid in a lump sum amount with allocation language included consistent with The Supreme Court Decisions in Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). Claimant demonstrated that a lump sum award would be in his best interest in that he is a homeowner, he is able to manage his own finances and he has legal fees which he is not able to pay outside of an award in lump sum. Although they objected to a lump sum payment, Employer/Carrier did not present any evidence that such a payment would be an undue hardship to them.

NINTH: Claimant is entitled to lifetime causally related care to include prescription medications, bracing, hip replacement surgery and lifetime repair, maintenance or replacement of

causally related hardware.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of this Commission as follows:

FIRST: Under §42-1-130, the Claimant was a covered employee at the time in question.

SECOND: Under §42-1-140, the Defendant/Employer, J Mac's Express was a covered Employer under the Act and the Defendant/Employer, Greg Blakely Logging, Inc., was a Statutory Employer under §42-1-420.

THIRD: Under §42-1-40, average weekly wage is defined.

FOURTH: Under §42-1-160, the Claimant sustained a compensable injury by accident to his right hip, left hip, left knee, left thigh, and left ankle.

FIFTH: Under §42-15-20, proper notice was provided to the Employer.

SIXTH: Under §42-9-10, §42-9-20, §42-1-160 and §42-15-60, the Claimant is totally and permanently disabled resulting from the injuries by accident arising out of and in the course of and scope of employment.

ORDER AND AWARD

Based on the above findings of fact and conclusions of law, it is hereby,

ORDERED, ADJUDGED AND DECREED, that as the Direct Employer, the

Defendant, J Mac' Express, shall pay all causally related medical bills, prescription expenses, co-pays and mileage costs arising from the care and treatment of the Claimant treatment including but not limited to Drs. Rodney Alan and Kyle E. Watford both of McLeod Physician Associates. J Mac's Express is directly liable for benefits and if J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Blakely Logging Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act; and

ORDERED, ADJUDGED AND DECREED, that as the Direct Employer, the Defendant, J Mac's Express, shall pay the Claimant, Ronald McDonald, compensation benefits at the compensation rate of \$405.47 per week for a period not to exceed Five Hundred (500) weeks for his total and permanent disability under the provisions of §42-9-10 with the Defendant getting credit for Temporary Total Disability Benefits to date. J Mac's Express is directly liable for benefits and if J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Blakely Logging Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act; and

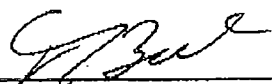
ORDERED, ADJUDGED AND DECREED, that as the Direct Employer, the Defendant, J. Mac's Express, shall provide lifetime care for Claimant's injuries under Dr. Rodney Alan and/or any other physician designated by Dr. Rodney Alan. Dr. Rodney Alan is the authorized treating physician. J Mac's Express is directly liable for benefits and if J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Blakely Logging Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act; and

ORDERED, ADJUDGED AND DECREED, that the payment of Claimant's Lump Sum Payment shall be paid upon the signing of this Order. At the date of May 27, 2015, Claimant would have received 124.4286 weeks of benefits, leaving 375.5714 weeks of benefits remaining. The remaining weeks computes to \$152,282.93. Therefore, the

present value calculated at a 2% interest rate of the remainder of the total and permanent disability award owed to the Claimant is \$141,772.94. Payment of the same should be:

Payment made hereunder shall be allocated by the Claimant in the following manner: of the total payment of One Hundred and Forty One Thousand Seven Hundred and Seventy Two and 94/100 dollars (\$141,772.94). Forty Seven Thousand Two Hundred Ten and 38/100 dollars, (\$47,210.38) shall be allocated toward payment of attorney's fees and Three Thousand Eight Hundred Twelve and 61/100 dollars (\$3812.61) for suit cost. The benefits for permanent disability to be paid as provided for herein are calculated at the rate of \$54.75 per week, commencing on June 1, 2015 and for a period of Two Thousand One Hundred Eighty Four and 00/100ths (1,657.24) weeks thereafter, representing the remaining weeks of disability benefits owed to Claimant pursuant to Section 42-9-10 of the South Carolina Code of Laws (1976, as amended), and as interpreted by the South Carolina Supreme Court in the decision of Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). J Mac's Express is directly liable for benefits and if J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Blakely Logging Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act.

AND IT IS SO ORDERED!!!



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties

or by depositing a copy hereof, postage paid, in the United States
certified mail addressed to any unrepresented party.

July 15, 2015

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

**DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1301480**

Ronnie McDonald	)
Claimant,	)
	)
vs.	)
	)
Gregg Blakely Logging, Inc./	)
J Mac's Express, LLC	)
Employer,	)
	)
Palmetto Timber Fund/	)
Carrier,	)
South Carolina	)
Uninsured Employers' Fund	)
	)
_____	)

HEARING: Held in Andrews, South Carolina on June 10, 2013.

APPEARANCES: Claimant represented by Joe Ann Calvy, Esquire of Kingstree, South Carolina. Defendant, Gregg Blakely Logging, Inc., represented by Walter H. Barefoot, Esquire, of Florence, South Carolina. Defendant, J Mac's Express, LLC unrepresented. Defendant, Uninsured Employers' Fund represented by Lisa C. Glover, Esquire, of Columbia, South Carolina.

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

DECISION AND ORDER: By Susan S. Barden, Commissioner

FILED: August 13, 2013.

I. APA SUBMISSIONS

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

Claimant's

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	McLeod Regional Medical Center	02/01/13-02/07/13	1-6
2.	McLeod Physician Associates	02/01/13-04/25/13	7-19
3.	Carolinas Rehabilitation Hospital	01/29/13-02/01/13	20-22
4.	Williamsburg Regional Hospital	01/07/13-01/29/13	23-24
5.	Correspondence from WCC	01/25/13-02/13/13	25-26
6.	W-2 from Employer for 2011- 2012		27-28
7.	W-2 from Employer for 2012		29
8.	Check Stubs	01/06/12-10/12/12	30-42
9.	Invoice from Employer	09/24/12-01/11/13	43-63

Defendants: Gregg Blakely Logging, Inc.

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	Records of Jimmy McFadden/J Mac's Express	03/11/11-01/04/13	64-85

Defendants : J Mac's Express, LLC

None

Defendants: Uninsured Employers' Fund

None

II. STIPULATIONS

The parties stipulate to the following matters:

1. The Commission has jurisdiction to hear the matters presented.
2. Venue is proper in Georgetown County.
3. The parties had notice of the hearing scheduled for June 10, 2013.
4. This matter came before the Commission on a Form 50 filed by the Claimant.
5. The Commissioner's notes and the Administrative Procedures Act submissions are a part of the record.
6. 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.

This hearing was initially scheduled for May 31, 2013 at 11:30 a.m. Mr. McFadden, the owner of J Mac's Express, LLC, was subpoenaed to attend but was not there when the case was called at 11:30 a.m. He arrived approximately 40 minutes later. Mr. McFadden was advised of his rights to have an attorney represent him. The hearing was then rescheduled for June 10, 2013 at 10:00 a.m. and he was Ordered to attend the hearing. At that time, the attorneys for the Claimant and for Gregg Blakely Logging, Inc, made Motions to Compel Mr. McFadden to attend. The attorneys for the Claimant and for Gregg Blakely Logging, Inc, also made Motions to Compel Mr. McFadden to respond to Subpoenas they had previously served him that he had not responded to and the response time had expired. All Motions were granted. On June 10, 2013, Mr. McFadden had responded to all subpoenas and was present for the hearing.

The attorney for the Defendant, Gregg Blakely Logging, Inc., also made a Motion to Postpone the initial hearing that was scheduled for May 31, 2013 for 30 days, contending that the carrier, Palmetto Timber SI Fund did have time to engage in

discovery such as deposing Claimant and gathering all the medical records, including those from the newly listed medical providers, and doing other investigation regarding the claim in time to have its defense prepared in time for the hearing. The Postponement was granted for 10 days.

III. STATEMENT OF THE CASE

Claimant filed this action against J Mac's Express, LLC, his employer, Gregg Blakely Logging, Inc., the alleged statutory employer, and the South Carolina Uninsured Employers' Fund (UEF). Claimant filed a Form 50 contending that if his employer is uninsured, then he is either the statutory employee of Gregg Blakely Logging or UIF is subject to the Act. Claimant contends that once the proper defendant/defendants are identified, then he is entitled to payment of all past medical care, payment for ongoing medical care, reimbursement and payment of all mileage and prescriptions. He further contends that he is entitled to temporary total disability compensation from the date of injury and continuing on a running award.

IV. EVIDENCE OF THE CASE

Claimant's Testimony

Claimant testified that he is 45 years old, married, and has children. He completed high school and has a diploma. Claimant testified that on January 7, 2013, he injured both hips, his left leg, pelvis, and left ankle when he was hit and dragged by a log. The driver of the crane was trying to load the log on a truck at the time he was hit. Since that time, his direct employer has refused to pay benefits. Claimant indicated that at the time of the injury, he was Mr. McFadden's employee and that although in October of 2012, Mr. McFadden stopped deducting state and federal taxes from his payroll, it was Claimant's understanding that he was still an employee of J Mac's Express, LLC and had been since 2010. He indicated that from October of 2012 and continuing until the end of the 2012 year, taxes were not deducted from his payroll.

monies. He also indicated that his job duties remained the same. That Mr. McFadden continued to pay Claimant, continued to have control over Claimant's work details and how he performed them, continued to furnish the work truck and any other equipment or supplies needed, continued to make any necessary repairs to the work truck, and continued to receive direct payment from the people they were servicing. Claimant indicated that he was never paid directly by any of the service providers, that the providers continued to call Mr. McFadden for any services they needed, and that he never used the work truck to do any work other than that what Mr. McFadden instructed him to do.

The Claimant testified that prior to his injury Mr. Blakely, owner of Gregg Blakely Logging, Inc., contacted his employer and asked that J Mac's Express provide them with a service. The service required Claimant to use J Mac's Express's truck and Gregg Blakely Logging, Inc.'s log trailer to haul logs to the mill. Claimant testified that Mr. McFadden and Mr. Blakely entered into the agreement to haul logs and Mr. Blakely paid J Mac's Express directly. He even testified that J Mac's Express had to change a tire on the log trailer. He also testified that this was the first time that J Mac's Express had hauled logs, and that he helped Mr. McFadden find the job with Blakely Logging, Inc.

The Claimant testified that he is still receiving medical treatment, that he has had surgery on his hip, and he may need surgery on his knee. He has not worked since the date of the injury.

Jimmy McFadden, Owner of J Mac's Express's Testimony:

Mr. McFadden testified that he is the owner of J Mac's Express. He testified that at the time of the injury he had 4 or more employees working for him and that Claimant was one of those employees. He testified that although he was subject to the act, he did not have workers' compensation insurance at the time of the injury. He testified that he received the monies for services provided, and then he in turn paid Claimant and the other employees. He testified that even after he stopped deducting state and federal taxes from Claimant's payroll in October of 2012, he still considered

Claimant to be an employee and his pay remained the same. He testified that he made all repairs on the trucks and paid for all fuel. He testified that this was the first time he had agreed to haul logs and that he is generally in the business of hauling dry freight, such as fiber, scrap, paper, logs, produce, and polyester.

Gregg Blakely, Owner of Blakely Logging, Inc.'s Testimony:

Gregg Blakely testified that he is the owner of Blakely Logging, Inc. and that on the date of the injury, J Mac's Express, Inc. was providing a service to his business. He testified that he is in the business of harvesting timber, processing the timber, and transporting the processed timber to the mill. At the time of the accident, his business was using the J Mac's Express, Inc. truck and employee/claimant to haul logs to the mill. He testified that at the time of the injury, he employed more than 4 or more employees and that he had workers' compensation insurance at the time of the injury. He also testified that being able to haul logs to the mill is an important, necessary, essential, and integral part of his business, and that the work J Mac's Express, Inc.'s employee was providing to his business at the time of the injury was the identical activity performed by his own employees. His employees also use his trucks to haul logs to the mill.

