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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1410083

Terry McCall,)
)
 Claimant,)
)
 vs.)
)
 Trojan Labor/Hire Quest,)
 LLC, Employer,)
)
 and)
)
 Ace American Insurance)
 Company, Carrier,)
)
 Defendants.)
)

TRANSCRIPT OF PROCEEDINGS
August 28, 2015

This hearing was held before Commissioner Gene McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, Broad River Correctional Institute, Columbia, South Carolina, on Friday, August 28, 2015.

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APPEARANCES

TERRY MCCALL, CLAIMANT, PRO SE

ATTORNEYS FOR THE DEFENDANTS

CHRISTIAN BOESL, ESQUIRE
COLLINS & LACY
1330 Lady Street
Columbia, South Carolina 29201

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EXHIBITS

CLAIMANT'S PAGE

Exhibit No. 1 Medical Records 31

DEFENDANT'S

Exhibit No. 1 SLED Report 38

1 THE COURT: Today's date is August 28, 2015.
 2 This is Workers' Compensation Commission File Number
 3 1410083. This is the case of Terry McCall vs. Trojan
 4 Labor/Hire Quest, LLC. The carrier is Ace American
 5 Insurance Company. Mr. McCall is here today pro se and
 6 the employer/carrier are represented by Christian
 7 Boesl.

8 The date of the accident is July 4 --
 9 July 4, 2014. The claimant has an average weekly
 10 wage -- Mr. Boesl, do you have that handy?

11 MR. BOESL: Yes, I do.

12 THE COURT: If you will tell me what you
 13 have.

14 MR. BOESL: According to our Form 20, an
 15 average weekly wage of \$558.75 yielding a corresponding
 16 compensation rate of \$372.52.

17 THE COURT: \$372 what?

18 MR. BOESL: Fifty-two.

19 THE COURT: Fifty-two. All right.

20 Mr. McCall, would you stipulate -- would you agree that
 21 that is correct as to your average weekly wage?

22 MR. MCCALL: Well, there was a little bit of
 23 conflict. I was looking when I got my employee
 24 information --

25 THE COURT: If you need to tell me

1 something, let's talk about this and I want to swear
2 you in because anything you say could be deemed as
3 testimony.

4 First thing is first. We talked before we
5 went on the record and you being represented by legal
6 counsel and it's my understanding from that
7 conversation that you're waiving your right to legal
8 counsel and you are going to represent yourself here
9 today. Is that correct, sir?

10 MR. MCCALL: That's correct.

11 THE COURT: All right. Now, let's go ahead
12 and swear you in.

13 (TERRY MCCALL, being first duly sworn to
14 tell the truth, testified as follows:)

15 THE COURT: State your name for the record.

16 MR. MCCALL: Terry McCall.

17 THE COURT: All right. Mr. McCall, now,
18 back to average weekly wage, sir.

19 MR. MCCALL: Yeah. I got this report from
20 Ms. Ellen Adams. It has right here that my earnings
21 were -- net was different than it was on my W2. I
22 think it was \$1,651 here and it's stated something
23 totally different. It stated \$1,676 here. I was just
24 curious about it.

25 THE COURT: You want to show that to

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Mr. Boesl and let him look at that.

MR. BOESL: Thank you. For the report, he has handed me what's been submitted to the Commission as our Form 20 documentation for the Form 20 is one and then a work history by employee document. I'm not familiar with this, but it does appear to be a Hire Quest. I will point out if he's saying 1,651 for purposes of this case, we actually went with the higher number which was 1,676. The 1,676 is the number that is taken for the three weeks of pay that he has divided by three, is how we arrived at the average weekly wage. If he wants to use the lower number, it will effect the compensation rate. But I would say we are fine proceeding with the higher number that would endure to your benefit.

MR. MCCALL: I just wanted to be honest about it. I seen it and I didn't want no --

THE COURT: And what they've done, as you just heard Mr. Bosel say, they took the higher number.

MR. MCCALL: Yes, sir. I just looked at my taxes and was curious about it because of that reason because it had a difference in the --

THE COURT: But for purposes of this proceeding, you would agree?

MR. MCCALL: Yeah, no problem. I appreciate

1 it.

2 THE COURT: Average weekly wage of \$558.75
3 with a corresponding compensation rate of \$372.52.

4 All right. Are there objections to
5 jurisdiction, venue, APA submissions, or any other
6 items?

7 MR. MCCALL: No.

8 MR. BOESL: I have no objections to the
9 extent that I have not received any APAs from him. To
10 the extent that he tries to introduce APAs --

11 THE COURT: You will be given an opportunity
12 to review those before they are accepted.

13 MR. BOESL: So with that caveat.

14 THE COURT: All right. The Commission file
15 becomes a part of the record with the exception of
16 self-serving declarations and unstipulated medical
17 reports.

18 All right. Mr. Boesl, in the interest of
19 time, if you would just help me conceptually understand
20 why we are here today.

21 MR. BOESL: Okay. I'm going to do my best,
22 Your Honor. ~~On November 18, 2014, a Form 50 was filed~~
23 ~~requesting a hearing by Mr. McCall.~~ He was previously
24 represented by counsel with the Joel Beiber Law Firm
25 who in an Order signed by Commissioner Beck has been

1 relieved as counsel in this case. ~~The Form 50 alleges~~
2 ~~that on July 4, 2014,~~ Mr. McCall injured his neck,
3 right shoulder, back, right hand, wrist, chipped teeth.

4 THE COURT: All right. You're going to have
5 to slow down.

6 MR. BOESL: I'm sorry.

7 THE COURT: Neck, right shoulder, back,
8 right hand. What?

9 MR. BOESL: Chipped teeth or just teeth.

10 MR. MCCALL: I had a tooth. It was a tooth.

11 MR. BOESL: Tooth. And neck.

12 THE COURT: Did you say something about the
13 wrist?

14 MR. BOESL: Yes. Right wrist and right
15 shoulder.

16 THE COURT: I got the shoulder and the neck.
17 I got the neck, right shoulder, back, right hand,
18 chipped tooth, and right wrist?

19 MR. BOESL: Yes, sir.

20 THE COURT: All right. And, of course, I'm
21 going to have an opportunity for you to comment, sir.

22 MR. BOESL: And this is all coming from ~~his~~
23 ~~Form 50.~~ It alleges in the description that he tripped
24 over a wire and fell by other workers. More recently
25 he has filed -- ~~he has requested a motion to file an~~

1 ~~amended 50~~ as of August 18, 2015 of which we have
 2 acknowledged receiving notice of that where he now
 3 alleges that he had an ~~injury on June 30, 2014~~, that
 4 injured his hernia or resulted in a hernia, and it
 5 appears that he is also alleging that he has repetitive
 6 trauma injuries to the body parts that were listed, I'm
 7 assuming, in his Form 50 which included the previous
 8 body parts. It appears that he's also making a claim
 9 now on Page 4 for depression, anxiety, and insomnia.
 10 If I could add one other thing. On February 7, 2015,
 11 ?
 12 it's unclear if he amended another 50 to bring in the
 13 right elbow as well as the left foot.

13 Those are the allegations that we understand
 14 them from the claimant. The defendants' position is
 15 very simple. We deny that he got injured in the course
 16 and scope of his employment. We deny that injury
 17 occurred on our job site. We deny any evidence under
 18 42-1-172 as designated medical evidence of repetitive
 19 injury or trauma.

20 It's our position that the evidence does not
 21 support a claim for hernia under 49-9-40. And,
 22 finally, there's no evidence under 42-9-35 that any
 23 pre-existing conditions were aggravated.

24 The record will show or evidence that
 25 Mr. McCall has been to the emergency room 32 times from

1 January 5, 2012 through June 28, 2014.

2 THE COURT: January 5, 2012 through what?

3 MR. BOESL: June 28, 2014. The evidence
4 will also show that he had been to the ER 19 times
5 during that period of time seeking narcotic medication.
6 And, finally, he has filed 13 prior workers'
7 compensation and/or insurance motor vehicle claims
8 prior to this claim.

