DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1413546

TIMOTHY A. MCDUFFIE, EMPLOYEE, CLAIMANT,

VERSUS

JOHNSON FOOD SERVICES, LLC, EMPLOYER,

AND

GREAT AMERICAN ALLIANCE INSURANCE CO./STRATEGIC COMP., CARRIER, DEFENDANTS.

HEARING:	Held on August 16, 2016 in Columbia, South Carolina.
APPEARANCES:	Claimant represented by Andrew N. Safran, Esquire, Post Office Box 12089, Columbia, South Carolina 29211. Defendants represented by E. Ros Huff, Jr., Esquire, Huff & Hapeshis, LLC, Post Office Box 1935, Irmo, South Carolina 29063.
PURPOSE OF HEARING:	Review of the May 16, 2016 Order of The Honorable Aisha G. Taylor.

DECISION AND ORDER OF THE APPELLATE PANEL

FILED: October 12th, 2016

STATEMENT OF THE CASE

This is an appeal from the May 16, 2016 Order of The Honorable Aisha G. Taylor, which determined: (a) the consequences of Claimant's, Timothy A. McDuffie's, September 19, 2014 compensable accident had produced distinct back and left knee injury components; (b) he required focused care for the essentially untreated left knee injury component through Dr. Christopher G. Mazoue, who had not only confirmed the causal relationship of his persistent symptoms, but also the potential need for surgery due to clinical findings consistent with a medial meniscus tear; (c) his compensable accident had also produced a posttraumatic facet syndrome that had not been treated by the physicians designated by Defendant, Great American Alliance/Strategic Comp. and warranted focused medical care per the opinions of Drs. John F. Johnson, Nancy R. Lembo and Ezra B. Riber; (d) Mr. McDuffie had not yet reached maximum medical improvement for either of these injury components; and (e) as his Employer, Johnson Food Services, LLC, had declined to accommodate work restrictions, notwithstanding an obvious awareness of their presence, Mr. McDuffie was entitled to accrued/continuing temporary total disability compensation.

Essentially, Defendants contend Commissioner Taylor erred in: (a) finding Mr. McDuffie had sustained a compensable left leg injury; (b) designating Dr. Mazoue as the authorized treater; (c) concluding Mr. McDuffie was entitled to temporary total

disability compensation; and (d) failing to generate a legally sufficient order.

In response, Mr. McDuffie maintains: (a) the evidence of record, including the nature of his undisputed mechanism of injury and the presence of distinct left knee symptoms documented by one of Defendants' medical providers, as well as Dr. Mazoue's unrefuted opinions relative to the causal relationship of these symptoms and his associated treatment needs, amply supports Commissioner Taylor's determination he sustained a compensable left knee injury that requires focused medical care; (b) her designation of Dr. Mazoue under the present circumstances satisfies the "good cause" proviso contained in S.C. Code Ann. Section 42-15-60 (2007), especially in view of Defendants' unwillingness to even acknowledge this injury component and Mr. McDuffie's confidence in/comfort with the prospect of undergoing surgery with this highly qualified specialist; (c) Defendants' specious argument relative to the temporary total disability compensation award conveniently ignores their admitted acknowledgement of Mr. McDuffie's restricted duty work status (which belies any notion due process was lacking) and unquestioned refusal to accommodate his medical limitations, as well as a clear legal basis for addressing this issue; (d) the May 16, 2016 Order, which contains thirty-seven (37) detailed factual findings and thirteen (13) comprehensive legal

conclusions, meets all applicable criteria; and (e) Commissioner Taylor's rulings should be affirmed in all respects.

After reviewing all pertinent evidence, in light of the relevant legal authorities and arguments of counsel, We hereby fully affirm Commissioner Taylor's determinations based upon the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

FINDINGS OF FACT

1. On September 19, 2014, Mr. McDuffie sustained compensable injuries to his back and left leg when he tripped over an exposed pipe at the Johnson Food Services, LLC facility located at Fort Jackson military base in Richland County, South Carolina. Specifically, he: (a) tripped when his left foot came in contact with the exposed pipe; (b) fell forward prior to catching himself before hitting the ground; (c) perceived a pop while attempting to maneuver his left leg away from the pipe; and (d) soon developed pain involving his back and left leg.

2. At the time he sustained these compensable injuries, Mr. McDuffie was performing duties arising out of and within the course and scope of his employment with Johnson Food Services, LLC, where he has worked for approximately two years.

3. Shortly after sustaining this injury, Mr. McDuffie was directed by his Employer to Medcare Urgent Care Center (September 20, 2014), where he: (a) reported the presence of back and left leg pain following this trauma; (b) exhibited a "[p]ostive . . . [left] leg raised test" response; and (c) received a prescription

for Naprosyn in conjunction with instruction to apply warm compresses to his back.

4. When his pain persisted, Mr. McDuffie sought further examination through the Palmetto Health Baptist Emergency Room (September 23, 2014), where he: (a) apprised the attending physician of his injury mechanism ("tripping . . . and catching himself on his left lower extremity but jarring his left lower back buttock area . . . [with resulting] pain down his left lower extremity"); (b) indicated the previously prescribed Naprosyn had "not been helping much"; (c) displayed "some palpable reproducible tenderness at the left sciatic notch . . . with a positive left legged straight leg raise" test response; and (d) received an additional prescription (Flexeril).