Medical Evidence

The medical evidence show that Claimant received bilateral hip fractures, left ACL tear of the left knee, left ankle, and pelvic pain as a result of this injury. Medical evidence also shows that he has had right hip surgery.

V. FINDINGS OF FACT

1. Claimant alleges that he injured his hips, pelvis, left knee, and left ankle in a work-related accident on January 7, 2013, while employed with J Mac's Express, a claim I find is supported by the greater weight of the evidence.
2. Claimant is 45 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant).
4. Jimmy McFadden is the owner of J Mac's Express (testimony of McFadden).
5. Gregg Blakely is the owner of Blakely Logging (testimony of Blakely).
6. On the date of the accident, J Mac's Express was in the business of hauling fiber, scrap, paper, logs, produce, and polyester (testimony of McFadden).
7. On the date of the accident, the business of Blakely Logging was harvesting timber, processing the timber, and transporting the processed timber to the mill. Owner Blakely admits that transporting timber is an important, essential part of his business, such that he does not get paid if he does not haul the logs to the mill. Further, Blakely owns 3 tractor-trailer trucks used for hauling logs (testimony of Blakely).
8. Blakeley Logging contracted with J Mac's Express to haul logs to the mill for Blakeley Logging. On the date Claimant was injured, Claimant was hauling logs for Blakely through Claimant's employment with J Mac's Express (testimony of Blakely; testimony of McFadden).
9. On the date of the accident, J Mac's Express regularly employed 4 or more employees (testimony of Claimant; testimony of McFadden).
10. On the date of the accident, J Mac's Express was uninsured (testimony of

McFadden).

11. On the date of the accident, Claimant was the direct employee of J Mac's Express, and not an independent contractor: (a) in performance of his job duties, Claimant drove a tractor-trailer truck belonging to J Mac's Express; (b) Claimant was required by J Mac's Express to keep the tractor-trailer truck clean; (c) J Mac's Express directly paid for/provided fuel, repairs, tires, and truck washing; Claimant did not have to pay or provide (initially or otherwise) for these items; (d) J Mac's Express paid Claimant weekly, and in cash; (e) although Claimant was not given a specific/precise time to leave in order to deliver/pick up a load, there was in fact a time frame within which Claimant knew he had to operate; (f) if something went wrong while en route, Claimant called McFadden for direction/instructions; (g) J Mac's Express provided Claimant's CB radio; (h) Claimant did not determine what he would be paid for a load; for the logging trips, the determination of the charge for the loads was decided strictly by McFadden and Blakely; (i) for logging trips, Claimant had to use Blakely's route (for all intents and purposes); (j) McFadden admits that he was Claimant's boss, and that Claimant was "pretty much under my control;" (k) through McFadden and Blakely's agreement, Blakely provided the trailer for hauling logs that Claimant used in performance of his job duties (testimony of Claimant; testimony of McFadden).
12. On the date of the accident, Claimant had been employed by J Mac's Express since 2010. Although McFadden stopped withholding Claimant's taxes in 2012, nothing else changed as far as their employment relationship is concerned (testimony of Claimant; testimony of McFadden).

13. I fully considered the fact that (a) Claimant provided his own cell phone; (b) McFadden paid Claimant a percentage of the load; (c) McFadden did not instruct Claimant to work/leave/arrive at an exact, precise time; and (d) Claimant was the initial "finder" (for McFadden's business) of the logging work with Blakely; I find this was nothing more than Claimant's trying to help his boss obtain business, which in turn helped Claimant (testimony of Claimant; testimony of McFadden).
14. Although Claimant had a certain latitude with his job (such as when precisely to leave/arrive), Claimant was required to pick up and deliver McFadden's loads every day. McFadden considered his employees "family," which I find accounts for some of the latitude/hands-off approach of McFadden. Instead of instructions from McFadden as to when a driver needed to arrive, it was actually Blakely who determined when Claimant needed to arrive/leave (testimony of McFadden; testimony of Claimant).
15. Claimant is Blakely Logging's statutory employee; Blakely Logging is Claimant's statutory employer.
16. J Mac's Express is directly liable for benefits. If J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund is liable, but is entitled to indemnity pursuant to Section 42-1-440.
17. Claimant to receive temporary total disability benefits from January 7, 2013, to the present and continuing, until further order of the Commission or agreement of the parties. Credit shall be given for the \$600 Claimant received from J Mac's

Express and Blakely Logging.

18. Claimant shall receive reimbursement for causally-related medicals pursuant to the Commission's fee schedule. This includes, but is not limited to, Claimant's right hip ORIF surgery (*e.g.*, Claimant's APA #1, pages 5-6).
19. Pursuant to the Commission's fee schedule, Claimant is to be evaluated for his residual injuries by McCloud Orthopedics, and shall receive any indicated/appropriate treatment.
20. Claimant has not reached maximum medical improvement. I base this finding on the medical evidence in its entirety.
21. Permanency is premature.
22. Claimant's average weekly wage is \$608.18, yielding a compensation rate of \$405.47. McFadden testified that he was uncertain as to whether the invoices were factored into the W-2 figure. Further, the "math" of the invoices does not completely "add up," and McFadden had no explanation for the discrepancies; he was repeatedly "not sure," and he could "not recall." I decline to speculate beyond the amount set forth on the W-2 (testimony of McFadden; *See* Claimant's APA #6, page 27, and Claimant's APA #8).
23. Defendants' Motion to Postpone was granted, and Defendants were granted 10 additional days for discovery. Further, the undersigned issued Orders to Compel. Defendants objected to the hearing going forward on the re-set date of June 10, 2013, as Defendants had sought more than 10 additional days for discovery. The undersigned would have granted Defendants' request for additional days for discovery beyond the 10-day postponement, except for the fact that Defendants'

request must be countered with Claimant's due process right to a timely hearing---
-particularly with regard to a denied claim where no benefits have been provided
for 5 months.

VI. CONCLUSIONS OF LAW

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant, J Mac's Express, LLC was a covered employer under the act.
2. Under § 42-1-400 and § 42-1-420 to § 42-1-450, Defendant, Gregg Blakely Logging, Inc., was the covered statutory employer of the Claimant and Claimant was its covered statutory employee.
3. Claimant sustained an injury by accident arising out of and in the course of his employment on January 7, 2013 within the meaning of § 42-1-160.
4. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. § 42-15-60.
5. Under §§ 42-9-10 and 42-9-190, Claimant was disabled within the meaning of the Act from January 7, 2013 and is still disabled as of the date of this hearing.

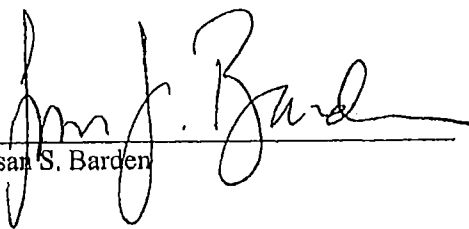
VII. AWARD

IT IS THEREFORE ORDERED that the direct Employer/Statutory Employer shall pay to Claimant temporary total disability compensation at the compensation rate of \$405.47 from January 7, 2013 and continuing on a running award until further Order of the Commission. J Mac's Express is directly liable for benefits. If J Mac's Express is unwilling or unable to provide benefits, Palmetto Timber Fund is liable, but is entitled to indemnity pursuant to Section 42-1-440.

IT IS FURTHER ORDERED that the direct Employer/Statutory Employer

shall provide causally related medical treatment to Claimant until he reaches maximum medical improvement. J Mac's Express is directly liable for the Claimant's medical care. If J Mac's Express is unwilling or unable to provide the medical care, Palmetto Timber Fund is liable, but is entitled to indemnity pursuant to Section 42-1-440.

AND IT IS SO ORDERED.



Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 13, 2013

By: Kristi Love, Administrative Assistant to Commissioner Barden

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



WCC File #: 1301480
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Ronnie McDonald SSN: 250-51-4219 Employer's Name: Gregg Blakely Logging, Inc./J. Mac's Express, LLC
Address: 140 Barr Circle Address: 589 Suttons Rd./1557 Patty Rd.
City: Kingstree State: SC Zip: 29556 City: Andrews/Cades State: SC Zip: 29511
Home Phone: (843) 372-6297 Work Phone: () - 518

Preparer's Name: Joe Ann Calvy Law Firm: Joe Ann Calvy, LLC Insurance Carrier: Walker, Hunter & Associates
Preparer's Phone #: (843) 354-9000

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

Date of Injury or Illness: 01/07/2013

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

1. The claimant sustained an injury to hips, left knee, left leg, left ankle, right shoulder (Part(s) of Body Injured) on 01/07/2013 (Month/Day/Year) in Williamsburg county, state of SC.
2. Body part(s) affected are: hips, left knee, left leg, left ankle, right shoulder
Briefly describe how the accident occurred. Claimant was dragged and hit by a crane.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 01/07/2013 (Month/Day/Year) in the following manner:
Jason McDonald

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: hips, left knee, left leg, left ankle, right shoulder

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
Benefits are being paid to claimant.

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

☒ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

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

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$_____, 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:

11. Further grounds or unusual aspects of claim:

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Williamsburg Regional Hospital-500 Nelson Blvd.-Kingstree, SC 29556; Carolinas Hospital System-805 Pamlico Hwy-Florence, SC 29505- McLeod Orthopaedics-E. Cheves Street-Florence, SC 29506; McLeod Regional Medical Center-555 E. Cheves Street-Florence, SC 29501

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: _____

☒ 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 _____
address _____ on the _____ day of _____ 20____ by ☐ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature _____ Attorney for Claimant _____ jcalvy@sc.rr.com _____ 01/08/2015 _____
Title _____ Email _____ Date _____

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

Calvy

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



WCC File #: 1301480
Carrier File #: 0001-0145-10-0001
Carrier Code #:
Employer FEIN #:

Claimant's Name: Ronnie McDonald SSN 250-51-4219 Employer's Name: Gregg Blakely Logging, Inc.
Address: 140 Barr Circle Road Address: 589 Suttons Road
Klingstree, South Carolina 29556 Andrews, South Carolina 29510
Home Phone: (843) 382-4608 Work Phone # _____ Insurance Carrier: Walker, Hunter & Associates, Inc.
Date of Injury: 1/7/13 Preparer's Name: Walter H. Barefoot Law Firm McAngus Goudelock & Courle Preparer's Phone #: (843) 519-1801

Date of Injury or Illness: 1/7/13 Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

- It is ☒ **Admitted** ☐ **Denied** the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Admitted only to the extent ordered in Single Commissioner's Order filed 8-13-13.
- 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: To same extent as No. 1. Claimant was found to be a statutory employee of Gregg Blakely Logging.
- It is ☐ **Admitted** ☒ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 2.
- It is ☒ **Admitted** ☐ **Denied** at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: See No. 1.
- It is ☒ **Admitted** ☐ **Denied** notice of injury was given the employer. The reasons for denial are: See No. 1.
- 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: Appears Claimant has reached maximum medical improvement.
- It is ☒ **Admitted** ☐ **Denied** the employee is entitled to temporary total disability for the period(s) of: Exact period to be determined. Defendants seek credit for any overpayment of temporary disability benefits.
- It is ☒ **Admitted** ☐ **Denied** the employee is permanently disabled. The reasons for denial are: Extent to be determined.
- It is ☐ **Admitted** ☒ **Denied** the employee has serious disfigurement.
- It is contended that an average weekly wage of \$ 608.18 applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are: _____
Section 42-9-210.

