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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
Susan S. Barden, Commissioner

W.C.C. File No. 0922023

Kimberly Mahaffey **Appellant,**

v.

Onetone Telecom, Inc. and
State Auto Insurance Companies **Respondents.**

RECORD ON APPEAL
VOLUME 1 OF 2

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OCT 15 2012

SC Court of Appeals

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STATE OF SOUTH CAROLINA

Kimberly Mahaffey,

Claimant,

vs.

Onetone Telecom, Inc.,

Employer,

and

State Auto Insurance Companies,

Carrier,

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

W.C.C. FILE # 0922023

**DECISION AND ORDER
OF THE FULL COMMISSION**

HEARING:

Held in Columbia, South Carolina, on August 15,
2011.

APPEARANCES:

The Claimant was represented by attorney, Larry C. Brandt, Esquire, Larry C. Brandt, P.A., 3691 Blue Ridge Blvd., Walhalla, SC 29691. Claimant's attorney he did not appear for the hearing.

The Defendants were represented by Alton L. Martin, Jr., Esquire, Martin & Martin, P.A. 1415 Augusta Street, Greenville, SC 29605

PURPOSE OF HEARING:

To determine issues set forth on the Form 30

COMMISSIONERS:

Derrick L. Williams, Commissioner; David W. Huffstetler, Commissioner; Susan S. Barden, Commissioner.
S.C. Workers' Compensation Commission

FILED:

11-3, 2011

STATEMENT OF THE CASE

A hearing in this matter was held on December 1, 2010 in Anderson, South Carolina to determine issues raised in the Claimant's Form 50 and Defendants' Form 51. The Claimant alleged injuries to her right and left knees and right and left shoulders. She sought a finding of compensability; causally-related medical care; and asserted that she was not at M.M.I. Claimant did not seek temporary total disability benefits. Defendants admitted the Claimant had a minor accident on July 21, 2009, but denied Claimant's current alleged injuries and symptoms are the result of this accident. Claimant missed no time from work and sought no medical treatment for the accident until June 30, 2010. Claimant treated with her own doctor for other ailments months after the accident and made no mention of any of her alleged injuries. Nearly one year after the accident, Claimant first sought treatment for her knees and shoulder and was diagnosed with a torn meniscus and torn rotator cuff. Defendants deny Claimant's injuries diagnosed in July of 2010 arose from the accident at work on July 21, 2009.

On March 14, 2011, the following Order was issued:

FINDINGS OF FACT

IT IS FOUND AS FACT:

- 1) The parties to this proceeding are subject and bound to the terms and provisions of the South Carolina Workers' Compensation Act as amended to date with Onetone Telecom as the Employer, State Auto Insurance Companies as the Carrier, and the Kimberly Mahaffey, Claimant as the employee.
- 2) The South Carolina Workers' Compensation Commission has jurisdiction to

hear the Claimant's alleged claim for benefits.

- 3) The venue in Anderson, South Carolina is proper.
- 4) Defendants admit a minor accident occurred on July 21, 2009, but contend Claimant suffered no compensable injuries from the accident and Claimant's current symptoms are not the result of this accident.
- 5) Claimant had an opportunity to mention her symptoms in a doctor's visit on March 19, 2010, but failed to do so. We find her explanation for not advising her doctor of her symptoms to be unreasonable and contrary to common sense, based on APA 1, pg. 7-8 and Claimant's testimony.
- 6) Claimant eventually did receive treatment in August of 2010, but filed it with her personal insurance, based on Claimant's testimony.
- 7) Claimant's first request for medical treatment from the Defendant was in June 2010, based on testimony of Scott Loggins, deposition testimony of Kim Smagala, and portions of the Claimant's testimony consistent with Mr. Loggins' testimony.
- 8) Claimant first filed a Workers' Compensation claim on September 20, 2010, based on Claimant's testimony and the Commission's file.
- 9) As it relates to Defendants Exhibit #2, we find the Incident Report was created on January 23, 2010, not July 22, 2009, as Claimant contends. We find the explanation regarding her dispute with the January 23, 2010 date is not plausible, nor credible, based on the testimony of Keith Nichols, Scott Loggins and Kim Smagala.
- 10) Overall, we find Claimant lacked credibility, based on the Claimant's

testimony, testimony of Scott Loggins, Kim Smagala, Keith Nichols, Kunniseth Chea, and APA 1, pg. 7-8 and APA 2, pg. 10.

- 11) Claimant has failed to carry her burden of proving a compensable injury to her shoulders and knees and as such, her request for benefits under the South Carolina Workers' Compensation Act is DENIED.