9 THE COURT: What else, sir?

10 MR. BOESL: We deny that he has -- or we
11 assert that he lacks credibility, which is obviously a
12 finding of the Commissioner. But it's our position
13 that he lacks credibility to sustain his claims for
14 compensability. I think at this point, that's all I
15 have.

16 And I just was unclear, and this was before
17 we went on the record before, but I just wanted to note
18 there was a previous Order from Commissioner Wilkerson
19 that did provide him -- I know he's here pro se. But
20 in the anticipation that there's an appeal later on
21 saying I didn't have time, I just wanted --

22 THE COURT: Right. There's an earlier Order
23 from Commissioner Wilkerson that is a part of the file
24 and the Commission file is part of the record.

25 MR. BOESL: And we're here to proceed and we

1 have no objections to his amendment of his 50 at the
2 last minute either.

3 THE COURT: Okay. No objection to the
4 amendment.

5 MR. BOESL: We're ready to proceed.

6 THE COURT: That is accepted. Specifically
7 on the frame work, because I like to organize these so
8 we can move along fairly quickly.

9 MR. MCCALL: Right. I understand.

10 THE COURT: Because yours is the first of
11 several cases. As Mr. Boesl has outlined injured body
12 parts, do you agree with his recitation of what he
13 believes to be the facts or are there other body parts
14 that he did not -- that you have already alleged in
15 filings?

16 MR. MCCALL: No. He said it right. What
17 happened was the earlier June 30th, ~~I had filed that~~
18 ~~when it happened.~~ Okay. Somehow -- I don't know how
19 [?] ~~it~~ it got turned around with this attorney that I had,
20 Joel Beiber, it was -- we had a little problem. He
21 didn't get my medical records. So I guess there was
22 never anything going to happen on it. So at that point
23 in time my other injury had done occurred five, six
24 days later, whenever it was, the 4th. It was like four
25 days later. Then that's when I filed the July 4th

1 claim.

2 THE COURT: ~~So these are two different~~
3 ~~claims?~~

4 MR. MCCALL: ~~Yes, sir. Yes, sir.~~

5 THE COURT: Do you have any objection in the
6 interest of judicial economy that they both be combined
7 for the purpose of the hearing?

8 MR. MCCALL: No, sir, I don't.

9 THE COURT: And how do you feel about that,
10 Mr. Boesl?

11 MR. BOESL: We would like it all heard at
12 the same time, Your Honor. To the extent there is
13 another --

14 THE COURT: Of course, what I will have to
15 do, you understand, ~~Mr. McCall, is I will have to~~
16 ~~research the record to seek out the filing on June~~
17 ~~30th. And provided that it was filed with the~~
18 ~~Commission, then they both can be addressed in my Order~~
19 ~~and -- because it will have a separate file number, and~~
20 I will cite both injuries in the file number that
21 corresponds and we'll issue an Order. Do you have --

22 MR. MCCALL: I'm sorry I don't have it with
23 me because I was trying to get a copy of it, but some
24 of my stuff got misplaced during my incarceration.

25 MR. BOESL: To the extent there's not

1 actually a claim filed for the June 30th. But he's
2 alleging two separate injuries, I would like, if you
3 could, in your Order to address both of them.

4 THE COURT: Yes, yes.

5 MR. BOESL: Okay. Thank you, Your Honor.

6 THE COURT: Yes. And let me just chat with
7 you a little bit about -- well, I'll come back to that.
8 I don't want to get off this track or I'll be dragging
9 it out. So we will look to see if it's filed; and if
10 it's filed, I can address it in my Order. Okay?

11 MR. MCCALL: Uh-huh.

12 THE COURT: Now, other than that, you would
13 agree with the recitation of the facts by Mr. Boesl?

14 MR. MCCALL: Yeah, yeah. All this stuff,
15 body parts alleged he's talked about, that's true.

16 THE COURT: All right.

17 MR. MCCALL: I did -- I did, I think, put in
18 that motion to amend that I withdrew my tooth because I
19 had a tooth that was already fractured at one point in
20 time. And I believe that when I did fall it chipped
21 some, but I went and took the bite on that one because
22 it's right here.

23 THE COURT: So you withdraw the tooth?

24 MR. MCCALL: I did. I just -- because I
25 know that my teeth right now are on top of each other.

1 When I fell, it did chip it some. But I guess since
2 then, I've had a little wear and tear on it, though, to
3 be honest about it.

4 THE COURT: First thing first. What are you
5 asking me to do for you today?

6 MR. MCCALL: Okay. I'm asking you to give
7 me temporary total disability benefits.

8 THE COURT: From when? Beginning when?

9 MR. MCCALL: From June 30th.

10 THE COURT: To present and continuing?

11 MR. MCCALL: Yes, sir. And medical
12 treatment as well.

13 THE COURT: And you do understand that it is
14 not my role here to represent you?

15 MR. MCCALL: That's right. So you want me
16 to go ahead --

17 THE COURT: If I ask questions, Mr. Boesl,
18 that you think are beyond the veil of what my role is,
19 I will not take any offense by you placing an objection
20 on the record. But I have found with pro se folks, if
21 I can lead them a little bit, we can move along a
22 little more quickly.

23 MR. BOESL: I understand.

24 THE COURT: But I'm serious, I will take
25 no -- would not take it personally at all if you

1 thought, you know, that's just a little too far and
2 we'll back up and start over again. Okay?

3 MR. BOESL: Noted.

4 THE COURT: All right. Thank you. And you
5 are also asking for medical care and treatment?

6 MR. MCCALL: Yes, sir, I am.

7 THE COURT: For all of the injured body
8 parts?

9 MR. MCCALL: Yes. Mainly for my shoulder,
10 my wrist, my hand, and my back and neck.

11 THE COURT: Shoulder, wrist, hand, back, and
12 neck?

13 MR. MCCALL: Yes, sir.

14 THE COURT: Okay. All right. Now, as to
15 your injury, what -- the burden in all of this is
16 yours.

17 MR. MCCALL: That's right.

18 THE COURT: This is a denied claim.
19 Mr. Boesl actually does not have to do anything today
20 but answer my questions. You have the burden of proof.

21 MR. MCCALL: Okay.

22 THE COURT: Okay?

23 MR. MCCALL: All right.

24 THE COURT: The standard in workers' comp,
25 as I'm sure you're probably aware, is more likely than

1 not. In other words, it's got to tip the scale to
2 51 percent.

3 MR. MCCALL: That's right.

4 THE COURT: With the exception you're
5 asserting a repetitive trauma claim and that is
6 addressed as is the hernia, but that's just a little
7 bit different, but I want to speak to the repetitive
8 trauma. Do you have a doctor who says that to a
9 reasonable degree -- I don't have the code in front of
10 me -- to a reasonable degree of medical certainty, more
11 likely than not -- here we go. Let's read exactly.

12 It's in 42-1-172(C). "Medical evidence in a
13 repetitive trauma claim means expert opinion or
14 testimony stated to a reasonable degree of medical
15 certainty, documents, records or other material that is
16 offered by a licensed and qualified medical physician."

17 And you're going to have to have that to
18 prove a repetitive trauma claim. In other words, I
19 can't send you to the doctor for a doctor to determine.
20 That's what we call burden shifting. You would have to
21 have that on the front end to prove your repetitive
22 trauma claim. Do you have such evidence?

23 MR. MCCALL: No. I'll just withdraw that
24 claim at this time.

25 THE COURT: That's fine. Because I just

1 want to be honest with you, sir.