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

Walter H Barefoot
Preparer's Signature: Walter H. Barefoot, Esquire

Attorney for Employer/Carrier
Title walt.barefoot@mgclaw.com
Email

February 6, 2015
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

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



WCC File #: 1301480
Carrier File #: 0001-0145-10-0001
Carrier Code #:
Employer FEIN #:

Claimant's Name: Ronnie McDonald SSN: 250-51-4219 Employer's Name: Gregg Blakely Logging, Inc.
Address: 140 Barr Circle Road Address: 589 Suttons Road
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Home Phone: (843) 382-4608 Work Phone: Insurance Carrier: Walker, Hunter & Associates, Inc.
Preparer's Name: Walter H. Barefoot Law Firm: McAngus Goudelock & Courie Preparer's Phone Number: (843) 519-1801

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: January 7, 2013 (m/d/yyyy)

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

SEE ATTACHED

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Joe Ann M. Calvy, Esquire, Joe Ann Calvy, LLC
Post Office Box 610
address Kingstree, South Carolina 29556 on the 27th day of July 2015.
by ☒ first class postage ☐ certified mail ☐ personal service.

Walter H. Barefoot
Preparer's Signature

Attorney for Employer/Carrier
Title

walt.barefoot@mgclaw.com
Email

July 27 2015
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC FORM #30
Revised 7/13

30

REQUEST FOR COMMISSION REVIEW

GROUNDNS FOR REVIEW
WCC #1301480

1. Whether the Hearing Commissioner erred in Finding of Fact No. 8 in finding that the Claimant is entitled to lump sum benefits pursuant to Section 42-9-301 of the South Carolina Code of Laws (1976, as amended), when such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
2. Whether the Hearing Commissioner erred in Finding of Fact No. 8 in finding that the Claimant demonstrated a need for monetary benefit of his claim to be paid in a lump sum amount, when such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
3. Whether the Hearing Commissioner erred in Finding of Fact No. 8 that the Claimant demonstrated that a lump sum award would be in his best interest and that he is a homeowner, he is able to manage his own finances, and he has legal fees that he is not able to pay outside of a lump sum award, when such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
4. Whether the Hearing Commissioner erred in failing to render a Finding of Fact that the Claimant is not entitled to a lump sum payment of the Award pursuant to Section 42-9-301, when a failure to render such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
5. Whether the Hearing Commissioner erred in failing to render a Finding of Fact that the Claimant did not demonstrate a need for the monetary benefit to be paid in a lump sum, when failure to render such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
6. Whether the Hearing Commissioner erred in failing to render a Finding of Fact that the Claimant is not entitled to a lump sum payment of his Award as it would not be in the Claimant's best interest, when failure to render such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
7. Whether the Hearing Commissioner erred in failing to render a Finding of Fact that Claimant has demonstrated difficulty in managing his own finances and, thus, is not entitled to a lump sum payment of his Award, when failure to render such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record.
8. Whether the Hearing Commissioner erred in failing to issue a Conclusion of Law that pursuant to 42-9-301, Claimant is not entitled to a lump sum payment of the Award, when the failure to issue such a Conclusion of Law was based on erroneous conclusions of law and factual findings, and against the greater weight of the preponderance of reliable and substantial evidence in the record.

9. Whether the Hearing Commissioner erred in his Order ordering the Defendants to pay the Claimant's Award in a lump sum, when such an Order is based upon erroneous conclusions of law and factual findings, and against the greater weight of the preponderance of reliable and substantial evidence in the record.
10. Whether the Hearing Commissioner erred in failing to order that the Claimant is not entitled to a lump sum payment of the Award, when the failure to issue such an Order is based upon erroneous conclusions of law and factual findings, and against the greater weight of the preponderance of reliable and substantial evidence in the record.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1301480

RONNIE McDONALD,

Employee,

Claimant,

vs.

GREGG BLAKELY LOGGING, INC.,

Employer,

AND

WALKER, HUNTER & ASSOCIATES,
INC.

Carrier,

Defendants.

**RESPONSE TO RESPONDENT'S
MOTION FOR ADMISSION OF
ADDITIONAL AND NEWLY
DISCOVERED EVIDENCE**

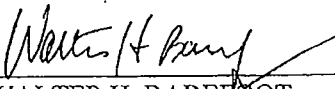
TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOE ANN
M. CALVY, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that Appellants, Gregg Blakely Logging, Inc., and Walker, Hunter & Associates, Inc., by and through their undersigned attorney, Walter H. Barefoot, Esquire hereby respond to the Respondent's Notice and Motion for Admission of Additional and Newly Discovered Evidence dated September 29, 2015, based on the following grounds:

1. This case was heard on March 25, 2015. At the hearing, the Claimant testified that if he was found permanently and totally disabled, he would like to receive his monies in a lump-sum payment.
2. The Claimant now produces additional and newly discovered evidence that the residence in which he is currently residing in is in the process of foreclosure.

3. The Claimant wishes to move the foreclosure proceedings into evidence to argue that the Claimant needs the monies in lump-sum to pay the mortgage of the house.
4. The Appellants object to the newly discovered evidence coming into the record as cumulative serving only to further bolster the single commissioner's award.
5. Additionally, the Claimant doesn't own the residence. The Foreclosure Complaint clearly states in Paragraph 14: "That upon information and belief, Defendant Ronnie McDonald is a renter/tenant/trespasser residing in the 2000 General/Augustine (28x60) Mobil Home (VIN: GMHGA6399900326AB) and has no legal or equitable right to possession of the mobile home." Also, his wife doesn't have any legal or equitable right to possession of the mobile as stated in Paragraph 15: "That upon information and belief Defendant Sharon McDonald is a renter/tenant/trespasser . . . and has no legal or equitable right to possession of the mobile home."
6. Furthermore, the Appellants object that because Claimant has no legal or equitable right, a lump sum payment to pay for someone else's property is not appropriate.
7. Based upon the above, Appellants respectfully request the Full Commission to deny Respondent's Notice and Motion for Admission of Additional and Newly Discovered Evidence.

Respectfully submitted,


WALTER H. BAREFOOT
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 7489
501 South Irby Street, 2nd Floor
Florence, South Carolina 29502
(843) 519-1800
Attorneys for the Employer/Carrier

Florence, South Carolina
October 9, 2015

IN THE STATE BOARD OF WORKERS' COMPENSATION
STATE OF SOUTH CAROLINA

RONNIE McDONALD,

Claimant,

-VS-

WCC FILE NO.
1301480

J. MAC'S EXPRESS, LLC.,

Defendant,

and

PALMETTO TIMBER FUND,

Carrier

HEARING

Before the Honorable T. Scott Beck
Florence, South Carolina

Commencing on March 25, 2015 at 12:17 p.m.

APPEARANCES BY COUNSEL:

FOR THE CLAIMANT: Joe Ann M. Calvy, Esq.
PO Box 610
Kingstree, SC 29556

FOR THE DEFENDANTS Walter H. Barefoot Esq.
AND CARRIER: PO Box 7489
Florence, SC 29502

Tatum Court Reporting
PO Box 248
Edgefield, SC 29824
706.207.5483
Christine Tatum, CCR

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RONNIE McDONALD

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LEGEND OF THE TRANSCRIPT

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

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P R O C E E D I N G S

COMMISSIONER BECK: Today is March 25, 2015. This is Workers' Compensation file number 1301480. Claimant in this matter is Ronnie McDonald, represented today by Attorney Joe Ann Calvy. The Employer in this matter is J. Mac's Express, LLC. I'll note for the record that they were found to be subject to the Act and uninsured at the time of this incident. Also present is Greg Blakely Logging, Inc. They were found by previous order of the Commission to be the statutory employer in this matter.

I will note for the record that J. Mac's Express, LLC. was properly noticed of this proceeding today. Anybody seen any indication that they are present today?

MR. BAREFOOT: None from us.

COMMISSIONER BECK: Okay. I will also note that the Uninsured Employers Fund appeared at the pre-hearing conference in this matter and a proposed order dismissing them as an unnecessary party was submitted. I signed that order, will serve that when I get back in the office on Friday. So they are not currently present for this proceeding.

Greg Blakely Logging, Inc. and the Palmetto Timber Fund are represented today by Attorney Walt Barefoot.

Date of accident in this matter is January 7, 2013. Parties have stipulated to an average weekly wage of

1 \$608.18, yielding a compensation rate of \$405.47. We're
2 here today on Claimants Form 50. I will also note for the
3 record that this matter has, in fact, been mediated and
4 resulted in an impasse. I received APAs from both the
5 Claimant and the Defendant in this matter.

6 Are there any objections to APAs, jurisdiction,
7 venue, or any other matter, Ms. Calvy?

8 MS. CALVY: No objection, Commissioner.

9 COMMISSIONER BECK: Mr. Barefoot?

10 MR. BAREFOOT: None from Defendants, Commissioner.

11 COMMISSIONER BECK: Without objection the Commission
12 file becomes a part of the record with the exception of
13 self-serving declarations and unstipulated medical
14 reports.

15 Also during the pre-hearing conference in this matter
16 the respected positions of both the parties was discussed.
17 From the standpoint of the Claimant; Mr. McDonald asserts
18 that he achieved maximum medical improvement on December
19 9, 2014. He has ratings of 20 percent to his hip, and
20 21.25 percent to his left lower extremity by the
21 authorized treating physician, Dr. Allen. He asserts that
22 he is permanently and totally disabled, entitled to
23 lifetime casually related medical care, to include repair,
24 maintenance, and replacement of hardware, prescription
25 medications, bracing, and future hip replacement surgery.

1 He is asking that the award today be paid in lump sum and
2 that Utica Allocation Language be included within the
3 order.

4 Ms. Calvy, anything in addition to that with regard
5 to the Claimant's position you'd like to get on the record
6 or any other matter you're here to litigate today, ma'am?

7 MS. CALVY: Nothing further, Commissioner.

8 COMMISSIONER BECK: From the Defendants' standpoint;
9 They concur with the maximum medical improvement date,
10 assert that the Claimant is only entitled to an award of
11 permanent partial disability to his hip and to his left
12 lower extremity, that future medical care would be limited
13 to the hardware, bracing, and prescription medications.
14 They object to lump sum, have no objection to Utica
15 language, and are seeking a credit for TTD paid beyond the
16 date of MMI.

17 Mr. Barefoot, anything in addition to that with
18 regard to the Defendants' position you'd like to get on
19 the record or any other matter you're here to litigate
20 today, sir?

21 MR. BAREFOOT: Nothing else from the Defendants, your
22 Honor.

23 COMMISSIONER BECK: Ms. Calvy, your first, and I
24 believe only, witness today is Mr. McDonald.

25 Mr. McDonald, would you take your hat off, please,

1 and raise your right hand.

2 Whereupon,

3 RONNIE McDONALD,

4 was called, and upon being first duly sworn,

5 was examined and testified as follows:

6 COMMISSIONER BECK: Please state your full name for
7 the record.

8 THE WITNESS: Ronnie Edward McDonald.

9 THE COURT: Ms. Calvy.

10 DIRECT EXAMINATION

11 BY MS. CALVY:

12 Q. Mr. McDonald, on January the 7th, 2013 you were involved
13 in a work injury, right?

14 A. Yes.

15 Q. And what type of injury did you have?

16 A. I got a hip injury, I got ACL torn, cartilage bone damage,
17 and the nerve in my left leg.

18 Q. Okay.

19 A. And my pelvis bone was cracked in two places.

20 Q. And what type of treatment have you had since that?

21 A. I've had surgery on my hip, they done surgery on my knee.

22 Q. Which hip?

23 A. On my right hip.

24 Q. Okay.

25 A. And they done surgery on my left knee.

1 Q. All right. And in addition to surgery what other type of
2 treatments have you had?

3 A. I did physical therapy.

4 Q. And what was the physical therapy on?

5 A. It was on my hip and my knee.

6 Q. All right. And since 2013 what kind of problems do you
7 still have now as a result of that injury?

8 A. Well, my left hip, it still bothers me, you know, it pains
9 me, you know, from day to day, and --

10 Q. Okay. Let's talk about your left hip first, then. Is
11 that your worse problem?

12 A. Yeah, it's pretty aggravating.

13 Q. How often do you have pain to your left hip?

14 A. It's like late in the afternoon, you know, around like
15 nighttime when it bothers me. Sometime it bothers me through
16 -- you know, in the day.