CONCLUSIONS OF LAW

Accordingly, pursuant to *South Carolina Code Ann.* §42-17-40 and §1-23-320, it is the determination of this Commission that:

- 1) Under South Carolina Code Ann. §42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
- 2) Under South Carolina Code Ann. §42-1-130, the Claimant is a covered employee.
- 3) Under South Carolina Code Ann. §42-1-140, the Employer was a covered employer.
- 4) Under South Carolina Code Ann. §42-1-150, there was an Employer/Employee relationship between the parties.
- 5) Under South Carolina Code Ann. §42-17-20, venue in Anderson, South Carolina is proper and agreed to by the parties.
- 6) Under South Carolina Code Ann. §1-23-320(b), and Reg. 67-607, Notice of the hearing was timely and properly served on all parties of interest.
- 7) Under South Carolina Code Ann. §42-1-160, the Claimant suffered a minor accident arising out of her employment, but did not suffer any compensable injuries by accident to her shoulders, knees or any other

body parts from the accident on or about July 21, 2009, and is therefore not entitled to any benefits under this Title.

- 8) Under South Carolina Code Ann. §42-15-60, the Defendants are not responsible for the past or future medical treatment for the Claimant's shoulders and knees.

ORDER

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the Findings of Fact and Conclusions of Law set forth above, are incorporated herein by reference as if repeated verbatim. The Claimant's request for benefits arising from alleged injuries to her shoulders and knees on or about July 21, 2009 is hereby DENIED.

IT IS SO ORDERED

APPEAL

Within the statutory period, counsel for Claimant filed an application for review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to Full Commission review before the Appellate Panel on August 15, 2011. The parties requested oral arguments prior to the Review Hearing. All proper evidence has been submitted. The Claimant's attorney did not appear for the Review Hearing. Such, together with all documentary evidence, has been delivered without oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Defendants respectfully submit that Single Commissioner erred in the following:

1. The Hearing Commissioner erred in finding that the claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other

body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the greater weight of the evidence clearly shows that she did.

2. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulder, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when his finding is not supported by substantial evidence.
3. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the only credible evidence shows that she, at least, injured her right shoulder and right knee as a result of the July 21, 2009 accident.
4. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proof when there is substantial evidence which clearly process her claims even if the testimony of Claimant is completely disregarded.
5. The Hearing Commissioner erred in placing significance on the issue of when the incidence report (Def. Exh. #2) was created as there is substantial evidence which shows that she suffered injury to, at least, her right shoulder and right knee, notwithstanding Claimant's testimony concerning same and/or consideration being given to the incident report (Def. Exh. #2).
6. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when there is no credible or substantial evidence whatsoever that it was created on January 23, 2010.
7. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when Keith Nichols testified that, if Claimant saved her own files, wiped everything out of her computer, uploaded Microsoft and then put it back on the computer, the date she put it back on the computer would be the creation date T., p. 86, ll.4-19); that he could not say that the document was not on Claimant's computer prior to January 23, 2010 (T., p88, ll.1-4), and that he could not say what would show as the origination date if the file was copied on the flash drive and then taken from the flash drive back over to the original computer (T.,p94, ll.4-10).
8. The Hearing Commissioner erred in conducting his in-hearing experiment with his own computer as it did not replicate what Claimant testified that she did in downloading her files to a flash drive, reinstalling Windows on her computer, and then reloading the file on the computer via the flash drive.
9. The Hearing Commissioner was clearly in error and was unfairly prejudiced against Claimant as a result of the issue that was raised concerning the

origination date of the incident report (**Def. Exh. #2**) as there was no credible evidence whatsoever that the document was created on any other date other than as Claimant testified.

10. The Hearing Commissioner erred in finding that Claimant lacked credibility as there was no substantial evidence whatsoever to impeach her.
11. The Hearing Commissioner erred in finding that Claimant's explanation for not advising her doctor of her symptoms on her visit to him on March 19, 2010 to be unreasonable and contrary to common sense as there is no substantial evidence to support that finding.
12. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proving compensable injury to her shoulders and knees, particularly her right shoulder and right knee, therefore, denying her request for benefits under the South Carolina Worker's Compensation Act.
13. The Hearing Commissioner erred in finding that Claimant had failed to carry her burden of proving compensable injury to her shoulder and knees and, as such, denying her request for benefits under the South Carolina Workers' Compensation inasmuch as the only credible evidence is that the injuries, at least as to her right shoulder and right knee, were proximately caused by the fall of July 21, 2009.
14. The Hearing Commissioner erred in finding that Claimant under S.C. Code §42-1-160, was not entitled to any benefits under the Worker's Compensation Act and is not entitled to past and future medical treatment for her shoulders and knees pursuant to §42-15-60 when her claims are, in fact, supported by substantial evidence.
15. The Hearing Commissioner erred in denying worker's compensation benefits to Claimant inasmuch as the claim has been clearly proven by all of the other evidence and the admissions of the Employer/Carrier even if the testimony of Claimant is disregarded.
16. The Hearing Commissioner erred in failing to consider the testimony of Janice Mahaffey, mother of Claimant, whose testimony was stipulated to by Employer without reservation or challenge to her credibility and which fully corroborated Claimant's claim of injuries resulting from Claimant's fall at work on July 21, 2009.
17. The Hearing Commissioner erred in refusing to hold the record open for Claimant to produce the flash drive upon motion of Employer's attorney and/or the taking of the deposition of Beth Moore upon motion of Claimant's attorney inasmuch as the accurate determination of the origination date of the incident report (**Cl. Exh. #2**) was considered by the Hearing Commissioner to