2 MR. MCCALL: I understand. I'm not real
3 familiar with this.

4 THE COURT: Most people aren't unless you
5 are an attorney who does workers' comp or you work for
6 the Commission, you're interfaced with workers' comp,
7 anybody who is interfaced, hopefully never, and if
8 someone is interfaced, we hope it's not but one or two
9 times in their lifetime. But I just want to be real up
10 front with you. That is -- even for an attorney to
11 prove a denied repetitive trauma claim is a very high
12 mountain to climb.

13 MR. MCCALL: I thought it was. I read about
14 it and I thought this is part of maybe my claim, but I
15 didn't know I had to have it from a doctor before I got
16 here. Okay. I'm going to tell you a little bit about
17 the facts and circumstances.

18 THE COURT: That's where I'm coming. Tell
19 me first about what happened on June 30th and then
20 we'll talk about July 4th.

21 MR. MCCALL: All right. Well, let me say
22 this: When I first started out with this Trojan
23 company, I was in a working management program at this
24 point in time. I never met with this gentleman here.
25 I never met with none of the employees over there at

1 Trojan. This company that I was with, it was called
2 Turning Point, they would get us our jobs and get us
3 back and forth to work. Okay. And I had given power
4 of attorney to Chris Fallaw, which was the employment
5 Commissioner -- I mean employment supervisor at that
6 time. And he was to pick up my check. He was to get
7 me, you know, on my jobs and things of that sort and
8 tell me when to go in and when I would get off.

9 Okay. So I never seen any kind of rules,
10 registrations from them or anything at that point. I
11 went in to work and started to work with this
12 electrical company. It was called Recore Electrical.
13 They were out of Charlotte. And we were doing an
14 addition down in the Fiesta Plant. I think that's how
15 you say it. It was a German plant down in
16 Simpsonville, South Carolina. And we were to run cable
17 from the bottom floor, first floor, and the second
18 floor.

19 Okay. So we had all these different
20 machines. We were putting in cable trays. We were
21 doing all sorts of maneuvering around with other
22 companies around us at the same time, construction-type
23 work. At this point in time on June 30th, I was in the
24 middle of cable tray and another gentleman yanked one
25 of the cables -- actually, the wire. And when he did,

1 it tripped me and my foot caught up in the cable tray
2 and I fell and I fell on my right side and injured my
3 shoulder and my back. It aggravated my back because I
4 have some pre-existing conditions with that, but it
5 aggravated my back and my wrist and my hand.

6 THE COURT: Now, all this is on June 30th?

7 MR. MCCALL: Yes. And my wrist.

8 THE COURT: I thought what you -- the injury
9 you suffered on June 30th was the hernia?

10 MR. MCCALL: No. I had an injury to my hand
11 and back too.

12 THE COURT: Get it straight in my mind.

13 MR. MCCALL: Yeah, I did. And it was in
14 that form I filed.

15 THE COURT: Let me write it down now. To
16 your wrist, your hand, and your back?

17 MR. MCCALL: Right. Yeah. And I was
18 pulling wire -- right before this occurred, I was
19 pulling wire. Okay. Before I got tripped, I was
20 pulling. And while I was pulling the wire, we were
21 having to move 500 -- it's about this big around.
22 (Witness indicates.) I'm not sure if you're familiar
23 with it. It's very, very heavy without any tugger. We
24 didn't have a tugger on the job. The company wouldn't
25 supply us with a tugger and we was short on demand with

1 employees on that particular day.

2 THE COURT: What you're saying is it's very
3 heavy? I'm assuming this is for purposes of the
4 record?

5 MR. MCCALL: Very strenuous heavy --

6 THE COURT: Cable?

7 MR. MCCALL: Yes, sir.

8 THE COURT: That's what you're talking about
9 being heavy?

10 MR. MCCALL: Yeah.

11 THE COURT: Okay. All right.

12 MR. MCCALL: And we were all on one, two,
13 three, four pull. One, two, three, four. And when I
14 pulled this particular time, my hand just -- and my
15 wrist popped and my hand just started burning and pain
16 shot up through my wrist up through my forearm.

17 MR. BOESL: What day is this?

18 THE COURT: This is on June 30th.

19 MR. MCCALL: June 30th, yes. And on July --
20 and then once I got tripped and fell, I landed on my
21 right side with my shoulder and injured -- like I said,
22 injured my shoulder and my wrist and aggravated my hand
23 and my back. I pulled my groin area during that time
24 when I was pulling cable, but I also pulled it more so
25 when I fell because I straddled all the way across the

1 whole cable tray with my legs sprawled out.

2 If you see the place, you have to crawl and
3 cross over places. It's just unbelievable. And I was
4 tied off at that time as well which yanked me back.

5 THE COURT: And just for the purpose of the
6 record, explain what "tied off" is.

7 MR. MCCALL: Tied off is you got your
8 harness is on you and you have to be -- if you're up so
9 high, especially on the third floor, you have to have
10 your harness tied off to some other available place
11 that's stable where you won't fall. Okay. Like down
12 on the next floor.

13 THE COURT: So that's what we call mechanism
14 of injury on the 30th, correct?

15 MR. MCCALL: Yes, sir.

16 THE COURT: I don't want to put words in
17 your mouth.

18 MR. MCCALL: You're right.

19 THE COURT: If I misspeak you, correct me.
20 All right.. Did you receive medical treatment for any
21 of those injuries at that time?

22 MR. MCCALL: I did go to the -- I did go to
23 the hospital and reported it and I have some records
24 here when I went.

25 THE COURT: If you have records, I want you

1 to hand them to Mr. Boesl and let him look at them
2 before I see them.

3 MR. MCCALL: And I would like to explain the
4 stuff he talked about earlier, the previous stuff that
5 I've had, yeah, I've had some visits to the hospital.
6 I've had some claims, but I never had anything previous
7 and I've never done anything wrong. I don't think he
8 has any evidence of that.

9 THE COURT: Let him take a chance to look at
10 those.

11 MR. BOESL: No objection to these. Can I
12 hand you my APAs now?

13 THE COURT: Yes.

14 MR. BOESL: I'm going to hand you my APAs
15 and I produced a copy for you as well. And it appears,
16 Your Honor, that he has made copies of our APAs, is
17 what he's handing you specifically APA 142 which would
18 be the defendants' APAs.

19 THE COURT: So this is already a part of the
20 record. And then, Mr. McCall, I will read all of
21 these. So if you have other things to hand up that are
22 in here, I'm going to read it anyway. You can just
23 tell me that -- see how they numbered them at the
24 bottom -- that you would like me to pay special
25 attention to page whatever. Okay?

1 MR. MCCALL: And I've got some more medical
2 records here.

3 MR. BOESL: Let me tell you what the next
4 group is. APA 148 through 151.

5 THE COURT: Okay. Very good. Do you have
6 something else for Mr. Boesl to look at, sir?

7 MR. MCCALL: Yeah. This is from the July --

8 THE COURT: Don't go there yet. Let's
9 finish up with June 30th first. Okay. Mr. Boesl has
10 cited in the record as far as the page numbers that you
11 would like me to pay special attention to as to your
12 June 30th accident.

13 MR. MCCALL: Yes, sir.

14 THE COURT: Anything else you want to tell
15 me about your June 30th accident?

16 MR. MCCALL: Well, during that day my
17 supervisor had me go back to the trailer and sit down
18 and rest and he came down there and wrapped my hand up,
19 told me to take the rest of the day off and just tried
20 to -- asked me did I need to go to the hospital, would
21 I be able to continue to work. I told him I hope so
22 because I didn't want to lose my job.

23 I had been working overtime for the company
24 every day, hadn't missed none. Been working ten hours,
25 I think it was, a day at the time. I was one of the

1 three people that was kept out of all the ones -- of
2 the three that Trojan had, I was the only one kept down
3 there on that particular job because I did work hard
4 and give it my best.

5 But I did go back and continued to work the
6 next day and I had a problem doing my best. And most
7 the activities that I was doing, I couldn't do what I
8 was doing. I wasn't able to get up on the ladder and
9 move it around like I was at that particular time.