17 Q. Okay. And how often -- in a weeks time how often do you
18 have hip pain?

19 A. Pretty much about five days out of the week.

20 Q. Can you describe that pain?

21 A. It's pretty bad pain. You know, it pinches real bad, you
22 know, whenever it starts to paining me.

23 Q. Okay. And what do you do to relieve the pain?

24 A. I just take my pain medicine and relax.

25 Q. Does that help?

1 A. Yes, it calms it down.
2 Q. All right. Is there anything in particular that you do
3 that causes the pain to be worse in your hip?
4 A. No, the pain, it just comes.
5 Q. All right. And what would be the next worse problem you
6 have?
7 A. Well, my left leg, sometime it swells up on me.
8 Q. Your left leg?
9 A. Uh-huh.
10 Q. Okay. Where does it swell up at, where you had surgery
11 or --
12 A. Like around in my knee where I had surgery at.
13 Q. All right. And you say it swells?
14 A. Uh-huh.
15 Q. How often does it swell?
16 A. It's probably about once a month.
17 Q. Any other problems with the left leg?
18 A. It's just feels stiff.
19 Q. It's stiff?
20 A. Uh-huh.
21 Q. Okay. And what kind of problems does that create for you?
22 A. It makes it kind of hard, you know, to walk. It keeps me
23 walking with a limp.
24 Q. All right. Now, other than swelling do you have any pain
25 in your left leg?

1 A. Yeah, it bothers me. Sometime I have a pain that runs up
2 my leg, you know, 'cause I got a nerve in there that's
3 deteriorating in my left leg.
4 Q. Okay. It runs where?
5 A. It runs all the way up to my hip.
6 Q. From your knee up to your hip --
7 A. Uh-huh.
8 Q. -- on your left side? Okay. And how often do you have
9 that pain?
10 A. The pain's about every other day.
11 Q. And that's the pain that shoots from your knee up to your
12 hip that you're talking about?
13 A. Yes.
14 Q. And it pain in the knee, too?
15 A. Yes.
16 Q. Okay. And what do you do to relieve the pain?
17 A. Only thing I can do is just relax, just be still. Get in
18 my recliner and just kick back.
19 Q. Okay. And so far as walking, how does that effect you as
20 you go throughout your daily activities, having pain in your
21 leg about every other day?
22 A. If I stay up on it too long it pains me, and then my hip
23 starts to bothering me a little.
24 Q. So how long can you stand before you have problems with
25 your left side -- with your --

1 A. Probably --
2 Q. -- from your knee to your hip?
3 A. Probably about ten minutes and then it will start -- I can
4 start feeling the pain coming in.
5 Q. And what do you have to do at that point?
6 A. Just sit down.
7 Q. Okay.
8 A. Or either lie down.
9 Q. All right. What other problems do you have besides your
10 hip and your left leg area?
11 A. That's pretty -- my shoulder bothers me a little, you
12 know, sometimes, but other than that that's pretty much it.
13 Q. Okay. Other than standing is there anything else that
14 aggravate the pain that you have in your left leg?
15 A. No.
16 Q. What about your ankle? How's your ankle doing these days?
17 A. My ankle, it's just tight, real stiff, but it doesn't
18 bother me too bad.
19 Q. Okay. When do you have problems with it?
20 A. Sometime, probably like in a month and a half, sometime.
21 Q. Okay. So that's not a big issue?
22 A. No.
23 Q. All right. Now, what kind of treatment are you getting
24 now for the problems with your hip?
25 A. Nothing but just medication, that's it.

1 Q. Okay. And what about on your left side, your knee and up
2 to your hip area, are you getting any type of treatment for
3 that now?¹
4 A. No, I just wears my brace on it.
5 Q. Okay.
6 A. Take my medication.
7 Q. Okay. So you still have medication you take for pain?
8 A. Uh-huh.
9 Q. Okay. And that's a yes, right?
10 A. Yes.
11 Q. Okay. Your left knee, you say you wear a brace?
12 A. Uh-huh.,
13 Q. Yes?
14 A. Yes.
15 Q. Okay. How often do you wear your brace?
16 A. I wear it about three to four times out of the week. It's
17 according to, you know, where I'm going sometime.
18 Q. Okay. Does it help you?
19 A. If I'm not going anywhere -- it does okay. It keeps my
20 leg from jumping, you know, buckling, like about to make me
21 fall.
22 Q. Yes.
23 A. Uh-huh.
24 Q. When do you find yourself needing to wear your brace?
25 A. It's like whenever my leg starts to jumping. Like when I

1 be walking it's like it tried to jump out of the socket and
2 pops back in.

3 Q. Okay. And how often does that happen?

4 A. That happen probably three to four times out of the week.

5 Q. And what kind of education do you have?

6 A. A high school diploma.

7 Q. Do you have any military experience?

8 A. No.

9 Q. Okay. No college education?

10 A. No.

11 Q. No. Any certificates or did any trade schools or anything
12 like that?

13 A. No. No.

14 Q. Okay. What did you have to do to get your truck driver's
15 license?

16 A. I just had to study, take the test, take the drive.

17 Q. Okay. And what type of work have you done in your
18 lifetime, mainly?

19 A. Truck driving.

20 Q. Tell me what type things you've done.

21 A. Pull flatbeds or haul logs, haul produce, haul a little
22 cattle.

23 Q. Cattle?

24 A. Uh-huh.

25 Q. Okay. And how long would you say you drove trucks?

1 A. About 28 to 29 years.
2 Q. What if you had a job sitting along side a truck driver,
3 riding, do you feel like that's a job you could do?
4 A. I don't think so.
5 Q. Okay.
6 A. The truck's pretty rough at times.
7 Q. Okay. Tell me why you feel like you couldn't do that.
8 A. Because I just wouldn't be comfortable, you know, sitting
9 there, 'cause it start my hip to hurting.
10 Q. Okay. And what about climbing into and out of the cab,
11 would that create any problems for you?
12 A. Yeah, that would be a problem, getting in and out.
13 Q. Now, at some point you did try to go back to work, right?
14 A. Yeah, I tried it.
15 Q. Okay. Was that before your -- was that after your hip
16 surgery?
17 A. Yeah, it was after the hip surgery.
18 Q. Was it before your knee surgery?
19 A. I can't remember. I don't think it was before the knee
20 surgery.
21 Q. Okay. Do you remember when you tried to go back to work?
22 A. I can't remember the month that I went back in.
23 Q. Okay.
24 A. I know Dr. Allen, he gave me a week to try it.
25 Q. Okay.

1 A. And I ran a trip and didn't work out too good.
2 Q. Tell me about that trip.
3 A. 'Cause mashing the clutch, it pains my knee real bad, you
4 know, holding that clutch in.
5 Q. Okay.
6 A. And then, you know, it pains my hip sitting there, you
7 know, for so long driving.
8 Q. Okay. So you had hip pain from sitting?
9 A. Uh-huh.
10 Q. And knee pain from mashing the clutch?
11 A. Yes.
12 Q. Okay. Any other problems you experienced while you took
13 that drive?
14 A. No, that was pretty much it, my hip and my knee.
15 Q. How long was the drive?
16 A. It was about ten and a half hours.
17 Q. Okay. And how long does that job normally take?
18 A. It takes about ten and a half hours to run it. It took me
19 like thirteen hours to do it.
20 Q. All right. And when you got back off the trip what kind
21 of problems did you have?
22 A. I have pain in my right hip and my left knee.
23 Q. And then you went back to see Dr. Allen at that point?
24 A. Yes, I went back to Dr. Allen.
25 Q. What did he do at that point?

1 A. He told me --
2 MR. BAREFOOT: Objection, your Honor, as to hearsay.
3 COMMISSIONER BECK: Sustained.
4 Q. Yeah, just don't tell me what he told you. But did he
5 take you out of work or --
6 A. Yes, he took me back out of work.
7 Q. Okay. And have you been out of work since?
8 A. Yes.
9 Q. All right. What type of finances do you have coming in
10 your house now?
11 A. Just workman's comp.
12 Q. And who handles those funds when they come in?
13 A. Well, my wife, she helps me with it.
14 Q. Okay. Tell me about it, how do y'all handle that?
15 A. Well, I pretty much -- me and her go over it, cash my
16 check, and I let her, you know, pay whatever bills we need to
17 pay.
18 Q. All right. Do you ever go and pay the bills yourself?
19 A. Sometime I do.
20 Q. Tell me what all you pay.
21 A. I go like pay the light bill and the phone bill.
22 Q. Okay. Have you and your wife filed bankruptcy?
23 A. No.
24 Q. All right. Do you ever have to write checks?
25 A. No.

1 Q. No, okay. Do y'all write checks in the home?
2 A. No.
3 Q. No? Y'all pay everything with cash?
4 A. Yes.
5 Q. Okay. Do y'all have a bank account?
6 A. Yeah, she does.
7 Q. Okay, your wife do. Is your name on that bank account?
8 A. No.
9 Q. No, okay. And does she use it just for saving?
10 A. Yes, just pretty much, you know, when she was working her
11 payroll was going onto her bank card.
12 Q. All right. And you don't have any type of savings or any
13 kind of accounts?
14 A. No.
15 Q. Okay. How are you with handling cash, yourself, handling
16 money, yourself?
17 A. Pretty good with it.
18 Q. Tell me about it.
19 A. Well, I try to, you know, pretty much do all the things
20 that I need -- the most important things to be done. And I try
21 to hold money for whatever, you know, things that are coming up
22 that we need to get paid, you know, like grocery and household
23 needs that we need.
24 Q. Okay. And how long have you been married?
25 A. Twenty-six years.

1 Q. Do y'all own y'all home?
2 A. Yes.
3 Q. Okay. And how are the finances right now with you being
4 out of work, how are things?
5 A. It's kind of rough.
6 Q. Tell me about it.
7 A. Well, sometime I have to borrow to, you know, try to get
8 my bills paid. You know, and most the time I just don't have
9 it to do it.
10 Q. And what about before this injury, how was things
11 financially in the home?
12 A. Things was pretty decent.
13 Q. Tell me about it.
14 A. Well --
15 (Whereupon, transcription impossible due to cross talk.)?
16 A. When I was working, you know, I pretty much try to work --
17 make enough money to pay whatever bill, you know, I needed to
18 pay, and it was working out pretty good.
19 Q. Okay. So not behind on bills before the injury --
20 A. No.
21 Q. -- or what would you say?
22 A. Every blue moon I'd probably get a little behind and then
23 get caught back up.
24 Q. Okay.
25 A. But it wasn't, you know, like how it is now.

1 Q. All right. Now, bills that your wife go and pay, is it
2 because she's the person that usually pays the bills or is it
3 because of any physical problems that you have that you can't
4 go pay the bills, or what?

5 A. Most of the time when I'm not feeling, you know, too good,
6 you know, like I'm in pain, she'll go and pay the bills and
7 everything, and, you know, get what we need.

8 Q. What about before this accident, how were you with paying
9 the bills? What did you do before this accident?

10 A. Well, before the accident I used to go and, you know, take
11 care of my bills. You know, like if I'm in town, you know, I'd
12 go out on -- I'd call her, find out what's need to be done and
13 I go ahead and get it done.

14 Q. And what kind of bills would that be, the ones that you'd
15 take care of?

16 A. The house payment, light bill, phone bill.

17 Q. Okay. Now that you're not working how do you spend your
18 day?

19 A. Most of the time I be watching TV, and sometime I go and
20 visit, you know, my friend, you know, sit with him for a little
21 while, and then I'll pretty much come on back to the house.