5. On the following day, Mr. McDuffie was examined, per Defendants' directive, by Dr. Stewart Young of First Care, who: (a) noted the presence of "mild medial left knee pain, some left thigh muscular pain and some low back pain"; (b) was similarly apprised of pain with standing/weightbearing on the left leg; (c) performed a physical examination which revealed "pain in the left thigh musculature with weightbearing/walking", "tenderness over the MCL area" and lumbar paraspinous tenderness/spasm; and (d) placed him on sedentary duty work status.

6. Inspection of Dr. Young's September 29, 2014 and October 13, 2014 treatment notes further confirms: (a) persistent reports of both left knee and back pain; (b) the presence of both

left leg and low back symptoms on clinical examination; and (c) this physician's attempt to treat these symptoms with physical therapy.

7. Upon reexamining Mr. McDuffie following several physical therapy sessions (November 28, 2014), Dr. Young: (a) noted this therapy had not only proved ineffective, but also "made his left knee worse"; (b) observed the "left lumbar paraspinous musculature [was] . . . tense and tender to palpation", "pain . . . [and tenderness] in the medial anterior knee just lateral to the patella" and "tense"/"tender" left thigh musculature; and (c) restricted him to sedentary work duties, while recommending orthopaedic evaluation for "[p]ersistent low back, left thigh, and left knee pain . . . ."

8. Approximately two weeks following this referral (December 17, 2014), Defendants directed Mr. McDuffie for evaluation by Dr. Michael W. Peelle of Moore Orthopaedics, who: (a) noted the September 19, 2014 tripping injury, as well as resulting pain involving his back, left buttock, left thigh and left leg; (b) observed limited lumbar flexion "with reproduction of buttock and hamstring pain on the left side", "a positive straight leg raise test in the seated position", "spinous process tenderness" and a "[n]egative Waddell sign"; (c) did not reference any focused examination of the left knee; (d) offered a diagnosis of left lower extremity radiculopathy, for which he felt an MRI scan was warranted; and (e) restricted his work

activities ("[n]o bending or stooping"; 20 lb. lifting/carrying limitation).

9. Although Mr. McDuffie remained symptomatic, at the time of a December 31, 2014 follow-up visit, Dr. Peelle: (a) indicated the lumbar MRI scan did not reveal any disc pathology; (b) offered no additional treatment; and (c) discharged him to resume full duty work activities effective January 5, 2015.

10. At that juncture, Mr. McDuffie sought further evaluation (January 12, 2015) from Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was apprised of persistent low back pain radiating into the left buttock, as well as left knee pain; (b) observed the low back pain was "most closely reproduced with returning upright . . . [from forward flexion] and with extension of less than 10°"; (c) confirmed he displayed left knee pain, particularly with flexion, experienced "some low back and gluteal discomfort on the left" in response to straight leg raise testing and had difficulty standing on his heels/toes; (d) determined the lumbar symptoms were the product of a post-traumatic facet syndrome, for which he identified a facet treatment algorithm that included medial branch blocks; and (e) also recommended performance of an intra-articular left knee injection.

11. On June 9, 2015, Mr. McDuffie was evaluated by Dr. Nancy R. Lembo of Carolina Spine & Sport Rehabilitation Specialists, P.A., who: (a) noted he continued to experience left

sided low back pain radiating "into the posterior left side to his knee" following the September, 2014 tripping injury; (b) found that he displayed "left sided lumbar paraspinal hypertrophy and pain with lumbar extension"; (c) characterized his symptoms to be consistent with lumbar facet and myofacial pain; (d) recommended proceeding with a "lumbar facet joint injection vs. medial branch block to indentify [the] . . . pain generator"; (e) indicated this treatment course was "consistent with" his physical examination and imaging findings; and (f) also felt resumption of Naprosyn and a trial of Robaxin, in conjunction with a 30 lb. lifting limitation, were appropriate.

12. Mr. McDuffie then (June 10, 2015) underwent focused examination of his left knee by Dr. Christopher G. Mazoue of the University of South Carolina School of Medicine's Department of Orthopaedics Surgery, who: (a) was apprised of the September 19, 2014 mechanism of injury, as well as the nature of his left knee pain; (b) elicited both medial joint line tenderness and a very positive medial McMurray's test response on clinical examination; (c) expressed "concern . . . about a medial meniscus tear of his left knee"; and (d) recommended obtaining an MRI of the left knee.

13. Additionally, through questionnaire responses dated July 13, 2015, Dr. Mazoue confirmed: (a) "the mechanism of injury which Mr. McDuffie described (tripping over a pipe with his left leg followed by jarring while attempting to maintain his balance

and avoid falling to the floor) was sufficient to create not only Mr. McDuffie's documented left leg symptoms, but also left medial meniscal pathology"; (b) the "documented left leg symptoms, including references to pain in the area of his left knee, are most probably consistent with this September 19, 2014 mechanism of injury"; (c) "[g]iven Mr. McDuffie's mechanism of injury, as well as his documented symptoms of both radicular left leg pain and left medial knee pain . . . at least a portion of his current left leg symptoms most probably result from a left knee injury component"; (d) "the left knee symptoms and clinical abnormalities identified in [his] June 10, 2015 report most probably result from the consequences of Mr. McDuffie's September 19, 2014 compensable accident"; and (e) "the treatment modalities . . . [he had] recommended, including an MRI scan and reevaluation to assess treatment options, are reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by Mr. McDuffie's September 19, 2014 compensable accident . . . ."