10 He didn't want -- the supervisor didn't want
11 me in high places after that situation. I explained to
12 him that he needed to contact the employer and let them
13 know that the injury had occurred. Okay. He said that
14 he would call them and he would notify them. And at
15 that point, I did give him notice of my injury. As to
16 Trojan, I didn't know who to call or I would have
17 called them at that point but I didn't know.

18 And another thing, we weren't allowed -- at
19 the Turning Point, we weren't allowed to correspond
20 with any of our hirees, I guess, or other employers.
21 We weren't supposed to call them or we would get
22 terminated, you know. That was part of Mr. Chris
23 Fallaw's philosophy. He didn't want you contacting
24 them.

25 THE COURT: What else about that day, sir,

1 or that injury or that time right after it?

2 MR. MCCALL: That's about what happened.

3 THE COURT: Okay. Let's talk about
4 July 4th.

5 MR. MCCALL: Okay. July 4th we were on the
6 third floor, okay, the top floor, and we were working
7 and we was on an opposite machine and wiring it up like
8 we were on the first time on the 30th and we were
9 putting cable trays in and we had another company down
10 there pulling their wire across our wire. Okay. And
11 we had a big mess. The companies want us to take and
12 move their wire and our wire and start all over again.
13 So we was having a big bunch of wires sitting out
14 everywhere.

15 And one of the guys with the company when I
16 was in the cable tray trying to maneuverer the wire,
17 here again, yanked the wire unexpectedly and this time
18 I fell over into a hole which wedged my shoulder and my
19 neck. I tore a place here on my shoulder that left a
20 little scar there, and I injured my back and my
21 shoulder, my wrist, and my hand.

22 THE COURT: And this is the same shoulder,
23 wrist, and hand as --

24 MR. MCCALL: Yes, sir. My right side. Yes,
25 sir. And my neck. And at that point in time, I wasn't

1 able to continue to do my job like I one time could.
2 The supervisor told me, said he was going to put me on
3 just some light stuff at that time until I could see a
4 doctor. He said, "You need to see the doctor," you
5 know. And he called in and said he reported it. I
6 explained to our supervisor that he needed to call over
7 there and tell them at Turning Point the situation
8 because, you know, I couldn't correspond with nobody
9 but them.

10 And so I think it was on the 14th, if I
11 ain't mistaken, the 14th or the 15th, that I called and
12 talked to a gentleman named Curtis over at Trojan in
13 Greenville.

14 THE COURT: On July 14th?

15 MR. MCCALL: Yes, sir. I think it was the
16 14th. I'm almost positive it was the 14th, maybe 15th.

17 THE COURT: On or about July 14th?

18 MR. MCCALL: Yeah, it was. It was.

19 THE COURT: And you called Trojan?

20 MR. MCCALL: Yes, sir, I did.

21 THE COURT: And talked to who?

22 MR. MCCALL: To a guy named Curtis for just
23 a brief minute and I was explaining my situation to him
24 and he said, "I don't want to hear that you got
25 injured. I don't want to hear about that." And so

1 some lady came on the phone then and I said, "Ma'am."
2 I said -- I told her who I was and told her the
3 situation and what was going on and that I was no
4 longer where I was at Turning Point because I had left
5 there at the time.

6 THE COURT: When did you leave Turning
7 Point?

8 MR. MCCALL: I left Turning Point the 13th,
9 I think it was. It was either the 14th or the 13th.

10 THE COURT: Let me make sure I understand
11 this. Turning Point is the entity through which you
12 received employment --

13 MR. MCCALL: Right.

14 THE COURT: -- to work on these job sites?

15 MR. MCCALL: It is. That's correct.

16 THE COURT: All right. And you left Turning
17 Point on the day before you called?

18 MR. MCCALL: Yeah, before I called. Yes,
19 sir, I did.

20 THE COURT: All right.

21 MR. MCCALL: And, like I said, I spoke with
22 the guy Curtis and he was just really hateful to me.
23 And the lady got on the phone and I explained to her, I
24 said, "Ma'am, I'm trying to explain my situation to
25 this gentleman." I said, "I don't know if y'all are

1 familiar with Chris Fallaw. Has he called y'all?" She
2 said, "Oh, we already know." She said -- I said,
3 "Well, I'm not there. So let me ask you this." I
4 said, "Where do I need to go? Do I need to go back to
5 Fiesta to work or where do I go?" She says, "I have to
6 call you back."

7 Well, about an hour later she called me back
8 and she said they didn't have any more work for me
9 because I had been injured. And I was doing fine until
10 this last injury. I haven't been able to use my
11 shoulder or raise my shoulder above my head. I haven't
12 been able to dress myself. I'm having people to have
13 to help dress me at the prison.

14 And I have also some witnesses -- a sworn
15 statement here that they seen me fall and it was on my
16 job. One of the gentleman, you can call him if you
17 needed to. I spoke with him yesterday. I don't know
18 if you've seen these medical records here. You can
19 enter these as well. These are the records for
20 July 4th.

21 THE COURT: Are they medical records that
22 are in the packet he handed up?

23 MR. MCCALL: No, sir. These are new.

24 MR. BOESL: I object to this as -- on a
25 number of levels. One, it purports to be an affidavit.

1 It's not notarized nor --

2 MR. MCCALL: It is notarized on the bottom.

3 MR. BOESL: There is no seal of any notary
4 on the bottom of this. I would contest that it's
5 notarized. Second of all, it's an affidavit that's
6 being offered for the truth of the matter asserted. It
7 would be hearsay in its classical definition. Third of
8 all, I don't have a right to cross-examine any of these
9 witnesses. And fourth and final, I haven't had any
10 list of any evidence of witnesses produced to me prior
11 to this or in anything he's submitted. So I would
12 object to this in its entirety.

13 THE COURT: And I'm not going to let that
14 in. Some of his objections I would have given you
15 leeway on. In other words, if you hadn't noticed
16 witnesses and they were here today, I would hear from
17 them because I understand that people who are not
18 attorneys don't understand the law as attorneys
19 understand it. There's some things that I would give
20 you leeway on. One thing I can't give you leeway on is
21 they are not here to testify which deprives Mr. Boesl
22 of an opportunity to cross-examine them.

23 MR. MCCALL: Okay.

24 THE COURT: And with him not having that
25 opportunity, that would prejudiced his case because I

1 want to be -- my role in this is I'm the arbitrator of
2 fact. I've got to take the facts and the law and see
3 how it measures up. But I have an additional
4 responsibility to be as fair to you as I can, but I
5 have an equal obligation to be equally fair to
6 Mr. Boesl's client because this system doesn't favor
7 one over the other.

8 MR. MCCALL: That's right. I understand.

9 THE COURT: And if I were to allow that in
10 without him having the opportunity to cross-examine
11 them, that would be unfair to his client. So I cannot
12 let that in.

13 MR. MCCALL: Okay. Any way you can call?

14 THE COURT: No. They would have had to have
15 been here today.

16 MR. MCCALL: They were working.

17 THE COURT: I understand that. That's the
18 way this system is designed. Now, do you have medical
19 records you want to show him?

20 MR. MCCALL: Yeah, that's the medical
21 records. That's the last record that I have where I
22 went to the doctor and this lady had written me out of
23 work with restrictions. I don't have that part of it.
24 It's on there listed that she says and talks about my
25 injuries worsened and it's my pain is localized in

1 other places than it was before the June 30th injury.

2 MR. BOESL: I tell you what, for the record,
3 I've never been provided these before. I don't see a
4 provider, but I will not --

5 MR. MCCALL: I told Ellen --

6 MR. BOESL: I'll not object. I'll let them
7 in.

8 THE COURT: Okay. Now those are part of the
9 record. Now these are not part of your APA
10 submissions, correct?

11 MR. BOESL: They are not.

12 THE COURT: All right. I'm going to have
13 you mark these, please, ma'am.

14 (Exhibit No. 1, Medical Records, was marked
15 and entered as evidence.)