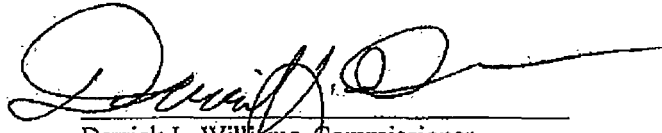
be an important aspect of the case and obviously affected his opinion concerning Claimant's credibility and his decision to deny her benefits under the Worker's Compensation Act.

In an Appellate Review, the Panel shall, pursuant to S.C. Code §Section 42-17-50 (1985), review the award, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission, by unanimous vote, has determined that the Hearing Commissioner's Order shall be affirmed in its entirety. Mr. Brandt failed to attend the hearing due to a computer problem within his office which sent the hearing notice to "spam" rather than to his "inbox". As a result, Mr. Brandt was unaware of the hearing date and time. Although Mr. Brandt's absence was not willful it is, nevertheless, his responsibility to take measures within his office to prevent such errors from occurring and to assure that all communications from the Commission are received and read. Accordingly, Mr. Brandt is fined \$100.00 for failing to attend the hearing. The Commission has assessed a fine on the Claimant's attorney in the amount of One Hundred Dollars (\$100.00) for failure to appear at oral argument, and said fine is not to be at the cost of the Client/Claimant.

ORDER

IT IS HEREBY ORDERED that the entire Decision and Order of the Single Commissioner dated March 14, 2011, by Commissioner T. Scott Beck shall be **AFFIRMED**. Additionally, it is also ordered that a fine be assessed on the Claimant's attorney in the amount of One Hundred Dollars (\$100.00) for failure to appear at oral argument, and said fine is not to be at the cost of the Client/Claimant.

AND IT IS SO ORDERED.


Derrick L. Williams, Commissioner


David W. Huffstader, Commissioner


Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties:

This 3rd day of November, 2011
By Valerie D. Deller

Administrative Assistant to the Commissioner

Larry C. Brandt
Alton L. Martin Jr.

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
	)	COMMISSION
Kimberly Mahaffey,	)	
	)	
Claimant,	)	
	)	W.C.C. FILE # 0922023
vs.	)	
	)	
Onetone Telecom, Inc.,	)	
	)	
Employer,	)	
	)	HEARING ORDER
and	)	
	)	
State Auto Insurance Companies,	)	
	)	
Carrier,	)	
	)	

HEARING: Held in Anderson, South Carolina, on December 1, 2010.

APPEARANCES: The Claimant was represented by Larry C. Brandt, Esquire,
Larry C. Brandt, P.A., 3691 Blue Ridge Blvd., Walhalla,
SC 29791

The Defendants were represented by Alton L. Martin, Jr.,
Esquire, Martin & Brasington, P.A. 1415 Augusta Street,
Greenville, SC 29605

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

DECISION AND ORDER: By T. Scott Beck, Commissioner
S.C. Workers' Compensation Commission

FILED: March 14, 2011

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

CLAIMANT'S

	Provider	Dates	Pages
APA # 1	Upstate Medical Associates	6/29/10	1-8
APA # 2	R. Sean McCallum, M.D.	8/11/10 – 9/8/10	9-15
APA # 3	Mountainview Medical Imaging	9/2/10	16-17
APA # 4	Oconee Medical Center	8/17/10	18-19
APA #5	Wal-Mart Pharmacy	6/29/10 – 9/21/10	20 - 21
APA #6	Outstanding Medical Expense and Mileage Summary		22
APA #7	Claimant's Exhibit A		23 - 60

Deposition Transcript of Kimberly Mahaffey

DEFENDANTS

	PROVIDER	DATES	PAGES
APA # 8	Hummel Physical Therapy	01/04/05-02/07/05	61-74
APA # 9	Mountainview Medical Imaging	01/31/05-02/16/06	75-76

Deposition Transcript of Kuniseth Chea
Deposition Transcript of Kimberly Smagala

CLAIMANT BIOGRAPHICAL INFORMATION

Age: 40
Sex: Female
Marital Status: Single
Children: None
Education: Claimant completed high school

Work History:

Claimant worked in the fast food industry out of high school; JP Stevens as a folder; ALPEAK Broadcasting; Helping Hands Children's Home; S& S South in shipping and billing department.; CG Roxane; Waterlinks Property Group; shipping and receiving for International Kitchen Supply; assistant bookkeeping at Contracting Decors; M&M Tax Service; Onetone Telecom; and presently works for National Tax Service as an assistant in bookkeeping and payroll.