22 Q. All right. Now, you did have to have some hardware as a
23 result of your injury, right?

24 A. Yes.

25 Q. Where is that hardware at?

1 A. In my right hip.
2 Q. In your right hip? And how has that been going, is it
3 helping you?
4 A. It's aggravating.
5 Q. How?
6 A. You know, with pain-wise, certain way I move it hurts.
7 Q. The hip or you can feel --
8 A. The hip.
9 Q. -- the hardware or the hip hurts?
10 A. Uh-huh.
11 Q. Which one?
12 A. The right hip.
13 Q. Okay. Do you feel the hardware in there or just feel
14 the --
15 A. No.
16 Q. -- pain?
17 A. Just feel the pain from it.
18 MS. CALVY: All right. I believe that's all the
19 questions I have at this time, Commissioner.
20 COMMISSIONER BECK: Mr. Barefoot.
21 MR. BAREFOOT: Thank you, your Honor.
22 CROSS-EXAMINATION
23 BY MR. BAREFOOT:
24 Q. Mr. McDonald, I believe you're 47 years old, is that
25 right?

1 A. Yes.

2 Q. And you said you've been married 26 years. Your wife's a
3 bus driver, isn't she?

4 A. Yes.

5 Q. Is she still working?

6 A. No, she's not working right now.

7 Q. Why is she not working now, sir?

8 A. Well, that's due to personal problems with her on her job.

9 Q. Well, you were talking about your finances before you got
10 hurt and after you got hurt. So she has stopped working since
11 -- what, that must be in the last six months.

12 A. No, she just was out of work since January.

13 Q. Of this year?

14 A. This year.

15 Q. Okay. So her going out of work -- obviously she's not
16 having an income at this point.

17 A. No, she doesn't.

18 Q. Did she get hurt at work too or what happened?

19 A. No, she didn't get hurt at work.

20 Q. Is she looking for other work she can do at this time?

21 A. Yes, she is.

22 Q. You have three children, I believe the youngest is seven,
23 is that right?

24 A. Yes.

25 Q. They all live with you?

1 A. Yes.

2 Q. They all depend upon you for support?

3 A. Yes.

4 Q. You mentioned you're a high school graduate. You have no
5 difficulty with reading and writing, do you, sir?

6 A. No.

7 Q. No difficulty with basic mathematics?

8 A. No.

9 Q. And you said you got your CDL, your Commercial Driver's
10 License. You never went to truck driving school, did you, sir?

11 A. No.

12 Q. You did that on your own?

13 A. Yes, my father helped me with that.

14 Q. Okay. You talked about your work history. At one point
15 you worked for a place called AG Whaley, which is a wire plant,
16 isn't that right?

17 A. Yes.

18 Q. And there you operated a wire machine?

19 A. Yes.

20 Q. I believe that was as long as two years, wasn't it, sir?

21 A. Yes.

22 Q. Okay. And at one point -- actually, two different points
23 -- you owned your own trucks, right?

24 A. Yes.

25 Q. So that's basically a little business you were running,

1 isn't that right?

2 A. Yes.

3 Q. Had to keep up with all the paperwork?

4 A. Yes.

5 Q. Had to pay all the taxes?

6 A. Yes.

7 Q. That type stuff. You told the Dr. -- I mean, the

8 Commissioner about seeing the doctors. Dr. Allen's pretty much

9 the main doctor you've been seeing for about the last year or

10 so, is that right?

11 A. Yes.

12 Q. And you've told him all the problems that you're having?

13 A. Yes.

14 Q. Didn't hold anything back from him?

15 A. No.

16 Q. You talked about your medication. I believe your pain

17 medication, you only take that, what, two or three times a

18 week, isn't that right?

19 A. Sometimes a little more than that, it's according to how

20 bad the pain gets.

21 Q. And you said you're using an ACL brace maybe three or four

22 times a week?

23 A. Yes.

24 Q. Now, work. You said you went back to work at one point a

25 while back and drove a load for Mr. -- the fellow at J. Mac's

1 Express, right?

2 A. Yes.

3 Q. You completed that load, didn't you?

4 A. Yes.

5 Q. You haven't looked for any other kind of work you could do

6 since then, have you, sir?

7 A. No.

8 Q. You haven't been in touch with the South Carolina

9 Department of Vocational Rehabilitation to see what they might

10 could offer you.

11 A. No.

12 Q. You can sit comfortably. Really, the doctor indicates you

13 can sit up to four hours at a time, and that's just because

14 that's just the maximum time on this form, isn't that right?

15 A. I guess. He didn't tell me that.

16 Q. Have you seen this form about what the doctor said you can

17 do?

18 A. That one? Yes.

19 Q. Okay. And you said you could sit up to four hours, is

20 that right?

21 A. It's all depending on the comfort of the chair.

22 Q. I'm just talking about what the doctor put on the form.

23 A. Yes, I understand that.

24 Q. It indicated you could work eight hours a day sedentary.

25 A. I don't know. He didn't say that to me.

1 Q. But you haven't tried to find any work that would fit
2 within what the doctor says you can do, have you?
3 A. No, because I was under the doctor care.
4 Q. So really we don't know if there's other work you can do
5 out there, 'cause you haven't gone and tried.
6 A. No.
7 Q. You can still drive your own personal vehicle?
8 A. Yes.
9 Q. No difficulty with that?
10 A. No.
11 Q. And personal hygiene, you know, that kind of stuff, you
12 can take care of that?
13 A. Yes.
14 Q. I believe you met with two vocational people, one was
15 Ms. Jubran and the other was Mr. Page, is that right?
16 A. Yes.
17 Q. Have you seen Mr. Page's report?
18 A. No.
19 Q. Okay. So at your house right now there's you and your
20 wife, who you say right now is unemployed, and your seven year
21 old, and your other two kids. How old are your other two kids?
22 A. I got one that is 23 and one that's 25.
23 Q. So at least your wife and your seven year old, they depend
24 on you for support?
25 A. Yes.

1 Q. You don't have any bank accounts, sir?
2 A. No.
3 Q. Have you ever had more than \$20,000 at one time?
4 A. No.
5 Q. Have you ever invested money?
6 A. No.
7 Q. Do you have any issues with the Internal Revenue Service
8 at this time?
9 A. Yes.
10 Q. What are those issues?
11 A. I mean, that's my personal business with that.
12 Q. Yes, sir. Is that from when you had your own business
13 before, when you were running your own truck?
14 A. Yes.
15 Q. You didn't pay the proper amount of taxes?
16 A. Yes.
17 Q. So you got problems with the IRS from issues when you were
18 running your own business. Is that because you didn't file the
19 proper paperwork and do all that stuff right?
20 A. Yes.
21 Q. Any other kind of financial issues you've got going on
22 right now?
23 A. No.
24 MR. BAREFOOT: Commissioner, I appreciate it. I
25 believe that's all the questions I've got at this time.

25

1 COMMISSIONER BECK: Ms. Calvy, anything further?

2 MS. CALVY: Yes, just probably one question.

3 REDIRECT EXAMINATION

4 BY MS. CALVY:

5 Q. The vocational expert, Fifi Jubran, that you saw and met
6 her in Florence, did she -- do you know whether she lists any
7 work that you can do?

8 A. No, she didn't.

9 MS. CALVY: Okay. That's all the questions I have.

10 MR. BAREFOOT: Nothing further from us.

11 COMMISSIONER BECK: Did any doctor ever tell you that
12 you would need a knee replacement?

13 THE WITNESS: Dr. Allen had told me.

14 MR. BAREFOOT: Your Honor, I hate to do this. I
15 probably need to place an objection just as to hearsay.
16 Now I've got my objection on the record, I'll be quite.

17 COMMISSIONER BECK: And here's the reason I'm asking;
18 there's a reference in the vocational report indicating
19 that you will need, not only a hip replacement, but a knee
20 replacement. I'm trying to figure out where that came
21 from.

22 MS. CALVY: What page are you on, Commissioner?

23 COMMISSIONER BECK: I'm on page five of the
24 Claimant's APAs. It's in that top paragraph, it says: He
25 will need a hip replacement in the future and he will need

1 a knee replacement in the future.

2 I've gone through all of these records -- all of
3 Dr. Allen's records -- and I don't see any recommendation
4 for any knee replacement. I'm trying to figure out how
5 the vocational assessor got that information.

6 Did you tell the vocational assessor, Ms. Jubran,
7 that you were going to need a knee replacement?

8 THE WITNESS: Yes, that's what Dr. Allen was telling
9 me at the present time before he done the surgery on my
10 knee.

11 COMMISSIONER BECK: All right. Ms. Calvy, anything
12 further?

13 MS. CALVY: Nothing further.

14 COMMISSIONER BECK: Mr. Barefoot?

15 MR. BAREFOOT: Nothing, your Honor.

16 COMMISSIONER BECK: Any other witnesses on behalf the
17 Claimant?

18 MS. CALVY: No other witnesses.

19 COMMISSIONER BECK: Any witnesses on behalf the
20 Defendants?

21 MR. BAREFOOT: None, your Honor.

22 COMMISSIONER BECK: That will conclude this
23 proceeding.

24 *

25 (Whereupon, the hearing was concluded at 12:44 p.m.)

Transcript of the Testimony of
**MCDONALD V. GREGG BLAKELY LOGGING, ET
AL.**

Date: October 19, 2015



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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1301480

Ronnie McDonald,)
)
Claimant,)
)
v.)
)
Gregg Blakely Logging,)
)
Employer,)
)
and)
)
Walker, Hunter & Associates,)
Inc.,)
)
Carrier/Defendants.)
)

FULL COMMISSION PANEL HEARING

Monday, October 19, 2015
2:36 p.m. - 2:51 p.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 19th day of October, 2015
before Jill H. Vickers, Court Reporter and Notary
Public in and for the State of South Carolina.

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APPEARANCES

1

2

COMMISSION PANEL:

Aisha Taylor, Chair

3

Susan Barden

Gene McCaskill

4

Joe Ann Calvy, Esquire

5

Joe Ann Calvy, LLC

209 West Mill Street

6

Kingstree, South Carolina 29556

Attorney for the Claimant

7

Walter H. Barefoot, Esquire

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McAngus, Goudelock & Courie, LLC

501 South Irby Street, 2nd Floor

9

Florence, South Carolina 29501

Attorney for the Defendants

10

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25

1 COURT REPORTER: Today is October 19, 2015. This is
2 South Carolina Workers' Compensation Case
3 Number 1301480. This is the case of Ronnie
4 McDonald, Claimant, versus and Gregg Blakely
5 Logging, Employer, and Walker, Hunter &
6 Associates, Inc. is the Carrier. The Appellant
7 is the Defendant who is represented by Walter
8 H. Barefoot. The Respondent is represented by
9 Joe Ann Calvy. Each side is allowed ten
10 minutes for oral argument and three minutes in
11 reply. You are requested to argue the grounds
12 of exception and stay within the record.

13 MR. BAREFOOT: Thank you, may it please the
14 commission. I'm Walt Barefoot. I'm here on
15 behalf of the defendants, Gregg Blakely Logging
16 and the Palmetto Timber Fund as Administered by
17 Walker, Hunter & Associates. This matter went
18 to a hearing on a Form-50 on March 25th, 2015.
19 At that hearing, the issue was the extent of
20 permanent disability and whether the claimant
21 is entitled to a lump sum payment. He sought
22 permanent and total disability and in a lump
23 sum. The Defendant's thought, "Oh, we don't
24 think it's a permanent and total claim, but if
25 it is, we don't think it's appropriate for a

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1 lump sum". The hearing commissioner issued an
2 order January 15th, 2015 finding the claimant
3 permanently and totally disabled and awarded a
4 lump sum. The defendants, Gregg Blakely
5 Logging -- and I say that because there's an
6 uninsured employer between us and the claimant.
7 We're the statutory employer. Gregg Blakely
8 Logging filed a Form 30. All the alleged
9 errors go to one simple argument. We don't
10 believe that this claimant is appropriate for
11 a lump sum award. Before I get into my
12 argument, I do want to ask -- I believe that
13 the claimant had submitted a motion for
14 additional ---

15 COMMISSIONER BARDEN: Is this the motion?

16 MR. BAREFOOT: Yes.

17 COMMISSIONER BARDEN: Commissioner McCaskill was kind
18 enough to remind me of that earlier today.
19 Based upon the fact that the evidence was
20 cumulative that you had filed that it -- you
21 know, that -- towards your request to
22 corroborate or to substantive, rather, a lump
23 sum, the motion was denied.