16 THE COURT: All right. What else,
17 Mr. McCall?

18 MR. MCCALL: Well, I was able to work before
19 my injuries. I am not able to work now, not due to the
20 incarceration, but because of my injuries now and the
21 conditions.

22 THE COURT: Expound on that a little bit for
23 me. Why are you not able to work? And don't just say
24 because my conditions. What can you not do?

25 MR. MCCALL: I cannot lift over five to ten

Yes I told her she failed

1 pounds. I cannot raise my right arm above my head. I
2 cannot use my shoulder as I one time could or my wrist.
3 My neck and my shoulder has tingling in it -- a
4 tingling sensation that runs up all the way to my neck
5 into my head here.

6 THE COURT: That's in your neck?

7 MR. MCCALL: Right. And my arm here like
8 this.

9 THE COURT: So I understand -- and correct
10 me if this is not what you intend for me to understand.
11 You have pain that runs across the top of your
12 shoulders, up your neck, and into your head?

13 MR. MCCALL: It is. Yes, sir. And it's a
14 tingling sensation as well.

15 THE COURT: Okay. What else, sir?

16 MR. MCCALL: I'm not able to bend my wrist
17 like I one time was. It's in a lot of pain,
18 excruciating pain.

19 THE COURT: Okay. And what else?

20 MR. MCCALL: And my back is continuously
21 hurting me in one area more than it ever was.

22 THE COURT: All right. When you say it's
23 "continuously hurting," does it hurt all the time?

24 MR. MCCALL: It does. Yes, sir.

25 THE COURT: Is that pain a constant pain or

1 is it better at times and worse at times?

2 MR. MCCALL: It's constant. It's constant.

3 THE COURT: Now, on a scale of zero to
4 ten -- and listen carefully to what I'm asking. Zero
5 being no pain at all, ten being pain so severe that we
6 need to take you to the hospital right now.

7 MR. MCCALL: Right.

8 THE COURT: On that scale of zero to ten,
9 what's your back pain?

10 MR. MCCALL: About a seven.

11 THE COURT: What else?

12 MR. MCCALL: Okay. And when I thought I
13 gave myself a hernia, okay, they checked me and said
14 that it was a strain in my groin area. That's what it
15 was diagnosed as. And I'm still having problems there
16 on my right side of my testicle. That's why I was
17 wanting to be seen and get treated and see what's --
18 what more damage have I done to myself than what I had
19 some -- in some of the pre-existing areas because I did
20 have a couple pre-existing areas, you know, because I
21 had carpel tunnel on my hand at one time, but not on my
22 wrist or nothing like that.

23 THE COURT: What else, sir?

24 MR. MCCALL: Well, I guess --

25 THE COURT: I mean, you're going to get

1 another opportunity. Mr. Boesl is going to have an
2 opportunity to ask you questions. Okay?

3 MR. MCCALL: All right.

4 THE COURT: And then after he's asked you
5 questions, anything else you want to add, I will give
6 you that opportunity to do that. Okay?

7 MR. MCCALL: All right.

8 THE COURT: Mr. Boesl.

9 MR. BOESL: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. BOESL:

12 Q. Morning, Mr. McCall.

13 A. Good morning.

14 THE COURT: And before we start, you do
15 understand Mr. Boesl is doing a job?

16 MR. MCCALL: I do.

17 THE COURT: He has a fiduciary
18 responsibility to his client to advocate for his
19 client's position. So don't take that personally.

20 MR. MCCALL: Oh, I don't.

21 THE COURT: All right.

22 BY MR. BOESL:

23 Q. Mr. McCall, I've been listening to your testimony
24 here today, reviewing some of your pleadings that you have
25 filed in this case. You said something very interesting to

1 me. You said I don't -- when you were testifying to the
2 Commissioner that you never did anything wrong as far as the
3 medical records and there wouldn't be any evidence of
4 anything frivolous in the medical records. You used the
5 word "frivolous" or "wrong." Didn't you testify to that?

6 A. What I said was -- I said that I had never filed
7 anything frivolous. That's what I was saying. You said I
8 had several claims, but I have never had anything that I
9 filed. I didn't know you couldn't make a complaint if you
10 had an injury.

11 Q. You understand the word "frivolous." You used
12 it. Frivolous means something that's untrue, correct?

13 A. Well, yeah, yeah.

14 Q. Okay. All right. But, in fact, you had --
15 you've had claims that you filed that have been frivolous
16 and you've made frivolous reports to the medical facilities
17 that you've treated at, haven't you?

18 A. I've never made a report frivolous that I know
19 of.

20 Q. Isn't it true that you actually have had some
21 trouble being truthful to law enforcement officers over the
22 years, haven't you?

23 A. I don't think that has anything to do with this
24 case here today. I don't think that -- I would object to
25 that. That has nothing to do with anything and I don't

1 think you have any evidence of that.

2 THE COURT: Hold on a second. You've raised
3 an objection. One of the things that Mr. Boesl put on
4 the record as to his position is your credibility.

5 MR. MCCALL: Yes, sir.

6 THE COURT: And the primary measure of
7 credibility is honesty. Now, I will not be biased by
8 any criminal conviction you have. I can assure you of
9 that. That has nothing to do with whether or not you
10 were injured at work.

11 MR. MCCALL: I hope not.

12 THE COURT: Well, I assure you of that. But
13 he does have the right to ask you about that. All
14 right. Mr. Boesl.

15 MR. BOESL: Thank you, Your Honor.

16 BY MR. BOESL:

17 Q. Picking up where I said, you've had some
18 difficulty being honest with law enforcement officers that
19 have caused you convictions; isn't that correct?

20 A. No, not with causing me convictions. No, sir.

21 Q. Isn't it true in 1988 you were convicted of
22 conspiracy on narcotic charges?

23 A. No, sir, I wasn't.

24 Q. Okay. And in 1990, isn't it true that you were
25 also convicted of fraud and obtaining controlled substances?

1 A. Now, I were convicted on fraud on prescriptions,
2 yes. What it was, was a photocopy -- I didn't particularly
3 do it, okay, but I used it and I wasn't aware of it. So I
4 didn't actually commit the fraud, but I did plead to the
5 charge. I had no knowledge of it.

6 Q. And you were convicted of four counts of fraud in
7 2001 and one count of using another person's driver's
8 license in 2001 as well, weren't you?

9 A. No. I had another person's driver's license in
10 my vehicle and I didn't have my driver's license on that
11 particular day. So I got charged with that, with having it
12 in my possession.

13 Q. And just recently isn't it true that you were
14 actually arrested and convicted for giving false information
15 to a law enforcement officer on December 2, 2014?

16 A. Yeah. I did say -- I did say I was Jerry, my
17 brother, instead of Terry. I did say that.

18 MR. BOESL: Commissioner, I would just like
19 to put into evidence his SLED enforcement report to
20 impeach his testimony about not being convicted on
21 those charges. It is in his SLED report and I move
22 that into evidence.

23 THE COURT: It will be admitted into
24 evidence solely for that purpose. Any conviction older
25 than ten years, only as to his testimony -- the

1 questions you've asked will be the only -- the only way
2 in which I will consider this testimony.

3 MR. BOESL: I'm offering it for impeachment
4 purposes.

5 THE COURT: Thank you.

6 MR. MCCALL: What page was that on about
7 conspiracy?

8 MR. BOESL: Sure. We'll let you go through
9 that. But for the Commissioner's reference, the
10 conspiracy charges start on Page 3 of 14, it is a
11 14-page rap sheet, under December 16, 1988..

12 (Defendant's Exhibit 1, SLED Report, was
13 marked and entered as evidence.)

14 BY MR. BOESL:

15 Q. Now, isn't it true you've also given inaccurate
16 information and false information to medical providers as
17 well, haven't you?