STIPULATIONS

The parties stipulated at the Hearing to the following issues:

- 1) The purpose of the Hearing was to determine the issues set forth in the Hearing Notice and issues pled in Forms 50 and 51.
- 2) The South Carolina Workers' Compensation Commission has jurisdiction over this case.
- 3) All parties received timely and proper Notice of the scheduled hearing.
- 4) Venue for the hearing was properly set in Anderson County.
- 5) The Commission file is made part of the record with the exception of self-serving declarations and unstipulated medical records.
- 6) The Claimant has an average weekly wage of \$344.47, with a corresponding compensation rate of \$229.66.
- 7) The APA Submissions of both parties were submitted without objection.
- 8) The Claimant's mother's testimony, if called to testify, would be supportive of the Claimant and cumulative.

STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner on December 1, 2010 in Anderson, South Carolina to determine issues raised in the Claimant's Form 50 and Defendants' Form 51. Notices were timely and properly served on all parties. All parties were present for the

hearing. The South Carolina Workers' Compensation Commission had jurisdiction over the parties and subject matter of this case.

The Claimant alleged injuries to her right and left knees and right and left shoulders. She sought a finding of compensability; causally-related medical care; and asserted that she was not at M.M.I. Claimant did not seek temporary total disability benefits. Defendants admitted the Claimant had a minor accident on July 21, 2009, but denied Claimant's current alleged injuries and symptoms are the result of this accident. Claimant missed no time from work and sought no medical treatment for the accident until June 30, 2010. Claimant treated with her own doctor for other ailments months after the accident and made no mention of any of her alleged injuries. Nearly one year after the accident, Claimant first sought treatment for her knees and shoulder and was diagnosed with a torn meniscus and torn rotator cuff. Defendants deny Claimant's injuries diagnosed in July of 2010 arose from the accident at work on July 21, 2009.

EVIDENCE OF THE CASE

The accident occurred on July 21, 2009. Claimant testified she worked for Onetone Telecom from 2008 to October 4, 2010. (Hr. Tr. pg. 10, lines 17-24 and pg. 11, line 1). She stated she voluntarily quit her employment with Onetone Telecom on October 4, 2010, for another job and is currently working. (Hr. Tr. pg. 11, lines 2-7, and pg. 44, lines 20-22).

She testified that her accident occurred when she was leaving the office for the day. She attempted to step over a phone cord that was about knee high. She caught her foot on the cord and fell onto both hands and both knees. (Hr. Tr. pg. 11, lines 8-22; pg. 31, lines 20-23) She testified Kimberly Smagala, her manager, was present when she fell. Ms. Smagala helped her get her bags and helped her get up. (Hr. Tr. pg. 12, lines 2-9) She stated that after her fall, she

sat in a chair for approximately 20 to 25 minutes. Ms. Smagala got her some water. Claimant then left and went home. (Hr. Tr. pg. 12, lines 15-18 and pg. 13, lines 22-25).

Claimant testified that after the fall she was hurting in her knees and shoulder. (Hr. Tr. pg. 12 lines 19-22) She told Ms. Smagala her knee was hurting, but she did not complain about her shoulders at that time. (Hr. Tr. pg. 13, lines 15-21) She testified Ms. Smagala told her to go home and put her feet up. (Hr. Tr. pg. 14, lines 1-5)

She reported for work the next day and spoke with Ms. Smagala about her accident. She told Ms. Smagala she thought she needed to go to the doctor. However, she said Ms. Smagala told her "they were looking for people to fire and not to rock the boat." (Hr. Tr. pg. 14, lines 6-23) Claimant did not go to the doctor. (Hr. Tr. pg. 14, lines 24-25) Claimant testified she went back to Kim Smagala again on Friday of the same week and advised her again that she needed to go to the doctor. She said Kim told her to go to the doctor and put it on her health insurance; however, Claimant still did not seek treatment. (Hr. Tr. Pg. 34, lines 8-18) Claimant did not mention any problems from the accident to Kim or any supervisor again until April of 2010. At that time, she said she reported it to her new supervisor, Beth Moore. Beth Moore is no longer an employee of OneTone. Claimant said she next reported that she needed medical treatment during an employee meeting with Scott Loggins, the company President, near the end of June 2010.