14. During the course of an October 19, 2015 deposition, Dr. Mazoue verified/explained: (a) Mr. McDuffie exhibited "a moderate level of discomfort to palpation" of the medial joint line on examination (See, Dr. Mazoue Deposition, p. 11); (b) his McMurray's test response was "significantly positive" (See, Dr. Mazoue Deposition, p. 13); (c) both the medial joint line tenderness and McMurray's test response have "an objective and

subjective portion" (See, Dr. Mazoue Deposition, p. 12); (d) Mr. McDuffie's mechanism of injury "was very consistent with the development of a meniscus tear, and his physical exam was highly consistent with a meniscus tear" (See, Dr. Mazoue Deposition, p. 18); and (e) this "high likelihood of meniscus tear" had prompted his recommendation for an MRI scan (Id.).

15. This orthopaedic surgeon further confirmed: (a) the information contained on Mr. Ernest Roberts' September 23, 2014 statement (Claimant's APA, p. 1) generally coincided with his understanding as to Mr. McDuffie's mechanism of injury (See, Dr. Mazoue Deposition, p. 21); (b) it was not uncommon for leg pain associated with an injury of type to have multiple sources (See, Dr. Mazoue Deposition, p. 22); (c) a meniscal tear does not preclude one from exhibiting a relatively normal range of motion (See, Dr. Mazoue Deposition, p. 24); (d) the results of prior examinations during Mr. McDuffie's post-injury course of treatment, including Dr. Young's findings, were consistent with the results of his clinical examination (See, Dr. Mazoue Deposition, pp. 23 - 27); (e) the McMurray's test is a recognized standard for assessing the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, pp. 30 - 31); and (f) Mr. McDuffie's response to this clinical test constituted a "highly significant" finding, which he believed to be a reliable indication of meniscal pathology (See, Dr. Mazoue Deposition, pp. 31 - 33).

16. Additionally, Dr. Mazoue testified: (a) Mr. McDuffie's development of increased pain while sitting was consistent with a medial meniscal tear (See, Dr. Mazoue Deposition, p. 35); (b) the absence of a noticeable limp (which he agreed was "variable as it relates to the level of dysfunction at a given moment") did not preclude the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, p. 36); (c) in view of Mr. McDuffie's mechanism of injury, well-documented post-injury left medial knee pain and significant clinical findings, his symptoms have "an objective pathological basis" (See, Dr. Mazoue Deposition, pp. 30 & 37); and (d) to a reasonable degree of medical certainty, this pathology is likely a medial meniscus tear that most probably results from the September 19, 2014 compensable accident (Id.).

17. On June 11, 2015, Mr. McDuffie was evaluated by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) obtained a history of injury consistent with previous examiners; (b) noted the presence of persistent "low back and buttock pain on the left that radiates down the left lower extremity to just below the popliteal fossa"; (c) identified "tenderness to palpation in the left lower lumbar region", "decreased . . . [r]ange of motion . . . particularly with full extension secondary to pain", "worsening pain [with] . . . leg extension" and a positive straight leg raise test response on the left; (d) indicated these symptoms were "a result of the 09-19-14 accident and very likely reflective of posttraumatic facet syndrome", for

which he had not reached maximum medical improvement; and (e) recommended "focused treatment that could include medial branch blocks which would be diagnostic as well as therapeutic."

18. In this regard, pursuant to questionnaire responses dated July 20, 2015, Dr. Johnson verified, to a reasonable degree of medical certainty, that: (a) "the posttraumatic lumbar facet syndrome . . . [he had] diagnosed proximately results from Mr. McDuffie's September 19, 2014 compensable accident"; (b) "without treatment, Mr. McDuffie's causally related lumbar symptoms will most probably remain problematic and materially/negatively impact upon his ability to sustain work activities"; (c) "the course of treatment . . . [he had] recommended for Mr. McDuffie's lumbar injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014 compensable accident"; and (d) treatment of the left knee injury component was "likewise reasonable, medically necessary and geared toward lessening [this] . . . ultimate period of disability . . . ."

19. When questioned as to the nature/source of Mr. McDuffie's lumbar symptoms, Dr. Johnson confirmed/reiterated: (a) his routine treatment of facetogenic pain, as well as the diagnosis of posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 13 - 14); (b) facetogenic pain, particularly if traumatic, does not lend itself to accurate diagnosis through MRI scanning (Id.); (c) the diminished lumbar extension referenced by

several examiners, as well as the slightly flexed posture of the spine he observed during this clinical examination, were reflective of facetogenic pain (See, Dr. Johnson Deposition, pp. 12 - 13, 21); (d) both the left buttock/thigh pain and positive straight leg raise responses he (and several other examiners) observed were likewise consistent with posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 15 - 16); and (e) Mr. McDuffie's mechanism of injury was likewise consistent with the production of posttraumatic facetogenic pain (See, Dr. Johnson Deposition, pp. 14 - 15).