18 A. I have one time that I know of.

19 Q. Okay. And that --

20 A. It was about my prescription.

21 Q. About your prescription. But isn't it true you
22 also gave them inaccurate information on December 20, 2013
23 at Greenville Memorial Hospital?

24 A. Not that I recall, no, sir.

25 MR. BOESL: Commissioner, I would like to

1 draw your attention to APA 83, 84, and 85 in
2 defendants' APAs.

3 BY MR. BOESL:

4 Q. Mr. McCall, you checked into GMMC on December 20,
5 2013, did you not?

6 A. Yes, sir.

7 Q. Okay. According to the medical records, you made
8 a statement that you were walking across the street and a
9 car pulled out in front of you and hit you.

10 MR. BOESL: Under the history of present
11 complaint, Your Honor.

12 BY MR. BOESL:

13 Q. And that you injured your right wrist, your
14 bilateral shoulder, and had low back pain as a result of
15 that; isn't that right?

16 A. That is correct. I did.

17 Q. Right. And you see where I'm reading at, don't
18 you --

19 A. Yes.

20 Q. -- under chief complaint? That next line, I'm
21 going to read this and you tell me if I'm reading it right.
22 It says, "The EMS reports that there were multiple witnesses
23 that all stated the car did not," in capital letters, "hit
24 you;" is that correct?

25 A. There was some witnesses that said that. That's

1 what the officer said, that there was no witnesses that gave
2 a written statement, but there was other witnesses that said
3 they did -- I did get hit, but the officer didn't write them
4 up for the reason of that he says the other witnesses was,
5 you know, saying that they didn't.

6 Q. That's right. And then later on Page 85, the
7 doctor noted in his report that the police officer actually
8 took statements from you and from other witnesses that did
9 not correlate, once again, indicating that there was no
10 evidence of any kind of injury where you actually had been
11 hit by a car; isn't that right?

12 A. No. Huh-uh. No.

13 Q. And at that time, that was your 19th visit to the
14 ER for medicated-related issues; isn't that right?

15 A. No, it's not. If you look at some of those times
16 I went, I went for times that I had mental problems because
17 I was in there because I was psychiatric, homicidal, and
18 suicidal.

19 Q. So it's your testimony --

20 A. It was not those -- all those times that you're
21 listing and stating aren't for going in for pain or injury.

22 Q. And, Mr. McCall, on Page 85 you will note where
23 I'm talking about under the doctor's notes. I'm not stating
24 that. That's what the doctor and the hospital system noted;
25 isn't that right?

1 A. Yeah. Where is that?

2 Q. Under doctor notes text, first page, Page 85.

3 A. I see this. Is what now?

4 Q. Let's move on. Let's talk about your injury. Is
5 it your testimony here today that you only have pre-existing
6 low back pain?

7 A. No.

8 Q. So you don't --

9 A. I had a pre-existing hand injury.

10 Q. So you had a pre-existing shoulder injury; isn't
11 that right?

12 A. That's true. Uh-huh.

13 Q. Okay. And you had a pre-existing wrist injury;
14 isn't that right?

15 A. Wrist injury?

16 Q. Yeah, right wrist injury.

17 A. I had surgery years ago on it, yes.

18 Q. And you continued to seek medical treatment for
19 your right wrist throughout the year 2012 leading up until
20 the day that you alleged that you got hurt on the job; isn't
21 that correct?

22 A. No, not until that same day.

23 Q. Not that same day, but you've actually
24 reported --

25 A. That's what you're saying. You said up to the

1 same day and I haven't. I've had complications with my
2 pre-existing injuries, but I was able to work every day
3 according to -- if you will look at these records here, I
4 worked every day for this company. I didn't lay out one day
5 and worked overtime hours with no problem until I had this
6 injury.

7 Q. And let's talk about your injuries that you've
8 testified here today. If I can follow you, you testified
9 here that you first injured yourself on June 30, 2014; is
10 that correct?

11 A. That's what the record says. Yes, sir.

12 Q. Well, that's your testimony here today, isn't it?

13 A. Yeah. Right.

14 Q. And you knew that you injured yourself on June
15 30, 2014, didn't you?

16 A. Sure.

17 Q. That's never been a question to you, has it?

18 A. No, it hasn't.

19 Q. So do you have any explanation to the
20 Commissioner here today as to why your Form 50 said that you
21 injured yourself on July 4th and not June 30, 2014?

22 A. Because I just told you earlier that I had filed
23 another form with this other attorney. Okay?

24 Q. And your attorney was Joel Beiber.

25 A. Joel Beiber. And it was already filed and I

1 don't know what happened to it. Okay.

2 Q. And did you meet with Joel Beiber?

3 A. Never met the man in my life. He had an attorney
4 that worked for him, I guess just an associate there, and
5 that's who was handling my case because I got a letter from
6 the Commissioner stating that, you know, he relieved himself
7 of counsel once I told him I wanted my record, you know, to
8 get my files from him because he hadn't got my doctor
9 records or nothing.

10 MR. BOESL: I'm trying to be patient, but I
11 would ask him to just answer the question that I've
12 asked. I've asked yes or no questions.

13 THE COURT: I will give you a chance at the
14 end to tell me anything else you want to tell me, but
15 right now just answer the questions Mr. Boesl asks you.

16 MR. MCCALL: Okay.

17 THE COURT: Just keep it focused on
18 answering his questions. That would be helpful.

19 BY MR. BOESL:

20 Q. I understand your complaint -- I understand your
21 testimony here today, you were standing on June 30, 2015
22 when someone pulled a cable and caused you to fall down;
23 isn't that right?

24 A. Uh-huh.

25 Q. Okay. Is that a yes?

1 A. Yes.

2 Q. Okay. And you went to the doctors later and you
3 reported your accident at work, didn't you?

4 A. I did.

5 Q. And you reported it that you were standing there
6 and that a cable had pulled and caused you to fall down,
7 right?

8 A. Sure.

9 Q. That's your testimony, right?

10 A. Yeah.

11 Q. But that's not what the medical records reflect,
12 is it?

13 A. I guess it is. That's what some of them reflect
14 here. I don't know about -- I haven't read them all.

15 Q. Okay. Well, let's read the records that you
16 actually submitted earlier because one is right on point.
17 I'm going to have you turn to your own records here, sir,
18 that you previously submitted.

19 MR. BOESL: Let's go to APA 142,
20 Commissioner.

21 BY MR. BOESL:

22 Q. This is your -- I'm going to ask you some
23 questions. This is your medical record from when you went
24 to the doctor on July 16, 2014; is that correct?

25 A. Uh-huh.

1 Q. All right. And under the history of the
2 complaint, you were there giving the information to them,
3 right? You didn't have someone go on your behalf, did you?

4 A. No, I didn't.

5 Q. Look under the history of the complaint where it
6 says, "History of present complaint." I'm going to read
7 this and you tell me if I'm reading it right. "Tripped and
8 fell and has low back pain, right shoulder pain, and low
9 abdominal pain;" is that correct?

10 A. Uh-huh.

11 Q. All right. Let's turn to Page 143 of that.

12 A. And that trip and fell, I didn't -- I don't know
13 why he didn't stipulate that I was tripped, but it was I was
14 tripped.

15 Q. You were tripped by the cable, that's your
16 testimony, right?

17 A. Yeah.

18 Q. All right. Well, let's see what 143 on the next
19 page under the chief complaint says. "Patient presents for
20 the evaluation of a fall while running, walking onto a hard
21 surface and landing on the right side." Do you see that?
22 That's not consistent with your testimony here today, is it?

23 A. I didn't say that I was running or falling or
24 walking. I said when I was walking and I was standing there
25 getting all this stuff when we were pulling wire, you know.