24 MR. BAREFOOT: Okay.

25 MS. CALVY: And we did receive an e-mail this

1 morning.

2 MR. BAREFOOT: I apologize. I've been out of my
3 office. I had a deposition, and I've been out
4 of my office this morning, so I haven't looked
5 at my e-mails. I've looked at a couple. You
6 know, you get so many that you can't go through
7 all of them.

8 COMMISSIONER BARDEN: Okay.

9 MR. BAREFOOT: Okay. Thank you. The legal standard
10 of the lump sum motion that we're here about
11 today, that comes from Section 42-9-301 of the
12 Workers' Compensation Act, and it reads in part
13 that "A claimant shall be entitled to a lump
14 sum to be provided when the employee so
15 requests and the commission deems it not to be
16 contrary to the best interest of the employer
17 or his defendants. So, that's the statutory
18 standard. We have some case law helping us
19 with this a little bit. In 1985, the Court of
20 Appeals decision, Cox v. Mills, the Court noted
21 that "A lump sum is appropriate when the
22 claimant demonstrates an ability to manage large
23 sums of money in a prudent fashion". I'm going
24 to repeat that, "manage large sums of money in
25 a prudent fashion", and that's 286 South

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1 Caroline 226. We also have Thompson versus
2 South Carolina Steel Erectors. That's a 2006
3 case when the Court of Appeals noted that when
4 you're making this analysis hear at the
5 commission, you're supposed to consider the best
6 interest of the claimant and his family. I
7 point that out because of a few issues I'll
8 deal with in just a second. So, we believe
9 that the legal -- the statutory and the caselaw
10 means we're here today to decide, "Is it
11 appropriate? Can the claimant handle a large
12 sum of money in a prudent fashion in the best
13 interest of him and his family?" That's the
14 legal standard in which we're dealing with.
15 So, now, let me talk to you a little bit about
16 the facts. The claimant is 47 years old. He
17 has three of his children who live with him.
18 One is seven years old. The claimant is a
19 truck driver. He had gotten off a truck when
20 this injury occurred. In the past, he had a
21 business running his own truck. That did not
22 turn out well. Even at the hearing that we
23 talked about, the claimant still had some IRS
24 problems associated with when he ran his own
25 truck business. He didn't pay his taxes

1 properly. He didn't file paperwork properly.
2 So, we've got that out there. Is he somebody
3 who can handle a lump sum in a prudent fashion,
4 well, based on experience, it looks like maybe
5 not. We've also got the issue that the
6 claimant says he pays all of his bills with
7 cash. That's on the transcript of the hearing
8 at Page 16. Also, the claimant doesn't have
9 any bank accounts. He says his wife has a bank
10 account. His name is not on it. He doesn't
11 have any bank accounts of his own. So, we've
12 got those three factors; prior business
13 experience where the claimant ran a business did
14 not turn out, didn't do a good job of handling
15 the business end of it, pays his bills in cash,
16 doesn't even have any bank accounts in his name,
17 and he's asking for a lump sum that, by my rough
18 calculations, and they may be right and maybe
19 not at this point, but about \$135,000.00. That's
20 a lot of money. When you put all that
21 together -- oh, and by the way, like I said,
22 he's got a seven year old at home that lives with
23 him. The seven year old is not going to be
24 graduating from high school for at least 10 or 11
25 years. Again, now you're talking about the

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1 best interest of the claimant's family. Hear's
2 the reality. If something happens -- if he gets
3 a lump sum payments and something happens to
4 this \$135,000, give or take, dollars, there's
5 no more Workers' Compensation money. We're done
6 here. There will be no more money. If he makes
7 a mistake and doesn't handle it prudently, it
8 will be all gone. We think we can put all that
9 together, and we believe his family will pay
10 the price for it. I'm not trying to be too
11 dramatic, but they depend upon him. At the
12 hearing, he testified he was the only person
13 bringing in any money. The only income they had
14 was his Workers' Compensation check. Again, when
15 you put all this together using a legal standard,
16 the facts of this case, we think that this is
17 a claimant, as tragic as I hate to say it, he's
18 not going to be able to prudently handle a
19 large sum of money. We think it's in his best
20 interest to be paid on a weekly basis so that
21 money can't get gone, so to speak, using the
22 Florence vernacular. Any questions?
23 (Whereupon, there were no questions from the
24 commission.)
25 COMMISSIONER TAYLOR: Ms. Calvy.

1 MS. CALVY: Yes, thank you, commissioners. I'm Jo
2 Ann Calvy. I represent Mr. Ronnie MacDonald in
3 this action, the claimant. The claimant has
4 been married for 26 years, and yes, his wife
5 does handle the family bank account, and she
6 pays the bills out of it, but there's
7 insufficient evidence here to show that my
8 client cannot handle a large sum of money. He
9 stands to get \$135,000.00, less attorneys fees.

10 COMMISSIONER BARDEN: But he really doesn't handle
11 the money, does he, if his wife is handling all
12 the finances, and he's not even on the account
13 I mean, can't you -- would you not concede that
14 that is problematic, he's not even on the
15 account. If he doesn't handle the money, the
16 money essentially is going to her, correct?

17 MS. CALVY: Well, if he chooses to use this account
18 once he gets the money, but this is how it's
19 been in the past.

20 COMMISSIONER BARDEN: Is there any testimony that he
21 plans to either, A, open his own account, or B,
22 be put on the account with the wife?

23 MS. CALVY: There's no testimony about that,
24 commissioner.

25 COMMISSIONER BARDEN: Okay.

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1 MS. CALVY: The employer has not shown that they
2 will receive a hardship from paying the money.
3 The claimant testified that, because of this
4 accident, he's had to rely on temporary total
5 benefits, and because of that, he's gotten
6 behind in most of his bills, and he says he
7 needs the money. He says he's behind in just
8 about everything, and he said it has not been
9 like this before. And prior to this when he
10 worked, he'd make sure he put in enough hours
11 to pay his bills. He did admit that he had
12 some tax problems with the IRS, but again, you
13 know, he probably plans to use some of this
14 money, you know, for that.

15 COMMISSIONER MCCASKILL: What education?

16 MS. CALVY: Is it eighth grade? Let's see. I think
17 it's the eighth grade.

18 MR. BAREFOOT: I believe he testified he's a high
19 school graduate.

20 MS. CALVY: Okay.

21 COMMISSIONER BARDEN: Did you -- and I'll have to
22 flip through and look at it, but did y'all
23 plead, you or your client plead in the
24 alternative for a partial lump sum, for
25 instance, for attorney's fees, that that could

1 be accomplished ...

2 MS. CALVY: At the time of the hearing, we didn't.

3 COMMISSIONER TAYLOR: I have on the order, he was a
4 high school graduate, and we don't usually
5 double check that information. Is that
6 correct?

7 MS. CALVY: Yes, that's correct, Commissioner.

8 COMMISSIONER MCCASKILL: So, he's a high school
9 graduate. He's got a wife and three kids,
10 married for 26 years, pays his bills in cash,
11 but as I remember reading, other than the tax
12 problem with the IRS, he said he would get
13 behind from time to time, but he would catch it
14 back up?

15 MS. CALVY: That's correct.

16 COMMISSIONER MCCASKILL: All three children living at
17 home?

18 MS. CALVY: That's correct, Your Honor.

19 COMMISSIONER MCCASKILL: Okay.

20 MS. CALVY: And that's our case.

21 MR. BAREFOOT: Nothing further from us. We think
22 the facts are pretty straightforward on this
23 one.

24 COMMISSIONER TAYLOR: Thank y'all very much.

25 (Whereupon, the hearing concluded at 2:51 p.m.)

Fi-Fi Jubran, M.A., CRC, CCM, CDMS
Rehabilitation Consultant

2 Sweet Jasmine Court
Columbia, SC 29229

Telephone: (803) 556-8357
Fax: (803) 699-0532

Claimant: Ronnie McDonald
Date of Birth: August 24, 1967
Date of Injury: January 7, 2013
SSN: 250-51-4219
Date of Evaluation: July 14, 2014
Purpose of Evaluation: Determine Whether Ronnie McDonald

August 8, 2014

VOCATIONAL REHABILITATION ASSESSMENT

INTRODUCTION:

File referred by attorney, Ms. Joe Ann Calvy for a Vocational Rehabilitation Assessment for the purpose of determining whether Mr. Ronnie McDonald is employable. Evaluation took place on July 14, 2014 at Barnes and Noble.

INJURY/MEDICAL STATUS:

On January 7, 2013, Mr. Ronnie McDonald was working as a Truck Driver for J. Macs Express. His brother was loading the truck with logs. He was swinging logs. Mr. McDonald came across the trailer and was hit with a log. It fractured his left hip. His right hip was crushed out of the socket. An ambulance took him to Williamsburg Regional where he was hospitalized for three weeks. He was sent to an inpatient facility to learn how to walk again.

On July 17, 2013, Mr. Ronnie McDonald was seen by Dr. Alan. The office note reads, "Constitutional: Patient returns for following evaluation. He had a work-related looking accident resulting in a right hip acetabular fracture which was treated operatively by my partner. He also had a proximal tibia fracture, fibula fracture with ACL, tear and distal tibia fracture as well. The injuries to the left lower extremity were treated nonoperatively. His main complaint is pain and stiffness in the hip. He also complains that the leg once to give out on him with routine walking. He has been wearing a brace. He also complains of popping in the knee when he is using the clutch on his truck. He has had a trail of return to work and

Page Two
Ronnie McDonald
Vocational Rehabilitation Assessment

is not comfortable with his work duties. Assessment: Current tear of meniscus. ACL Tear. Work-related injury. Aftercare for healing traumatic fracture of hip. Treatment: 1. Current tear of meniscus: Patient continues to be symptomatic from his knee. He has had therapy and has been using a brace. At this point, I recommend arthroscopy with possible chondroplasty, partial meniscectomy, and left knee ACL reconstruction. I discussed the use of autologous versus allograft. I discussed the potential for donor site morbidity with auto graft versus potential for transmitted disease with allograft. Patient has been set up for surgery August 15, 2013 pending medical clearance."

On July 24, 2013, Mr. McDonald was seen again by Dr. Kyle Watford. The office note reads, "Constitutional: Mr. McDonald is here for follow-up. He complains of right hip pain and discomfort. He states the pain is regular and it is difficult for him to sit on hard chairs for lengthy periods of time. Assessment: Hip arthritis. Plan: Hip arthritis: We will arrange for an Intraarticular injection of the right hip. He understands that this may or may not relieve his pain but is willing to give this a try. He will return to work with no restrictions. He is scheduled for left knee arthroscopy with Dr. Alan in mid-August".

On August 15, 2013, Dr. Rodney Alan performed diagnostic arthroscopy of Mr. Ronnie McDonald's left knee at McLeod Regional Medical Center. The postoperative diagnosis was: 1. Partial ACL tear, with symmetric stability on exam under anesthesia, left knee. 2. Minor fraying of the posterior horn of the medial meniscus, left knee. 3. Grade 2 chondromalacia, medial femoral condyle, left knee. The operative report read, "The patient had a negative pivot shift on exam under anesthesia, with the Lachman's and drawer testing. His exam was symmetric to the contralateral side. Diagnostic arthroscopy revealed fibers intact, but the left knee ACL, grade 2 chondromalacia of the medial femoral condyle and minor fraying of the edges of the meniscus and posterior horn of the medial meniscus."