Claimant testified she asked Ms. Smagala about an incident report and was told they didn't have those at Onetone, so she found one on the internet. (Hr. Tr. pg. 15, line 7-10) Claimant identified an incident report that she said she created on July 22, 2009, the day after her accident. (Hr. Tr. pg. 15, lines 1-6 and 11-16, Hr. .Tr. Pg. 26, lines 23-25, pg. 27, lines 1-2) She

testified that she offered the incident report to Ms. Smagala, but was told to keep it. (Hr. Tr. Pg. 15, lines, 17-20)

Claimant testified that she first sought medical treatment for her alleged injuries in June 2010. Claimant said the reason she waited so long was because the pain was becoming unbearable. (Hr. Tr. Pg. 16, lines 16-24) Claimant admitted she did not have any conversations about her medical care with Mr. Loggins until June, 2010. She stated Mr. Loggins immediately told her to go to the doctor when she reported it to him. (Hr. Tr. Pg. 17, lines 8-17 and 21-23) Claimant testified she is currently treating with Dr. John McCallum with Blue Ridge Orthopaedics and her first treatment for this accident was with Dr. Henry Ramirez. (Hr. Tr. pg. 19, line 25, pg. 20, lines 1-12, pg. 26, lines 6-15)

Claimant testified that after offering the Incident Report to Kim Smagala immediately after the accident, she did not provide the Incident Report to anybody else until June 30th, 2010, nearly one year later. (Hr. Tr. Pg. 27, lines 16-18). At that time, Claimant received an e-mail from Mitzi Worley in Human Resources asking her about the details of the accident she was now seeking medical treatment for. (Hr. Tr. Pg. 18, lines 19-25, and pg. 19, lines 10-14) Claimant testified she did not provide the Incident Report to anyone else from the time she offered it to Ms. Smagala on July 22, 2009 until she e-mailed the unsigned incident report to Ms. Worley upon her request on June 30, 2010. (Hr. Tr. Pg. 27, lines 11-25)

On Cross-examination, Claimant was shown Exhibit 2. It consisted of three pages: 1) an e-mail from Mitzi Worley requesting a description on the accident and contact information and a response e-mail from the Claimant to Ms. Worley; 2) the unsigned Incident Report she sent to Ms. Worley attached to her e-mail; and, 3) a screenshot printed off of her computer by Keith Nichols, the company's I.T. Director, which showed the Incident Report was created on her

computer on January 23, of 2010 and last modified on June 30, 2010. (Hr. Tr. Pg. 29, lines 5-22 and pg. 30, lines 8-21)

Claimant testified that the reason the creation date of the Incident Report was not July 22, 2009 as she had previously testified was due to her reloading Windows on her work computer. She said she had submitted a repair request to the IT Department, but her computer had not been repaired. So, her supervisor, Beth Moore told her to go ahead and reload Windows to her computer that weekend. She stated Onetone did not have copies of Windows, so she reinstalled her own copy of Windows and had to reload all of her documents onto the computer. (Hr. Tr. pg 96, lines 12-20. pg. 97, lines 16-19) She claimed the document creation date would have been altered by the software being reloaded. (Hr. Tr. Pg. 31, lines 6-11) Claimant admitted the document's last modification time of June 30, 2010 at 1:57 p.m., was the exact time that she e-mailed the Incident Report to Mitzi Worley (Hr. Tr. Pg. 30, lines 19-25)

When Claimant was asked what modification she made to the Incident Report on June 30, 2010, the following exchange took place:

Q. All right. And what modification did you make to the documents?

A. The only thing I did was open it and check it. And then when I went to close it it asked me to save it because that is the first time that it had been opened in awhile.

Q. So you didn't make any modifications to it?

A. No.

(Hr. Tr. pg. 98, lines 1-9)

In Claimant's deposition, she testified she had not ever been counseled at work. (Claimant's Dep. Tr. pg. 35, lines 14-15) At the hearing, she admitted she was counseled at

work for giving a customer an incorrect credit. (Hr. Tr. pg. 53, lines 12-20) She admitted she was counseled for FaceBook usage during work. (Hr. Tr. pg. 53, 6-11). In April or May of 2010, Claimant and some other employees, who had also been counseled about Facebook usage, had their hours reduced from 40 to 32 hours per week. Claimant admitted she and two other employers filed a claim for unemployment benefits based on their hours being reduced in May of 2010. Their claims were denied. (Hrg. Tr. pg. 44, lines 3-7) Claimant admitted she and another employee filed an anonymous OSHA complaint against the company because the air conditioner leaked. (Hrg. Tr. pg. 44, lines 13-19) The OSHA claim was found unsubstantiated, as the air conditioner was repaired immediately after the leak occurred. There were no problems noted when OSHA conducted a surprise inspection in response to the complaint. Claimant was counseled after other employees complained about her calling her workers' compensation attorney during work hours in the Call Center. Further, Claimant admitted the co-worker that made the OSHA complaint with her was one of the two co-workers who made the unemployment complaints with her. When one of those employees was terminated on September 28, 2010, the other employee quit the same day, and Claimant quit four days later. She filed a Form 50 on September 20, 2010.