20. Dr. Johnson further explained: (a) Mr. McDuffie's clinical presentation was valid and the product of a genuine effort (See, Dr. Johnson Deposition, pp. 17 - 18); (b) the presence of 5/5 muscle strength was not only anticipated, but also "in no way inconsistent with [his] . . . diagnosis of post-traumatic facet syndrome" (See, Dr. Johnson Deposition, p. 18); (c) given the fact Mr. McDuffie's posttraumatic facet syndrome and left knee pathology had received no focused treatment, the progressive worsening of lumbar symptoms recently documented by Dr. Riber was an expected consequence of his accident (See, Dr. Johnson Deposition, pp. 18 - 20); (d) failure to treat his left knee injury component has "[a]bsolutely" fueled "the continued presence of the facet syndrome and likely prolong[ed] . . . it" (See, Dr. Johnson Deposition, p. 20); and (e) Mr. McDuffie requires treatment of the left knee in tandem with focused care

of his posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 19 - 20, 23-24).

21. Additionally, Dr. Johnson verified: (a) as Mr. McDuffie was attempting to remain employed through performance of regular duty work activities, he did not discourage this effort (See, Dr. Johnson Deposition, pp. 21 - 22); (b) he had developed "trust" in Dr. Riber's opinions through their professional experience ("I think he does a fine job") (See, Dr. Johnson Deposition, pp. 20 - 21); (c) his agreement with the work restrictions imposed by Dr. Riber (Id.); (d) the validity of Mr. McDuffie's description of his persistent lumbar symptoms (See, Dr. Johnson Deposition, p. 25); and (e) his adherence to the opinions expressed in his July 20, 2015 questionnaire responses (See, Dr. Johnson Deposition, pp. 22 - 23).

22. Pursuant to questionnaire responses dated July 20, 2015, Drs. Riber and Lembo likewise: (a) attributed Mr. McDuffie's lumbar symptoms to the consequences of his compensable accident; (b) verified "failure to treat this lumbar injury component would materially/negatively impact upon . . . [Mr. McDuffie's] ability to sustain work activities"; (c) his need for focused treatment of not only these lumbar symptoms, but also the left knee injury component (which they verified to be "reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014

compensable accident"); and (d) offered each of these opinions to a reasonable degree of medical certainty.

23. Inspection of Dr. Lembo's September 10, 2015 deposition testimony confirms: (a) Mr. McDuffie's reported symptoms were consistent with his described mechanism of injury and her clinical findings (See, Dr. Lembo Deposition, p. 13); (b) he exhibited both objective evidence of muscle spasm and pain with lumbar extension, which she indicated were consistent with an injury caused by his compensable accident (See, Dr. Lembo Deposition, pp. 20, 22, 44 - 45 and 52); (c) the presence of painful extension was a "significant" factor in her diagnosis, as this finding is "consistent with a facet pain generator" (See, Dr. Lembo Deposition, p. 44); (d) facetogenic pain, which she "commonly . . . see[s] in [her] . . . practice" is not diagnosed through MRI scanning (See, Dr. Lembo Deposition, p. 43); and (e) she reaffirmed her July 20, 2015 opinion that Mr. McDuffie's posttraumatic lumbar facet syndrome proximately results from his September 19, 2014 compensable accident (See, Dr. Lembo Deposition, p. 49).

24. After being apprised of Mr. McDuffie's persistent lumbar symptoms and associated functional difficulties, Dr. Lembo also verified: (a) his causally related pain was interfering with daily activities (See, Dr. Lembo Deposition, p. 49); (b) her prior questionnaire response relative to the likelihood his "causally related lumbar symptoms . . . remain[ing] problematic

and materially/negatively impact[ing] . . . upon his ability to sustain work activities" remained accurate (See, Dr. Lembo Deposition, p. 50); (c) these symptoms were "most likely not going to . . . improve . . . absent treatment" (See, Dr. Lembo Deposition, pp. 50 - 51); (d) his receipt of any accommodations in connection with his employment was not consistent with unrestricted work activity (See, Dr. Lembo Deposition, p. 55); and (e) Mr. McDuffie's causally related symptoms warranted imposition of a 30 pound lifting restriction (See, Dr. Lembo Deposition, pp. 24, 35 and 54).

25. On October 12, 2015, Mr. McDuffie was reexamined by Dr. Riber, who: (a) noted "his pain and dysfunction had become progressively worse"; (b) again observed "his pain is more closely reproduced with returning upright . . . [from forward flexion] and extension most closely reproduces his pain"; (c) similarly detected "low back, gluteal and hamstring discomfort" in response to straight leg raise testing; (d) perceived slight gait disturbance; (e) reiterated his prior diagnosis of a posttraumatic lumbar facet syndrome, as well as the need for medial branch blocks; and (f) imposed several work restrictions, including "no twisting, stooping or bending and no lifting greater than 10 pounds."