On August 28, 2013, Mr. McDonald was seen by Dr. Alan. The office notes read, "Constitutional: Patient returns for follow-up after left knee arthroscopy. No complaints. Assessments: 1. Surgery follow-up examination. Treatment: 1. Surgery follow-up examination. Continue physical therapy."

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Ronald McDonald
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On October 9, 2013, the claimant was seen by Dr. Kyle Watford. The office notes read, "Constitutional: Patient presents to the office today for evaluations/p right acetabulum, ORIF January 2013, complaining of same right hip pain today that is intermittent in nature, ambulating well on his RLE. He complains mostly of left knee pain, underwent previous left knee arthroscopy by Dr. Alan, and has a hinge brace in place. Denies his right hip giving out, just has some pain at times mostly anterior hip. Assessment: 1. Arthritis pain, hip - 716.95 (Primary), post traumatic arthritis hip. Plan: 1. Arthritis pain, hip: Patient seen and evaluated x-rays reviewed of right hip, hardware in good alignment, fracture has healed, and post traumatic arthritis is noted."

On October 9, 2013, Mr. McDonald was also seen by Dr. Alan. The notes read, "Constitutional: Patient returns for follow-up status post left knee arthroscopy. At the time of surgery patient had partial ACL tear felt to be stable but requiring reconstruction. Patient has completed physical therapy. He wears a brace. He had a work-related injury to the knee with a log, fell on him. He also has posttraumatic arthritis of the right hip. He had an acetabular fracture. Acetabular fracture was treated surgically. Assessments: 1. Surgery follow-up examination... Treatment: 1. Surgery follow-up examination. I suspect the patient's stretch will gradually return in the left knee. Continue brace as needed. Remain out of work. Patient has follow-up with Dr. Watford for the right hip. He seemed to have responded to a steroid injection in the hip and I recommend avoiding hip replacement until the patient is older. I will see him for final visit after his follow-up with Dr. Watford for final evaluation and rating."

On January 15, 2014, Mr. McDonald was seen by Dr. Alan. His office notes read, "Patient comes in complaining of acute knee pain and swelling around the holiday time. The swelling has improved with diclofenac. He has some minimal pain at baseline in the knee. The severe pain has resolved. He does report some intermittent episodes of the knee giving out. He had a partial ACL tear that was not reconstructed. He has been using a brace. Treatment: Will order ACL brace, we will screen for gout."

On February 3, 2014, Mr. McDonald was seen by Dr. Kyle Watford. The orthopedist's notes read, "Constitutional: Patient is a 46-year-male who is well-known to me. He did have a posterior wall acetabulum fracture treated with open reduction internal fixation at over a year ago. This was something that was done a little bit sub-acute as he was 3-4 weeks out. I believe from his original injury when this was done. He is back today, having some significant pain in his right hip. He does report he had good relief from a previous intra-articular injection into his right hip many months ago. Assessments: 1. Hip arthritis- 716.95 (Primary). Posttraumatic arthrosis right hip. Plan: 1. Hip arthritis: I have ordered AP and lateral x-rays of the right hip which show some rather significant degenerative

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joint disease at his right hip. This is a little worse than his last films. He was supposed to see Dr. Allen today for his left knee and I do think it would be reasonable for Dr. Alan to see him to see if he thinks he is a candidate for total hip arthroplasty. I have also made sure that he understands that Dr. Almy also order an Injection into his right hip."

On May 7, 2014, Mr. McDonald was seen by Dr. Alan. The office notes read, "Constitutional: Patient returns for follow-up. He has a partial tear of the left ACL and has had some intermittent episodes of giving way. The right hip hurts in the groin. He had open reduction internal fixation of acetabulum fracture. His pain is 4-8/10. He takes diclofenac intermittently. Treatment: 1. Work related Injury: Patient currently with hip pain however, I do not think hip replacement surgery will improve his condition at this time. I believe he will need hip replacement in the next 5-10 years. Patient continues to have occasional symptoms from the left knee. I do not think reconstruction will improve this. He should continue with an ACL brace. He will need to wear this with activities. He will need a new one every year or two when it wears out. After talking with the patient, I believe he is at maximal medical improvement. He will eventually need a right hip replacement. He will need to continue using a knee brace. He will need continued anti-inflammatories as needed for pain. Based on his description of his job duties as a logger, I do not think he will be capable of returning to this occupation. He should be capable of caring out the duties of a job that required sedentary or light physical exertion as defined by Social Security. He has 20 percent impairment to the right hip based on his work-related injury. This is based on the diagnosis-related estimate of cruciate ligament tear with mild instability based on the fifth edition of the AMA guides to see the evaluation of permanent impairment."

On May 28, 2014, Mr. McDonald was seen by Dr. Alan. The office notes read, "Constitutional: Patient returns for follow-up evaluation. He had a work-related injury affecting his right hip, left knee, and left leg. His primary complaint today is pain in the right hip. Pain is associated with stiffness. Pain is 7/10. He is wearing a brace on the left knee. He is taking diclofenac. Assessment: 1. Right hip pain. 2. ACL tear. 3. Left ankle pain. 4. Left knee pain. Treatment: 1. Work related Injury: 37 percent permanent impairment to right hip, 17 percent permanent impairment to left knee, 5 percent permanent impairment left ankle. Impairment based on diagnostic related estimates in the fifth edition of the AMA guides to the evaluation of permanent impairment. 2. Others: The patient has posttraumatic arthritis of the right hip is a direct result of his work-related injury. He is too young for hip replacement. He has had surgery and the hardware is in good position and appears stable. I recommend conservative treatment for his hip. He also has an ACL tear. We are treating this in a brace, she will need to continue

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using the anytime he has instability or pain in the knee. I do not recommend surgery unless he is actively engaged in pivoting-type sports or having instability symptoms with routine activities such as walking. The patient has reached maximal medical improvement. I am going to allow him a trial to return to work. I believe he will be best off if he is able to return to the work that he is trained to do. He describes driving trucks long distances. I am going to approve that with permanent restrictions. He has been instructed to return if his work demands exceed his abilities. He will need continued anti-inflammatories and Tylenol as needed. He will need a hip replacement in the future. He will need a knee replacement in the future. Hopefully, this will be after he turns 60."

CURRENT MEDICATIONS:

Mr. McDonald takes the following medications:

1. Diclofenac Sodium 75 milligrams, one tablet three times a day for pain.
2. Ultram 50 milligrams, one tablet every six hours for pain.
3. Naprosyn 500 milligrams as needed every twelve hours

Regarding side effects, Mr. McDonald indicated they make him sleepy and effect his concentration.

ACTIVITIES OF DAILY LIVING:

Mr. McDonald is married with three sons, ages 25, 22, and 7 years old. The older boys live with him and the 7-year old comes on the weekend. His wife has worked over 20 years as a Bus Driver. He barely gets four hours of due to the pain in his leg and hip. He is unable to get in a comfortable position. He wakes up around 10am. He eats breakfast at McDonalds. He tries to cook to help his wife but does it at his pace. She usually comes home and prepares dinner. Most of the time, he eats sandwiches.

When it comes to cleaning, Mr. McDonald explained that prior to his work injury; he used to mop, vacuum, wash dishes, and help do the laundry. Since the injury, he cannot vacuum or mop though he still tries. He does wash dishes and tries to fold the laundry. His wife cleans the bathrooms. He does more according to his symptoms. His wife scolds him for overexerting himself but he feels bad when he sees her doing most the housework.

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Mr. McDonald used to mow the yard, trim the bushes, and perform other yard work. Even though he has a riding lawnmower, he still cannot mow the lawn. His older sons do most of the yard work now. Sometimes, he tries to pick up trash.

The claimant goes to Church once or twice a month. When he was working, he was unable to go to Church often. Now, just sitting in Church over half an hour bothers his hip. He has never been involved in Church activities. His wife participates in them. His friends visit him sometimes but not often. When asked if he eats out, he indicates he eats out once every three months.

The injured worker watches over ten hours of TV. He is usually sitting in a recliner with his legs elevated at waist level. Sometimes, he dozes off because of the medication. He does not read. He indicates his eyesight is poor and he can barely see print. Anyway, he indicates he does not read very well.

Mr. McDonald admitted he is depressed because he misses working. He wishes there was something he could do but at times, the pain is overwhelming. Counselor noticed he turned his face and wiped at his eyes. She asked him if he has crying spells. He shook his head but Counselor told him it was ok. He indicated he does cry occasionally when he is alone about "the way my life turned out". He keeps that away from his wife and family, stating they have enough to deal with him not being able to help out. It was apparent, based on his statements, that he perceived himself to be a burden on his wife and children.

EDUCATIONAL BACKGROUND:

Mr. McDonald completed the 12th grade at Winnsboro Blakely High School in 1978. He maintained a D average. He indicated he was okay in Math but barely got by in English.

He has had no further formal schooling except for brief on the job training and orientations. He has a CDL, which has expired.

TESTING RESULTS:

Mr. McDonald was administered the Wide Range Achievement Test Revision 4 (WRAT4) by this Consultant. The WRAT 4 is a screening tool that evaluates word recognition, spelling, mathematical ability, and sentence comprehension. It is used to assess the foundational skills needed for academic success. Mr. McDonald's scores were derived from age-appropriate norms and are noted below:

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Subtest	Raw Score	Standard Score	Grade Equivalents
Word Reading	40	73	4.7 Grade
Sentence Comprehension	14	58	2.8 Grade
Spelling	25	64	3.0 Grade
Math Computation	30	76	4.6 Grade

Mr. McDonald's Spelling was equivalent to a 4th grade level. His Math was equivalent to a 4th grade level. The claimant's Sentence Comprehension was equivalent to nearly 3rd grade level. His Word Reading was at nearly a 5th grade level. Mr. McDonald's was felt to have given very good effort. His results are inconsistent with his educational level except this Consultant was not surprised based on her experience with the population in this rural area and the school system.

WORK HISTORY:

For one year, Mr. McDonald worked for WBT Trucking in Georgia. He drove a truck. For a year and a half, he worked for Georgetown Carrier in Georgetown, SC as a Truck Driver carrying rocks, gravel, and sand.

For three years, the claimant worked as a Truck Driver for Paisley Trucking. He carried produce and logs the majority of the time. For two years, Mr. McDonald worked for Tri-County Gin carrying cotton gin seed.

At the early age of 16, Mr. McDonald drove a school bus for three years. He then worked as a Machine Operator at AG Whaley, a wire plant. He worked as a Cook at Calabash. He also worked as a Janitor for many years.

VOCATIONAL CONCLUSIONS AND RECOMMENDATIONS:

Mr. McDonald has an excellent work history, which reflects a good work ethic. His work history consisted of work as a Truck Driver, Janitor, Machine Operator, and Bus Driver. Most of these jobs are unskilled such as Janitor and Machine Operator since they have an SVP of 2. The Truck Driver and Bus Driver are semi-skilled and have an SVP of 3, making them semi-skilled. But, there are some jobs that are classified as semi-skilled by the Dictionary of Occupational Titles which is published by the US.

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Department of Labor, that are unique and specific, meaning the skills gained can only be used in that industry and job and are not readily transferable to other jobs and industries. They may as well be unskilled with regards to transferable skills. Specific Vocation Preparation is defined as the amount of lapsed time require by a typical worker to acquire the information, and develop the facility for average performance in a specific job-worker situation. This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes; vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs. Transferability of skills applies to work skills which a person has demonstrated in vocationally relevant past jobs that can be used to meet the requirements of other jobs. Transferability of skills is most probable and meaningful among jobs requiring similar skills, when similar tools and machines are utilized and when similar processes and services are involved.

The claimant's prior jobs involved heavy lifting, up to 70 pounds constantly, prolonged standing and walking, frequent stooping, kneeling, and handling. Dr. Alan has limited Mr. McDonald to sedentary work. The orthopedist responded to a letter from Attorney Joe Ann Calvy indicating that Mr. McDonald would have pain with no prolonged standing and walking.