Claimant claimed that in addition to Beth Moore there were several co-employees to whom she complained about her knee and shoulder; however, none were listed as witnesses for the hearing. (Hr. Tr. pg. 40, lines 6-16)

Claimant admitted she did not go to the doctor from July 2009 until March of 2010. (Hr. Tr. Pg. 34, lines 19-25, pg. 35, lines 1) When she did go to her family doctor, Dr. Ramirez on March 19, 2010, her chief complaint was worsening of her asthma, swelling in her legs and right foot. (Hr. Tr. Pg. 35, lines 2-10 and 23-25, pg. 36, lines 1-4; Claimant's APA #1, Pg. 7) Dr.

Ramirez's medical notes of March 19, 2010 reflect no musculoskeletal symptoms, normal movement of all extremities, strength was normal, gait and stance normal. (Claimant's APA #1, pg. 8) Claimant testified that Dr. Ramirez prescribed Lasix for her leg swelling at the March 19, 2010 visit. (Hr. Tr. Pg. 36, lines 16-18) Claimant admitted that she did not mention anything to Dr. Ramirez about problems with either of her knees or her shoulder at the March 2010 visit. (Hr. Tr. pg. 36, lines 19-25, pg. 37, lines 1-3, pg. 52, lines 10-14)

Medical records from Dr. McCallum dated August 11, 2010, note Claimant reported falling onto her right shoulder. (Claimant's APA #2, pg. 14) Dr. McCallum completed a medical questionnaire that was prepared by Claimant's attorney regarding her accident of July 21, 2009. According to the questionnaire, the mechanism of injury was described as "twisting her knee and falling onto her right shoulder." (Claimant's APA #2, pg. 10) However, Claimant's testimony at the hearing and in her deposition was that she tripped and landed on both knees and hands. (Hr. Tr. pg. 11, lines 18-19 and pg. 31, lines 20-23)

The next witness was Scott Loggins. Scott Loggins is the President of Onetone Telecom. He has been president of the company over the course of the entire incident from July 2009 up until the hearing. (Hr. Tr. pg. 65, lines 2-6) He testified that he first learned of the Claimant's fall when she requested to go to the doctor in June of 2010 during an employee meeting. (Hr. Tr. pg. 76, lines 18-21) Mr. Loggins testified that he has an Open Door policy and there have been times when Ms. Mahaffey came to speak with him because they needed some things in the Call Center. She has come to his office and she has sent e-mail to him requesting things. (Hr. Tr. pg. 65, lines. 11-25) He testified that during his first conversation with the Claimant regarding her accident, he advised her that if she had fallen and hurt herself she would need to see a doctor and the company would pay for it. (Hr. Tr. 66, lines 8-10) He testified the next conversation he had

with Claimant was after other employees complained about her making telephone calls to her attorney in the Call Center. (Hr. Tr. pg. 68, lines 3-6).

Keith Nichols, Director of Information with Onetone Telecom also testified. He was shown the 3rd page of Defendants Exhibit #2. Mr. Nichols testified that it was a screenshot he printed that showed the file properties of the Incident Report on Claimant's workstation. The document showed a creation date of Saturday, January 23rd, 2010, at 1:06 p.m., and it had been modified on June 30, 2010. The access date reflected on the document was the date he pulled the file and printed the screenshot. (Hr. Tr. pg. 84, lines 3-13) He confirmed the date on the e-mail between Claimant and Mitzi Worley was the exact date and time as the modified date and time of the screen shot. (Hr. Tr. pg 84. lines 25, pg. 85, lines 1-3) This indicated the document was modified, saved, and closed out and then immediately e-mailed on June 30, 2010. (Hr. Tr. pg. 85, lines 4-6) He testified that just pulling the document up to print it would not show a modification, only an access time. (Hr. Tr. pg. 87, lines 9-16) Mr. Nichols was unaware of any changes having been made to the workstation's software. He did not recall any repair requests from the Claimant around January 23, 2010. (Hr. Tr. pg. 85, lines 11-1,pg. 88, lines 13-18) When asked about the original creation date of the Incident Report, he testified that to the best of his knowledge it was created on the 23rd of January, 2010. (Hr. Tr. pg. 88, lines 5-12)

The deposition of Kim Smagala was submitted without objection. Ms. Smagala testified that after her fall, Claimant sat for about two to three minutes before leaving. (Depo Tr. of Kimberly Smagala, pg. 9, lines 24-25) Claimant only complained of dizziness, and did not mention her knee or shoulder. (Depo. Tr. of Kimberly Smagala, pg. 10, lines 13-16). Claimant complained of some pain the following day after her accident and she advised Claimant that if

she needed to go home to let her know and if she needed to fill out an incident report, to do so with the HR Department. (Dep. Tr. of Kimberly Smagala pg. 11, lines 8-12)

During Ms. Smagala's deposition she was shown the signed Incident Report (Exhibit #1 to Claimant's deposition) and was asked if she had ever seen a document like that before, to which she replied, "no, sir, I have not." (Deposition Tr. of Kimberly Smagala pg. 11, line 25, and pg. 12, lines 1-3).¹ Ms. Smagala was asked about the Incident Report completed by Claimant and her dealings with Claimant the day following the accident:

Q. On the date of this accident or the day after the accident on the 22nd of July 2009, was Exhibit Number 1, copy of that offered to you by Ms. Mahaffey?