26. During the course of his October 26, 2015 deposition, Dr. Riber explained: (a) Mr. McDuffie displayed no "pain behavior", which he characterized as an "over-dramatic",

"unbelievable" or suspicious presentation (See, Dr. Riber Deposition, pp. 17 - 18, 20 and 45); (b) he observed no evidence of symptom magnification and had "no reason to doubt . . . the physiological legitimacy of any pain . . . [Mr. McDuffie} report" (See, Dr. Riber Deposition, pp. 46 and 48); (c) he had previously treated posttraumatic facet syndromes on "hundreds" of occasions prior to examining Mr. McDuffie (estimating "at least" 20% of the backs he sees involve a facet syndrome) (See, Dr. Riber Deposition, pp. 49 and 59); (d) he would not rely upon an MRI scan to diagnosis a facet syndrome, as "[y]ou can have a perfectly normal MRI and have a very clear-cut facet syndrome" (See, Dr. Riber Deposition, pp. 49 - 50); (e) diagnosis of this condition is instead "based on the mechanism of injury, which is part of the history, the complaints and then the exam" (See, Dr. Riber Deposition, p. 49); and (f) facetogenic pain can include "some nerve involvement" that produces leg pain (See, Dr. Riber Deposition, pp. 50 - 51).

27. Dr. Riber further verified: (a) lumbar extension "loads the facet joints", to the extent that when an individual "either return[s] . . . upright or extend[s], . . . a facet joint issue . . . [will] declare itself" (See, Dr. Riber Deposition, p. 55); (b) his clinical observation of pain with lumbar extension was consistent with the relevant clinical findings identified in Dr. Lembo's June 9, 2015 report, as well as Dr. Johnson's June 11, 2015 report (See, Dr. Riber Deposition, pp. 55 - 56); (c) Mr.

McDuffie's positive straight leg raise response was also consistent with the diagnosis of posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 51 - 52); (d) his updated (October 12, 2015) examination remained reflective of a posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 39 - 40); (e) Mr. McDuffie's lumbar symptoms resulted from his September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 27 & 61); (f) treatment for this back injury component would begin with medial branch blocks, with consideration of radiofrequency rhizotomy depending upon his response to these blocks (See, Dr. Riber Deposition, pp. 29, 60 & 64); (g) improvement of Mr. McDuffie's back injury component would be enhanced by receipt of treatment for his left knee (See, Dr. Riber Deposition, p. 61; (h) his receipt of treatment for the back injury component was reasonable, medically necessary and aimed toward lessening the ultimate period of disability stemming from the September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 61 - 62); and (i) the restrictions he had assigned were not only geared toward preventing Mr. McDuffie "from getting any worse until he gets some treatment", "but also reasonable and medically necessary" in this instance (See, Dr. Riber Deposition, pp. 36 and 62).

28. Although he obviously attempted to perform full duty work in accordance with Dr. Peelle's instruction, Mr. McDuffie: (a) continued to experience back and left leg symptoms; (b)

encountered problems engaging in these job activities, noting receipt of assistance and instances where he "couldn't even . . . stand straight up . . . [and/or his] back had locked up" (See, Hearing Transcript, pp. 35 - 36); (c) has more recently missed time from work because his "back was giving [him] . . . problems" (See, Hearing Transcript, p. 37); (d) was instructed by his Employer to obtain "a doctor's slip" in order to resume work following these recent absences (See, Hearing Transcript, p. 38); (e) provided his Employer with this required documentation following medical reevaluation in October, 2015 (See, Hearing Transcript, p. 39); (f) was nonetheless afforded no opportunity to resume restricted work activities, despite compliance with his Employer's directive (Id.); (g) received no explantation as to why his restrictions would not be accommodated other than ". . . I couldn't come back 'til their insurance people talked to my lawyer" (Id.); and (h) remained "willing to come back". (Id.).

29. Mr. McDuffie's testimony also confirms: (a) the duties incidental to his job as a Cook II include "cooking in the big pots, cleaning up, putting the pots and pans . . . in the aisles, putting them in the warmers, serving on the line . . . [and] going to the meat room to get the meat" (See, Hearing Transcript, p. 20); (b) these work activities require lifting weights that not only exceed 10 lbs. (the limitation identified by Dr. Riber and endorsed by Dr. Johnson), but also the 30 lb. restriction referenced by Dr. Lembo ("chicken is like the most heaviest thing

that we'll pick up. It's probably like 40 to 45 pounds.") (Id.); (c) he is also obliged to twist (See, Hearing Transcript, p. 21); (d) the left knee pain had been present "from the beginning" (See, Hearing Transcript, p. 37); (e) while Dr. Young had "looked at [his] . . . knee", there had heretofore been no focused treatment of this injury component by any physician to whom he was directed by Defendants (See, Hearing Transcript, pp. 28 and 42 - 43); and (f) his symptoms had never abated following receipt of the full duty work release from Dr. Peelle (See, Hearing Transcript, p. 47).

30. After thoroughly reviewing all evidence of record and acknowledging Commissioner Taylor's observations of Mr. McDuffie during the course of the hearing, We specifically find: (a) his testimony, including description of the injury mechanism and the nature/location of all symptoms associated with this accident, are wholly consistent with the medical evidence; (b) this medical evidence certainly confirms the onset of low back and left leg pain shortly after sustaining the admittedly compensable September 19, 2014 trauma; (c) while the apparent absence "of structural abnormalities on his MRI" led Dr. Peelle to discharge him from active care, Drs. Johnson, Riber and Lembo unanimously confirmed a scan of this nature is not diagnostic of facetogenic pain; (d) these medical specialists also convincingly verified/explained the positive correlation between their diagnosis of posttraumatic facet syndrome with not only his

relevant clinical findings (including diminished lumbar extension), but also the September 19, 2014 mechanism of injury; (e) these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment; and (f) this treatment, aimed toward a posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, proximately results from the consequences of his September 19, 2014 compensable accident.