1 You've moving around the whole time. It's not like you're
2 standing in one position. I don't know if you've ever been
3 on construction jobs, but it's not just one position. We're
4 moving all day long back and forth. That's what happened.
5 That's how --

6 Q. It is your testimony --

7 A. I guess that's why he wrote it like that, but
8 it's not that. I was just, you know --

9 Q. So you're claiming these records are all
10 inaccurate?

11 A. Well, they're not maybe written according to what
12 my testimony was to him, what I said to him.

13 Q. And your testimony to him was also that it
14 happened on June 30th, that's right?

15 A. Yeah.

16 Q. Because that's your testimony here today, that it
17 happened on June 30th?

18 A. Yeah.

19 Q. Right. And if you look down below it where it
20 says, "Occurred," three lines down, it says, "Onset was four
21 days prior to arrival." I'll submit that at the bottom of
22 the page, the arrival was July 16th. Four days before that,
23 judicially noted, would be July 12th; isn't that correct?

24 A. I guess it would be.

25 Q. It would be. So this is also -- this medical

1 record is also false according to your testimony?

2 A. Could be a typo. Could be a typo. Possibility.

3 Q. That would with be the second typo wrong on this,
4 wouldn't it?

5 A. People do make mistakes, you know.

6 Q. They do.

7 A. Yeah, especially in these reports.

8 Q. And they also took your social history, didn't
9 they? They took your social history?

10 A. I guess so.

11 Q. On that same page on 143 under "Social History,"
12 it says that you denied alcohol abuse, tobacco abuse, and
13 drug abuse. Do you see that?

14 A. Where is that at?

15 Q. Right above it, "Social History."

16 MR. BOESL: Page 143, Your Honor.

17 BY MR. BOESL:

18 Q. But that's not true, again, is it, because you
19 actually had alcohol abuse problems and drug abuse problems
20 where you actually were incarcerated and then had treatment
21 for that; isn't that true?

22 A. They asked me about social history, have I had
23 problems. And asked them previously, no, because I was in
24 treatment. Okay. I didn't.

25 Q. That's not what it says. It says denied.

1 A. I didn't lie to them. I wasn't having problems
2 at that time, sir. That's what I was telling them.

3 Q. You weren't having problems at that time and that
4 was July 16th; is that right?

5 A. That's right.

6 Q. And it's your testimony today that you couldn't
7 go back to work with the company you were working for? Not
8 Hire Quest, the one that put you at Hire Quest. Who was
9 your facilitator?

10 A. I moved from there.

11 Q. You moved from there. That's why you couldn't go
12 back. But isn't it true you actually failed an
13 methamphetamine drug test?

14 A. No, sir. Sure didn't.

15 Q. All right.

16 A. I don't think there's any evidence of anything
17 like that.

18 Q. You have reviewed the evidence, haven't you?

19 A. I've reviewed what we got here. Yes, sir.

20 Q. And you came here today with medical records that
21 were supplied to you by Ms. Ellen Adams in my office, didn't
22 you?

23 A. Uh-huh. Yes, sir. And you. You supplied me
24 with some of that.

25 Q. And it's interesting, I know also that you

1 amended your Form 50 after you got the medical records,
2 didn't you?

3 A. Well, I didn't know I could amend it until
4 somebody told me about it. I don't know if it's the law
5 library or not. Might have been.

6 Q. And you amended it to now assert repetitive
7 trauma injuries, didn't you?

8 A. I did. Uh-huh.

9 Q. Okay. And you amended it after you got the
10 medical records and saw Ms. Ellen's assertion that you had
11 pre-existing conditions, didn't you?

12 A. No, I didn't. That wasn't the reason I amended
13 it because out of the time working there, all the repetitive
14 stuff we do pulling and pushing and going back and forth,
15 anybody in their right mind would know that's a
16 repetitive -- it could be a repetitive possibility. I had
17 the injury repetitive as well, you know, breaking down of
18 the wrist.

19 Q. Now, is your testimony here today -- and I
20 listened very carefully. You said, sir, that after this
21 accident and injury or accidents and injuries, that you
22 couldn't go back to work again; is that right?

23 A. I could not do what I used to do.

24 Q. That's right. In fact, you said you couldn't
25 lift your hand above your shoulder?

1 A. That's right.

2 Q. Right?

3 A. That's right.

4 Q. And you couldn't lift, I think I wrote down
5 anything from five to ten pounds; isn't that right?

6 A. That's true.

7 Q. Do you have any explanation as to how you were
8 lifting gas tank supplies when you were arrested after this?

9 A. I didn't lift any gas tank supplies.

10 Q. You were just arrested for stealing gas tank
11 supplies and fuel out of vehicles, weren't you?

12 A. I've never been arrested for that, sir.

13 Q. Can I --

14 A. I have never been arrested for gas tanks and
15 fuel. At the time of my arrest, someone else was with me,
16 sir.

17 Q. Turn to Exhibit 1 for impeachment purposes only
18 and for purposes of proving lack of credibility. And you
19 that as well. I gave that to you. If you want to turn to
20 Page 12 of 14. On August 1, 2013, weren't you arrested for
21 breaking into an auto tank where fuel are stored; isn't that
22 true?

23 A. I was arrested, yeah.

24 Q. So it didn't bother you --

25 A. I was charged with it. I guess I was arrested

1 that day. I don't recall this at all.

2 Q. It's tough to recall all those, isn't it?

3 A. No. The reason I say that is because someone
4 else was with me and it was their vehicle I was in.

5 Q. So do you think that this SLED report is
6 inaccurate?

7 A. No. I'm telling you that you're inaccurate by
8 saying that I picked it up because I didn't pick those up.

9 Q. Okay. So it's your testimony you couldn't pick
10 up something like that, could you?

11 A. That's true.

12 Q. You couldn't pick up anything over five to
13 fifteen pounds; isn't that right?

14 A. I didn't at that time.

15 Q. Do you know any furniture that would be less than
16 five pounds?

17 A. Yes, sir.

18 Q. What furniture would you have that's less than
19 five pounds?

20 A. Some wicker pieces I have.

21 Q. So anything less than five pounds wouldn't hurt
22 you because you would be able to lift it up; isn't that
23 right?

24 A. Well, it could bother me. Yes, it could by
25 pushing it and moving it and that's what I done. I moved

1 some pieces in the living room there.

2 MR. BOESL: And APA 165, Your Honor.

3 MR. MCCALL: I don't think it had anything

4 to do --

5 BY MR. BOESL:

6 Q. October 2014, isn't it true you presented with
7 injury that came as a result of lifting furniture and moving
8 furniture around on October 2014?

9 A. I did go and try to maneuverer furniture, but I
10 couldn't do it because of my injuries and I couldn't do it
11 because of it.

12 Q. So it's your testimony you couldn't do it. You
13 just reported to the hospital saying that you had injured
14 yourself lifting furniture?

15 A. Well, I was aggravating it by trying to push it
16 around.

17 Q. So what's your testimony, did you lift it or did
18 you not?

19 A. Sure. I pushed it around, but I didn't pick it
20 up, you know, like you're trying to imply. You weren't
21 there.

22 MR. BOESL: Your Honor, just so --

23 MR. MCCALL: I haven't been able to use my
24 arm --

25 THE COURT: Let him talk. I'll give you a

1 chance at the end.

2 MR. MCCALL: I appreciate it.

3 THE COURT: Because the court reporter
4 cannot record what two people say at the same time.
5 That's impossible for her.

6 BY MR. BOESL:

7 Q. Isn't it true when you reported for your hernia,
8 that they had no evidence of any hernia or any issues with
9 your abdominal wall; isn't that true?

10 A. They had -- they had evidence of a groin strain.

11 MR. BOESL: APA 143, Your Honor.

12 MR. MCCALL: I think it's in there. There's
13 evidence of a groin strain here. Did you look at that?

14 MR. BOESL: Can you refrain -- can you
15 admonish him so that we can continue talking and I can
16 ask my questions without him giving his statement?