A. No, sir.

Q. Did she ask you about going to the doctor the following day?

A. No, sir.

Q. Did you tell her that if she wanted to go to the doctor, she could go on her own?

A. No, sir.

Q. That they were looking to fire people?

A. No, sir.

(Depo Tr. of Kimberly Smagala, page 16, lines 17-25 and pg. 17, lines 1-3)

After study and evaluation of all the evidence submitted, including the Commission's file, the following Findings of Fact and Conclusions of Law are made by a preponderance of the evidence on the record as a whole.

¹ The Incident Report that Claimant e-mailed to Mitzi Worley which was admitted as part of Defendants' Exhibit 2 was unsigned.

FINDINGS OF FACT

IT IS FOUND AS FACT:

- 1) The parties to this proceeding are subject and bound to the terms and provisions of the South Carolina Workers' Compensation Act as amended to date with Onetone Telecom as the Employer, State Auto Insurance Companies as the Carrier, and the Kimberly Mahaffey, Claimant as the employee.
- 2) The South Carolina Workers' Compensation Commission has jurisdiction to hear the Claimant's alleged claim for benefits.
- 3) The venue in Anderson, South Carolina is proper.
- 4) Defendants admit a minor accident occurred on July 21, 2009, but contend Claimant suffered no compensable injuries from the accident and Claimant's current symptoms are not the result of this accident.
- 5) Claimant had an opportunity to mention her symptoms in a doctor's visit on March 19, 2010, but failed to do so. I find her explanation for not advising her doctor of her symptoms to be unreasonable and contrary to common sense, based on APA 1, pg. 7-8 and Claimant's testimony.
- 6) Claimant eventually did receive treatment in August of 2010, but filed it with her personal insurance, based on Claimant's testimony.
- 7) Claimant's first request for medical treatment from the Defendant was in June 2010, based on testimony of Scott Loggins, deposition testimony of Kim Smagala, and portions of the Claimant's testimony consistent with Mr. Loggins' testimony.
- 8) Claimant first filed a Workers' Compensation claim on September 20, 2010, based on Claimant's testimony and the Commission's file.
- 9) As it relates to Defendants Exhibit #2, I find the Incident Report was created on

January 23, 2010, not July 22, 2009, as Claimant contends. I find the explanation regarding her dispute with the January 23, 2010 date is not plausible, nor credible, based on the testimony of Keith Nichols, Scott Loggins and Kim Smagala.

10) Overall, I find Claimant lacked credibility, based on the Claimant's testimony, testimony of Scott Loggins, Kim Smagala, Keith Nichols, Kuniseth Chea, and APA 1, pg. 7-8 and APA 2, pg. 10.

11) Claimant has failed to carry her burden of proving a compensable injury to her shoulders and knees and as such, her request for benefits under the South Carolina Workers' Compensation Act is DENIED.

CONCLUSIONS OF LAW

Accordingly, pursuant to *South Carolina Code Ann.* §42-17-40 and §1-23-320, it is the determination of this Commission that:

- 1) Under South Carolina Code Ann., §42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
- 2) Under South Carolina Code Ann. §42-1-130, the Claimant is a covered employee.
- 3) Under South Carolina Code Ann. §42-1-140, the Employer was a covered employer.
- 4) Under South Carolina Code Ann. §42-1-150, there was an Employer/Employee relationship between the parties.
- 5) Under South Carolina Code Ann. §42-17-20, venue in Anderson, South Carolina is proper and agreed to by the parties.
- 6) Under South Carolina Code Ann. §1-23-320(b), and Reg. 67-607, Notice of the hearing was timely and properly served on all parties of interest.

7) Under South Carolina Code Ann. §42-1-160, the Claimant suffered a minor accident arising out of her employment, but did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on or about July 21, 2009, and is therefore not entitled to any benefits under this Title.

8) Under South Carolina Code Ann. §42-15-60, the Defendants are not responsible for the past or future medical treatment for the Claimant's shoulders and knees.

ORDER

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the Findings of Fact and Conclusions of Law set forth above, are incorporated herein by reference as if repeated verbatim. The Claimant's request for benefits arising from alleged injuries to her shoulders and knees on or about July 21, 2009 is hereby DENIED.