31. We further find: (a) the evidence, including consistent opinions expressed by Drs. Johnson, Riber and Lembo, convincingly indicates Mr. McDuffie's compensable accident has created a lumbar posttraumatic facet syndrome; (b) this causally related condition has produced not only persistent back pain, but also associated left leg symptoms (See, testimony of Drs. Riber and Johnson); (c) Mr. McDuffie has not reached the point of maximum medical improvement relative to this causally related back injury component; (d) the treatment he requires for this compensable back injury component includes, but is not limited to, the lumbar facet/medial branch blocks identified by these physicians; and (e) Mr. McDuffie's receipt of these additional treatment modalities for his back injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his September 19, 2014 compensable accident.

32. We also find: (a) the symptoms stemming from Mr. McDuffie's causally related back injury component have negatively impacted upon his ability to engage in unrestricted work activities, notwithstanding Dr. Peelle's previous full duty work release; (b) Dr. Riber (who documented the presence of facetogenic symptoms in January, 2015, as well as the progressive impact of his condition in October, 2015) recommended several work restrictions ("no twisting, stooping or bending and no lifting greater than 10 pounds") in order to avoid further worsening of these symptoms; (c) these restrictions were subsequently endorsed by Dr. Johnson, who expressed his "trust" in Dr. Riber's judgment as to work status; (d) Dr. Lembo similarly felt Mr. McDuffie was incapable of performing unrestricted work activities, assigning a 30 pound lifting limitation; and (d) the work restrictions assigned by these physicians are inconsistent with certain aspects of Mr. McDuffie's "full duty" work regimen.

33. In this regard, We further find: (a) after these causally related lumbar symptoms necessitated his absence from work in 2015, Mr. McDuffie attempted to resume performance of his job duties; (b) despite his provision of medical documentation authorizing performance of restricted work activities, his Employer has declined to afford him any opportunity to engage in job duties consistent with these medical restrictions; (c) the medical evidence firmly establishes these restrictions result

from/are attributable to the consequences of his September 19, 2014 compensable accident; (d) our inspection of the record verifies Mr. McDuffie's continued absence from work was exclusively the product of Defendants' unwillingness to "accommodate" these work restrictions (See, Hearing Transcript, pp. 11, 15 and 37 - 39); (e) although all parties were aware of these work restrictions, as well as Mr. McDuffie's desire to engage in accommodated job duties, Defendants elected not to provide work consistent with these medical limitations; and (f) these circumstances have produced a continuing period of temporary total disability.

34. Additionally, We find: (a) after sustaining the September 19, 2014 trauma, Mr. McDuffie reported the presence of both back and left leg pain; (b) as time progressed, the left leg pain persisted from his buttocks to his knee; (c) despite Dr. Young's clinical identification of left knee symptoms and recommendation of orthopaedic referral for assessment of ". . . [p]ersistent low back, left thigh and **left knee pain**", Defendants' designated physician (Dr. Peelle) did not perform a focused examination of Mr. McDuffie's left knee; and (d) he was consequently obliged to obtain an independent medical evaluation by Dr. Mazoue.

35. We also find Dr. Mazoue (the only orthopaedic surgeon who scrutinized Mr. McDuffie's left knee): (a) discovered significant clinical evidence of medial meniscus pathology; (b)

explained these clinical findings had "an objective" element; (c) indicated the September 19, 2014 mechanism of injury "was very consistent with the development of a meniscus tear"; (d) attributed Mr. McDuffie's left knee symptoms to the consequences of his compensable accident; and (e) recommended further treatment, commencing with performance of an MRI scan.

36. We also find: (a) the reliable medical evidence, particularly the opinions expressed by Dr. Mazoue, amply establish a causal relationship between Mr. McDuffie's focal left knee symptoms and his September 19, 2014 compensable accident; (b) he requires further treatment for this injury component, including an MRI scan and follow-up care through Dr. Mazoue; (c) Mr. McDuffie has not yet achieved maximum medical improvement relative to his causally related left knee injury component; (d) his receipt of further treatment is reasonable, medically necessary and will tend to lessen the period of disability produced by the consequences of the September 19, 2014 compensable accident; and (e) notwithstanding their full awareness of Dr. Mazoue's determination as to the nature/source/medical requirements of Mr. McDuffie's causally related left knee symptoms, as well as the absence of any contrary opinion relative to these symptoms, Defendants chose to deny liability for this left knee injury component.

37. The medical treatment, medications, evaluations, diagnostic testing, physical therapy, etc. which Mr. McDuffie has

heretofore received/undergone through any authorized medical providers were reasonable, medically necessary and tended to lessen his ultimate period of disability. We also find Dr. Mazoue's June 10, 2015 evaluation was reasonable, medically necessary and tended to lessen Mr. McDuffie's ultimate period of disability.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, WE CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On September 19, 2014, Mr. McDuffie, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained compensable injuries to his back and left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Johnson Food Service, LLC, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976).