17 THE COURT: You will get a chance at the
18 end.

19 MR. MCCALL: Sorry.

20 BY MR. BOESL:

21 Q. It's okay. I'm just trying to let our court
22 reporter continue.

23 Finally, isn't it true that you actually reported
24 prior to this incident that you were filing for Social
25 Security disability for injuries that you had to your

1 shoulder and your wrist as a result of a motor vehicle
2 accident?

3 A. Yes, I did. I did. I was going to try to get my
4 disability.

5 MR. BOESL: I have no further questions?

6 THE COURT: Okay. Now, Mr. McCall.

7 MR. MCCALL: I apologize.

8 THE COURT: We're fine. What else would you
9 like to add for the record?

10 MR. MCCALL: Well, as far as the stuff he's
11 saying that I picked up, the stuff on this guy's truck,
12 yeah, I was with him and I got charged, but I didn't
13 pick it up. It sit in the vehicle. Nevertheless, I
14 got charged. I don't think that has anything to do
15 with my injury.

16 But as far as the furniture that I had -- I
17 had moved around and trying to get things straightened
18 out because I was going to have to move and my brother
19 came over and took care of it because I couldn't
20 continue to try to do it. So that's what where that
21 come in at.

22 As far as me not being able to use any arm,
23 I haven't been able to use my arm and there is medical
24 record there. The lady that seen me last, Ms. Lily,
25 she's verified that I can't raise my arm, I can't bend

1 my wrist as I did, and I'm not able to sit and stand as
2 I one time was and use my back. And, like I said, I'm
3 having tingling all up and down my neck and my head.

4 I'm not able to work. I cannot do
5 electrical work anymore at all. And I don't know of
6 any job that I could do at this point in time, you
7 know, unless I get some type of treatment that can
8 possibly get me better.

9 THE COURT: How old are you, sir?

10 MR. MCCALL: I'm 56. And, yes, I did file
11 for disability. But at the time, I would like to say
12 this, that I was going to try to get my disability, but
13 I didn't want to do that. I felt less of a man. So I
14 started back to work and I was able to work and I
15 continued to work until these injuries happened.

16 THE COURT: How much education have you
17 completed?

18 MR. MCCALL: I've been through high school.

19 THE COURT: You graduated from high school?

20 MR. MCCALL: Yes, sir.

21 THE COURT: And where did you attend high
22 school?

23 MR. MCCALL: And I've had two years
24 Tri-County Tech.

25 THE COURT: We will come to that. Where did

1 you graduate high school?

2 MR. MCCALL: Carolina High School.

3 THE COURT: And you had two years?

4 MR. MCCALL: Yes, sir.

5 THE COURT: At where?

6 MR. MCCALL: Tri-County Tech in Anderson.

7 THE COURT: What were you studying there?

8 MR. MCCALL: I was getting my paralegal

9 certification.

10 THE COURT: Did you complete that course?

11 MR. MCCALL: I did.

12 THE COURT: Any other education?

13 MR. MCCALL: No, sir.

14 THE COURT: Any other certifications?

15 MR. MCCALL: No.

16 THE COURT: Do you have any kind certificate

17 of any kind of additional --

18 MR. MCCALL: Not now. It's been years and

19 years ago.

20 THE COURT: Anything else, sir?

21 MR. MCCALL: No, sir. I don't guess there

22 are.

23 THE COURT: Do you have any other questions

24 for Mr. McCall?

25 MR. BOESL: I don't think, Your Honor.

1 THE COURT: Do you have any other witnesses
2 here today, Mr. McCall?

3 MR. MCCALL: No, I don't. But I would say
4 one more thing. I would object to the stuff that he
5 said, you know. And I'm just asking that you be fair
6 and grant me my benefits where I can get some kind of
7 help. My injuries is the main thing. I'm not
8 concerned as much about the money as I'm hurt and I
9 want to get back to normal, you know.

10 THE COURT: And do you have any other
11 witnesses here today?

12 MR. MCCALL: No, I don't. Not here. No,
13 sir.

14 THE COURT: So that's your case?

15 MR. MCCALL: Yes, sir.

16 THE COURT: All right. Witnesses,
17 Mr. Boesl?

18 MR. BOESL: Actually, we're not going to
19 present any witnesses. We're fine.

20 THE COURT: All right. Then that concludes
21 this hearing. Please stay on the record. Let me
22 explain to what you what happens now. We will -- once
23 I have reviewed the evidence, reviewed your testimony,
24 I will issue what are called Order instructions. I
25 will send you a copy and I'll send Mr. Boesl a copy.

1 I'm going to ask him to prepare an Order based on those
2 Order instructions. I'll ask that he send you a copy
3 of the Proposed Order so you can compare what I said to
4 what he's written to satisfy yourself that it's
5 reflective of what I told him -- told y'all what my
6 finding was.

7 Okay. Then I'll sign the Order. Once you
8 get the Order, you have 14 days -- if you disagree with
9 what I've said, you can appeal to the Commission --
10 Full Commission.

11 MR. MCCALL: Where is that at?

12 THE COURT: That's in Columbia.

13 MR. MCCALL: Same place?

14 THE COURT: Same place. But you have 14
15 days. You would have to call the Commission or have
16 someone call -- no, I think you're going to have to
17 unless you get a lawyer. You're going to have to call
18 the Commission within 14 days or notify in writing in
19 14 days that you want to appeal. Okay. If you wait
20 longer than that, that window closes. In other words,
21 if you decide three weeks later you want to appeal, too
22 late. My ruling would then be the law of the case.

23 But if you want to appeal, it cost you \$150
24 to appeal. You can also write the Chairman and ask him
25 to waive that. Okay. If you appeal or if Mr. Bosel

1 appeals -- because he certainly has the same rights you
2 do. If he appeals, then it will be set for an oral
3 argument before three other Commissioners. And on that
4 day, whoever appeals is the appellant and they get ten
5 minutes, the respondent gets ten minutes, and the
6 appellant gets three minutes in reply. And then that's
7 that. Then appellant panel will make a decision
8 whether they will affirm what I've said, reverse what
9 I've said, amend what I've said, vacate what I've said,
10 you know. The decision is theirs. And then beyond
11 that, the appeal would be up to the Court of Appeals or
12 the Supreme Court, but that's a whole other ball game.
13 But the important part to remember is if you don't
14 agree or he doesn't agree, it's 14 days to appeal.
15 Okay?

16 MR. MCCALL: All right.

17 THE COURT: Any other questions?

18 MR. MCCALL: No, that's all.

19 THE COURT: All right. That concludes this
20 proceeding. Thank you, sir.

21 (The hearing was concluded.)
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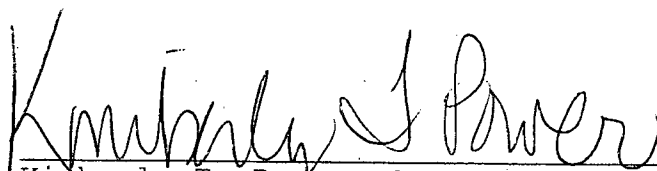
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3 CERTIFICATE OF REPORTER

4 I, Kimberly T. Power, Court Reporter and
5 Notary Public for the State of South Carolina at Large, do
6 hereby certify:

7 That the foregoing proceeding was taken
8 before me on the date and at the time and location stated on
9 Page 1 of this transcript; that the deponent was duly sworn
10 to testify to the truth, the whole truth, and nothing but
11 the truth; that the testimony and all objections made at the
12 time were recorded stenographically by me and were
13 thereafter transcribed; that the foregoing transcript as
14 typed is a true, accurate, and complete record of the
15 testimony and of all objections made at the time of the
16 examination to the best of my ability.

17 I further certify that I am neither related
18 to nor counsel for any party to the cause pending or
19 interested in the events thereof.

20 Witness my hand, I have hereunto affixed by
21 official seal this 15th day of February, 2016, at Lexington
22 County, South Carolina.

23
24
25

26 Kimberly T. Power, Court Reporter
27 Notary Public
28 State of South Carolina at Large
29 My Commission Expires: 04/24/2025