When Mr. McDonald's significant physical limitations are considered, it is highly unlikely he will be able to find or sustain employment. Based on his physical limitation, he is not a reasonable vocational rehabilitation candidate. And because of the length of time he has been disabled and the fact he will vocational prognosis will change. Consequently, I do not believe a reasonable stable market exists or the type of services that Mr. McDonald is physically, educationally or vocationally capable of performing/sustaining.

The claimant's Reading, Spelling, and Sentence Comprehension scores suggest unskilled work. Based on his testing scores, he would not qualify for clerical type jobs. He does not have the aptitude for clerical sedentary work. He does not have basic math skills required in many manufacturing jobs. He could not do any jobs requiring Reading, Spelling, and Math skills.

Mr. McDonald's impairments render this client unable to engage in any gainful work activity in the US Labor Force. Disability must also include the labor market in which an injured worker lives in and the likelihood of obtaining employment in that area. Mr. McDonald lives in a very rural area which has a higher unemployment rate than the rest of the United States. The textile plants have closed down years ago and lay off workers and no other businesses have replaced them due to the lack of higher education in the population that could attract potential employers.

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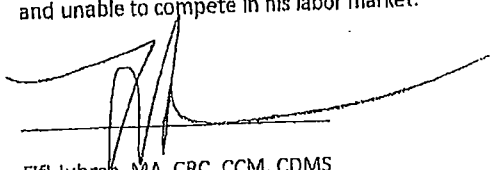
Ronnie McDonald

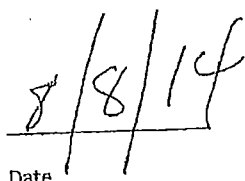
Vocational Rehabilitation Assessment

He would not be unable to meet minimal qualifications for jobs, and could not persist at work activities for an eight hour day, over a period of weeks or months. He would need to alternate positions. He needs to be able to get up and walk around to relieve the stiffness he gets which was documented in Dr. Alan's reports. Additionally, the pain medications that he has to take cause him to be sleepy and affect his concentration.

If Mr. McDonald were to somehow find a sedentary job, which is highly unlikely, he would only earn the minimum wage of \$7.25 per hour. It would have to be a sedentary assembler job. He would have to be allowed the ability to alternate positions and get up and walk around due to the stiffness he reports. This is an accommodation that many potential employers will not make.

Taking into consideration Mr. McDonald's age of 46, his low testing scores, his limited education, and his medical restrictions; it is the professional opinion of this Consultant that Mr. McDonald is unemployable and unable to compete in his labor market.


Fifi Jubran, MA, CRC, CCM, CDMS
Rehabilitation Consultant


Date

PAGE REHABILITATION SERVICES, INC.
Vocational Rehabilitation Experts

DATE: 11-6-14 SCWC #: 1301480
CLIENT: Ronnie McDonald DATE OF INJURY: 1-17-13
CUSTOMER: MGC Law EMPLOYER: G. Blake Logging

Summary Report

General Information

This case was referred by Walt Barefoot of MGC Law for an evaluation of Mr. McDonald's employability and wage earning capacity. Mr. McDonald was injured while working with Gregg Blake Logging on January 17, 2013. Mr. McDonald is represented by Ms. Joe Ann Calvy. Information reviewed includes the following documents:

- February 5, 2013 operative report McLeod Regional
- June 15, 2013 operative report McLeod Regional
- June 28, 2013 progress note indicating need for future hip replacement
- August 8, 2013 vocational analysis by Fi Fi Jubran
- May 17, 2014 progress note by Dr. Alan indicating 20% impairment to the right hip and 7% impairment to the left knee. This note also indicates he will need continued anti-inflammatories for pain, and should be capable of carrying out duties of jobs that require sedentary or light physical exertion as defined by Social Security
- June 10, 2014 letter from Ms. Calvy to Dr. Alan indicating to a reasonable degree that Mr. McDonnell will need a hip replacement
- August 15, 2014 deposition of Mr. Ronnie McDonald

Several contacts were made with Ms. Calvy's office and an appointment was scheduled to meet with Mr. McDonald in Kingstree, SC on October 21, 2014. Mr. McDonald was on time for the appointment. He was casually dressed in jeans and a pullover shirt and ball cap. He wore a knee brace and was using a cane. When walking he appeared to need the support of a cane.

My initial discussion with Mr. McDonald revealed the purpose of my visit. I explained to him that he should not answer any questions he did not understand or was uncomfortable with without either his attorney or assistant available. Mr. McDonald acknowledged understanding this verbal disclosure and answered questions without any apparent hesitancy.

P.O. Box 894 Isle of Palms, SC 29451 (843) 885-9464 Fax (843) 885-9465

Client McDonald, Ronnie

Date November 6, 2014

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Mr. McDonald is 47 years old, is married to his wife Sharon and has three children. The children are ages 25, 23 and seven. Mr. McDonald noted the 25-year-old works. Mr. McDonald denies any social or community organizational memberships and noted if applicable he could work on Saturdays or Sundays. He denied ever being in bankruptcy or currently receiving any other income other than his workers' compensation.

Mr. McDonald has a South Carolina driver's license and has commercial licenses good till 2017. He did reveal he has reliable transportation. He noted he has applied for Social Security disability. He is not working with the SC Department of Vocational Rehabilitation nor has he received any additional assistance from other agencies. He denied any criminal record. He revealed most of his daily activities include watching TV. He revealed prior to his injury he used to deer hunt regularly but no longer does so. He did reveal he went a few weeks ago and sat in his truck while others hunted.

Medically, it appears Mr. McDonald agrees with Dr. Alan's restrictions with the exception that light-duty may require standing constantly and Mr. McDonald does not believe he can do so. Mr. McDonald denied hearing issues or diabetes but noted he has high blood pressure which is not controlled and does use glasses. He revealed that his right shoulder is painful, and when he reaches too high behind himself he has additional pain. He noted he has addressed this with his attorney and the physician but has never received treatment. He revealed pain in his left knee and thigh as well as his left foot and right elbow. He noted that Dr. Alan thinks his left foot pain is a result of gout. Current medications include the following; tramadol as needed, oxycodone as needed, naproxen as needed, gabapentin as needed and diclofenac two times per day.

Education and Related Information

Mr. McDonald stated he completed high school in 1985. I asked him about his math and reading skills and he indicated he was pretty fair in math but not a good reader. I did administer the Wide Range Achievement Test revised fourth edition math and word recognition test to Mr. McDonald. Scores reveal Mr. McDonald's reading level to be a 3.8 grade level and math a 4.8 grade level. These scores reveal Mr. McDonald would have difficulty reading a newspaper or performing general math. One needs approximately a 6.0 grade level to have functional math and reading skills. I did give Mr. McDonald a sample application. He was able to complete portions of the application with some minor misspellings. A copy has been attached for your records. Mr. McDonald denies ever being in the military.

Client McDonald, Ronnie
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Work History and Related Information

As you are aware, Mr. McDonald was employed with a subcontractor, J Mac Express Trucking who was employed by Gregg Blakely Logging. He had been employed there from June 2010 to January 2013. He would pick up logs and deliver to a plant. His reason for leaving was his injury.

Mr. McDonald was self-employed from 2003 to 2010 as an over the road truck driver delivering plants as far north as Boston and driving as far south as Florida. He revealed he had to get out of this business because he wrecked his truck. He noted he went to the emergency room after the wreck, and stated he had injured three discs but revealed he had fully recovered. He estimated his annual income was over \$90,000 per year. According to Mr. McDonald he and his wife shared the activities of bookkeeping, scheduling and mileage books.

According to Mr. McDonald he has been driving a truck for the last 15 years. He's driven everything from tractor-trailers, flatbeds, rock trucks to logging trucks, and hauled produce and flowers. He revealed that in high school he drove a school bus and did so for approximately two years. Other work includes being a janitor at the Fontainebleau Hotel in Myrtle Beach, SC around 1987 and a machine operator making wire for cotton bales at A G Whaley, date unknown. Other work included construction laborer on I-26 for approximately 3 months and also working for Boyd Electric as electrician helper, time unknown.

I asked Mr. McDonald if he was a good worker and he stated: **"Yes, I try to do my best at everything I go at."** I asked Mr. McDonald to define for me his interpretation of a good worker and he used the following terms:

- do job correctly
- do job safely
- do work timely

I asked Mr. McDonald if he had any ideas about what type of work he wanted to do and he stated; **"I might, don't know about that."** Ask him to explain what he didn't know and he stated; **"just don't know about that."** I asked Mr. McDonald if he wanted to return to work and he stated: **"If I could I wouldn't mind going back to work"**. I asked Mr. McDonald what his major concerns or questions might be and he stated: **"Trying to maintain bills, kind of rough"**.

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DOT Research and TSA

Mr. McDonald's skills have all been relatively physical in nature and built around driving a truck over the last 15 years. Physically he will not be able to return to the type of truck driving he has done in the past in his current condition. There are lighter duty work options that may work for Mr. McDonald, including escort driver and school bus driver. Although school bus driver is identified by the Department of Labor as a medium duty job, it is classified as such due to the nature of the position over 20 years ago. Current school bus drivers do not assist with loading children, shifting gears or manually opening bus doors. The vast majority of school buses now have automatic transmissions, hydraulic or electric doors and power steering. Unless one drives a bus for special needs children this position would be classified as light duty. The position of escort driver is considered sedentary by the Department of Labor.

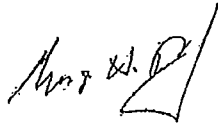
Discussion and Summary

As previously noted, Mr. McDonald was a pleasant individual to interview. He made good eye contact, had good verbal skills, was well groomed and clean-shaven. He did stand at approximately 45 minutes into the interview indicating a need to stretch. I did not observe any other pain behaviors during the interview. He appeared to be focused on testing information which lasted approximately 15 minutes. If Mr. McDonald is to return to work his best options appear to be related to the transportation industry in jobs as indicated above such as a school bus driver or escort driver. Escort drivers are individuals who lead/follow oversized loads on state highways. I did some research in an effort to identify wages for these positions. The Bureau of Labor Statistics indicates the SC state average for school bus driver in South Carolina to be \$10.87 per hour. There was no information on escort drivers but it has been my experience in direct contact with the service that the wages range between \$8 and \$10 per hour. It is my opinion that since Mr. McDonald has a commercial driver's license, has driven a school bus in the past, that school bus driving now has light duty physical demands, and Dr. Alan's indication he should be able to pursue work that is sedentary or light, Mr. McDonald is employable as a school bus driver job almost immediately. Additionally, the option of an escort driver is employment he could also pursue.

Client McDonald, Ronnie
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I hope this information is beneficial to all parties. I reserve the right to make changes in my opinion and to this report if additional information is provided. Please feel free to contact me if you have any questions regarding this report. Thank you for this referral.

Respectfully;

A handwritten signature in dark ink, appearing to read "George H. Page", followed by a large, stylized checkmark or flourish.

George H. Page, MS, CVE, CDMS, CCM, PVE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

OCT 04 2016

Appellate Panel

SC Court of Appeals

W.C.C. No. 1301480

Ronnie McDonald, Employee..... Respondent,

v.

J Mac's Express, LLC, Direct Employer,

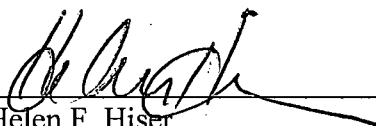
Gregg Blakely Logging, Inc., Statutory Employer Employers, and
WC Uninsured Employers Fund and Palmetto Timber Fund, Carriers, Defendants,

Of which Gregg Blakely Logging, Inc. and
Palmetto Timber Fund are the..... Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal filed in this matter contains all the material proposed to be included by the parties to this matter and does not include any other material. The undersigned further certifies that the Record on Appeal filed in this matter complies with the South Carolina Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

October 3, 2016


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Attorneys for Appellants