3. As previously noted, the evidence of record (testimony and the opinions expressed, to a reasonable degree of medical certainty, by Drs. Johnson, Riber, Lembo and Mazoue) firmly/convincingly/reliably establishes: (a) Mr. McDuffie's persistent back and left leg symptoms proximately result from the

consequences of his September 19, 2014 compensable accident; (b) his left leg symptoms involve not only pain stemming from a posttraumatic facet syndrome, but also a distinct left knee injury component of the nature identified by Dr. Mazoue; (c) he has not yet reached the point of maximum medical improvement as to either his back or left leg injury components; and (d) Mr. McDuffie requires not only facet-directed treatment of the back injury component, but also focused care for a likely medial meniscal tear. We consequently conclude Mr. McDuffie has clearly established: (a) the causal relationship of his current lumbar symptoms to the consequences of his September 19, 2014 compensable accident; (b) his need for treatment of a heretofore untreated causally related posttraumatic facet syndrome; (c) the September 19, 2014 compensable accident also produced a left knee injury component that likewise requires focused treatment; and (d) maximum medical improvement has yet to be attained as to either of these compensable injury components.

4. Defendants are financially responsible for the medical treatment, medications, evaluations, physical therapy, evaluative procedures, diagnostic testing, etc. which Mr. McDuffie has heretofore received/undergone through any authorized healthcare providers as a result of his back injury component, as he received these treatment modalities per the direction of Defendants. We further conclude: (a) the additional medical evaluations which Mr. McDuffie has independently undergone

relative to his back injury component were certainly warranted, especially in view of Defendants' denial of liability for further treatment of his causally related posttraumatic facet syndrome; and (b) the assessment by Dr. Mazoue, the only orthopaedic surgeon to actually evaluate Mr. McDuffie's left knee symptoms/pathology, was clearly reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2007).

5. We further conclude: (a) despite their knowledge (through report, questionnaire responses and deposition testimony) of Dr. Mazoue's opinions relative to Mr. McDuffie's left knee injury component and the absence of any conflicting medical opinion relative to this injury component, Defendants maintained their denial of liability; (b) notwithstanding this denial, they certainly had ample opportunity to obtain assessment of this left knee injury component, but chose not to do so; (c) given the nature of his left knee symptoms, Mr. McDuffie reasonably sought evaluation from Dr. Mazoue (whose qualifications to treat this condition have not been challenged); (d) Mr. McDuffie has developed sufficient confidence in Dr. Mazoue to proceed with surgery by this physician (a likely scenario); and (e) the current circumstances constitute good cause for designation of Dr. Mazoue as Mr. McDuffie's authorized treater relative to the left knee injury component per Section 42-15-60. See also, Clark v. Aiken County Government, 366 S.C.

102, 620 S.E. 2d 99, 104 (Ct. App. 2005); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

6. We similarly conclude: (a) Mr. McDuffie's receipt of treatment for the posttraumatic lumbar facet syndrome diagnosed by Drs. Johnson, Riber and Lembo is reasonable, medically necessary and geared toward lessening his ultimate period of disability per Section 42-15-60; (b) this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by these physicians; (c) Defendants will be afforded the right to provide **treatment** for Mr. McDuffie's back injury component per Section 42-15-60, but strictly based upon the undersigned's ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident, so as to ensure receipt of this **treatment**; and (d) this obligation to provide ongoing medical treatment shall continue until this Commission determines he has achieved maximum medical improvement.

7. Upon informing counsel of her rulings relative to this dispute, Commissioner Taylor inadvertently overlooked their previous agreement to defer establishment of Mr. McDuffie's average weekly wage and compensation rate pending further review of all relevant data. This oversight was subsequently brought to her attention via email communication from Mr. McDuffie's counsel. As a consequence, the issue relative calculation of Mr.

McDuffie's average weekly wage and compensation is held in abeyance for determination at a later date.

8. Additionally, the email correspondence requested Commissioner Taylor to address Mr. McDuffie's entitlement to temporary total disability compensation. In response, counsel for Defendants maintained that as the Form 50 did not specifically request this compensation, the issue was not ripe for determination.

9. In this regard, counsel for the respective parties directed Commissioner Taylor, as well as this Panel, to portions of the hearing transcript which they believe are particularly relevant to this issue. Based upon our review of the pertinent portions of the hearing transcript, We conclude: (a) while the parties were obviously preoccupied with the issue involving withdrawal of Dr. Lembo's report (a circumstance which is thoroughly addressed in the May 16, 2016 Order), Mr. McDuffie's counsel nonetheless indicated his client was not currently working due to his Employer's unwillingness to honor restrictions identified by unauthorized physicians (Drs. Riber and Lembo) (See, Hearing Transcript, p. 11); (b) Defendants were obviously aware of Mr. McDuffie's restricted duty work status, as reflected by their counsel's recognition of a need "to accommodate him" (See, Hearing Transcript, p. 15); (c) Mr. McDuffie provided relatively detailed testimony outlining not only his efforts to resume restricted duty work activities, but also his Employer's

inability/failure to provide duties consistent with his medical restrictions (See, Hearing Transcript, pp. 37 - 39); (d) the Form 50 contained "a boilerplate claim for '[a]ppropriate benefits as provided in the [Workers' Compensation] Act for the above ground and **other relief** as the Workers' Compensation Commission may direct as just and proper" (See, Nettles v. Spartanburg School District #7, 341 S.C. 580, 535 S.E. 2d 146, 149 (Ct. App. 2000)); and (e) in view of this proviso, as well as the parties' mutual recognition of the fact his absence from work was due to Defendants' disinclination "to accommodate" him, Mr. McDuffie's entitlement to temporary total disability compensation is properly before this Commission for consideration. See also, Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994) ("As to the merits of the pleading issue, Harbin's claim for any and all rights under the Act was a sufficient pleading.").

10. "Under the Workers' Compensation Act, a claimant is entitled to compensation for a total disability resulting from a work-related injury." Last v. MSI Construction Company, Inc., 305 S.C. 349, 409 S.E. 2d 334, 336 (1991). In this regard, the Supreme Court of South Carolina has consistently held that "the loss of earning capacity caused by the physical injury is the pertinent measure of compensable disability." (Id.); See also, Bowen v. Chiquola Manufacturing Company, 238 S.C. 322, 120 S.E. 2d 99 (1961); Shealy v. Algeron Blair, Inc., 250 S.C. 106, 156

S.E. 2d 640 (1967). Consequently, the issue is "whether the injury ha[s]. . . resulted in some loss of. . . [the Claimant's] earning capacity." Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E. 2d 448, 449 (Ct. App. 1996); Last, 409 S.E. 2d at 336.

11. Additionally, a review of the relevant portions of S.C. Code Ann. Section 42-9-260 (1976, as amended), as well as S.C. Code Ann. Regs. 67-505 (2012) and 67-506 (2012), verifies: (a) disability is presumed to continue until an employee has returned to work for the requisite fifteen day period with the employer responsible for the payment of temporary disability compensation; and (b) this compensation remains payable unless the injured employee is either released by the treating physician to work "without restriction", provided with "limited duty work consistent with. . . [restrictions assigned by] the treating physician" or actively working.

12. Our Appellate Courts have similarly held: (a) the incarceration of an injured worker did not terminate his period of temporary total disability (rejecting an argument that imprisonment, rather than work related injury, produced inability to work). Last, supra; (b) an intervening pregnancy did "not change the fact that . . . [a compensable] injury" continued to prohibit an employee from performing her previous job. Orr, 474 S.E.2d at 449; (c) a "seasonal" employee remained temporarily totally disabled due to injury, notwithstanding his "return to school on a full-time basis . . . [purportedly] removed him from

the labor market . . . ." Hines v. Hendricks Canning Company, 263 S.C. 399, 211 S.E.2d 220, 223 (1975); and (d) an employer "can be relieved of the liability to pay . . . [temporary total disability compensation] by either offering or procuring" suitable employment for the injured worker. Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43, 46 (1965); See also, S.C. Code Ann. Section 42-9-190 (1976).

13. Essentially, "when the injured worker is under work restrictions, the employer must either offer suitable employment within the injured worker's capacity or pay temporary total disability compensation." Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E. 2d 430, 433 (2013) (Court indicated it "d[id] . . . not disagree with [this] . . . proposition . . . ."). In this instance, analysis of the evidence of record reveals: (a) Mr. McDuffie work status has been materially restricted as a consequence of his causally related symptoms; (b) these limitations are inconsistent with his regular/full duty work activities; (c) while Johnson Food Service, LLC has been afforded an opportunity to provide suitably restricted work activities, it has declined to do so; and (d) Mr. McDuffie has not yet reached maximum medical improvement. We consequently conclude he has been temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (2007), as a matter of law, since his last work date and remains so at this time.

14. It is axiomatic that the provisions of S.C. Code Ann. Section 42-17-40 (1976, as amended) simply oblige this Commission to make "findings of fact . . . upon the essential factual issues. . . .". Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970); Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E. 2d 804, 808 (1977). While these findings must "be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been correctly applied to those findings . . . [, n]o particular format is required." Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991).

15. Inspection of Commissioner Taylor's Order clearly verifies: (a) the presence of numerous findings which address all factual issues through exhaustive analysis of the evidence; (b) identification of the evidentiary basis for these factual determinations; (c) adherence to applicable law; and (d) its content obviously satisfies the requirements prescribed by Section 42-17-40, as construed by the South Carolina Supreme Court.

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) accept financial responsibility for all medical modalities previously provided/prescribed by any authorized healthcare specialists, as well as for the charges stemming from Dr. Mazoue's June 10, 2015 evaluation; (b) authorize the additional

causally related medical treatment, medications, evaluations, diagnostic testing, evaluative procedures, physical therapy, surgical procedures, etc. provided/prescribed by Dr. Mazoue who is hereby designated as Mr. McDuffie's treating physician relative to the left knee injury component for the purposes of this claim; (c) accept financial responsibility for **treatment** of Mr. McDuffie's lumbar posttraumatic facet syndrome through an appropriate specialist of its choosing, who shall provide **treatment** for this condition as a causally related result of Mr. McDuffie's compensable accident; and (d) pay temporary total disability compensation effective the day following his last active work date until such time as this obligation is relieved by further Order of this Commission.

IT IS SO ORDERED.

The Honorable T. Scott Beck
Chairman
South Carolina Workers' Compensation Commission

WE CONCUR:

The Honorable Susan S. Barden

The Honorable Gene McCaskill

CERTIFICATE OF SERVICE

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

By Kim Falls on October 12, 2016