IT IS SO ORDERED

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

March 14, 2011

By: Amy Bracy, Administrative Assistant to Commissioner Beck

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



Carrier File #: WCP 2111697-02 COPY
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kimberly Mahaffey SSN: _____ Employer's Name: Onetone Telecom, Inc.
Address: _____ Address: 100 Century Plaza
City: _____ State: SC Zip: _____ City: Seneca State: SC Zip: 2967
Home Phone: (864) 247-2301 Work Phone: () - Insurance Carrier: State Automobile Mutual Insurance Co.
Preparer's Name: Larry C. Brandt Law Firm: Larry C. Brandt, P.A. Preparer's Phone #: (864) 638-5406

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: 07/21/2009

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to Right & left knees and right & left shoulders (Part(s) of Body Injured) on 07/21/09 (Month/Day/Year) in Oconee county, state of South Carolina.

1b. Body part(s) affected are: Right & left Knees and right & left shoulders

Briefly describe how the accident occurred: Claimant was stepping over a phone cord manager had stretched across the office, tripped and fell.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 07/21/09 (Month/Day/Year) in the following manner:

Reported immediately to Manager, Kimberly Smagala, on 07/22/09

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: Right & left Knees and right & left shoulders

☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

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

☐ (1) General Disability:

☐ Total

☒ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☒ Partial

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

10a. At the time of the injury, the Claimant was paid weekly wages of \$To Be Determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
National Tax Service, 105 Wallstreet Clemson, South Carolina 29631

11a. Further grounds or unusual aspects of claim:

All grounds available under SC Workers' Compensation Act, as amended.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Attached

11c. To the best of your knowledge, did you have any prior permanent disability? Yes

If yes, describe: 15% to lower extremity due to ACL repair

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

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

☒ 13b. I am requesting a hearing. A \$25 fee is required only to determine coverage, medical treatment for knees and shoulders and TDD.

14. Estimated time needed for hearing: One (1) hour

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

Preparer's Signature

Larry C. Brandt
Title

lcb.brandt@lawfirm@att.net
Email

October 25, 2010
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

AMENDED WCC Form # 50
Revised 9/07

50

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

Kimberly Mahaffey vs. Onetone Telecom, Inc;
WCC File No.: 0922023;
Date of Injury: 0922023

Amended Attachment to Claimant's Amended WCC Form 50

11b: List of Medical Providers -

	Oconee Medical Center	298 Memorial Drive Seneca, SC 29672
P. Sean McCallum, M.D.	Blue Ridge Orthopaedics, P.A.	10630 Clemson Blvd., Suite 100 Seneca, SC 29678
Henry M. Ramirez, P.A.C.	Upstate Medical Associates	15575 Wells Hwy. Seneca, SC 29678
	Mountainview Medical Imaging	1059 By-Pass 123 Seneca, SC 29678
	Wal-Mart Pharmacy	1636 Sandifer Blvd. Seneca, SC 29678

1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



Carrier File #: WCP 2111697-02
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kimberly Mahaffey SSN: _____ Employer's Name: Onetone Telecom, Inc.
Address: _____ Address: 100 Century Plaza
City: _____ State: SC Zip: _____ City: Seneca State: SC Zip: 29672
Home Phone: (854) 247-2301 Work Phone: _____ Insurance Carrier: State Auto Insurance Companies
Date of Injury: 07/21/2009
Preparer's Name: Alton L. Martin, Jr. Law Firm: Martin & Brasington, PA Preparer's Phone: (864) 271-1822

Date of Injury or Illness: 07/21/2009

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

1. It is Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
This claim is denied pending further investigation. Claimant did not seek medical treatment until one year after minor accident.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1.
5. It is Admitted notice of injury was given the employer. The reasons for denial are:
6. It is Denied the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1.
7. It is Denied the employee is entitled to temporary total disability for the period(s) of:
See No. 1.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
See No. 1.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ TBD applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and add any and all defenses currently unknown as they investigate.
12. Estimated time needed for hearing: 1 hour

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Thad B. Ball, Esquire

Address: P.O. Box 738, Wainalla, SC 29691

on the 9th day of November by ☒ first class mail ☐ personal service ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Employer/Defendant
Title

al@martinbrasington.com
Email

November 9, 2010
Date

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

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing



COPY

Claimant's Name: Kimberly Mahaffey Employer's Name: Onetone Telecom, Inc.
Address: _____ Address: 100 Century Plaza
City: _____ State: SC Zip: _____ City: Seneca State: SC Zip: 29672
Home Phone: (864) 247-2301 Work Phone: () Carrier: State Automobile Mutual Insurance Company
Preparer's Name: Larry C. Brandt, Attorney for Claimant Preparer's Phone #: (864) 638-5406

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: See Form 20 2. AWW: See Form 20 Date of Injury: 07/21/2009
3. Type of injury and body part(s): Right and Left Knees and Right and Left Shoulders
4. Facts in controversy: Compensability of injuries, Continued entitlement to medical care & treatment of those injuries specified Above, Entitlement to weekly temporary total benefits for hours lost for doctor's visits from 7/21/2009 to present which were related to injuries; Entitlement to payment of related medical expenses and mileage
5. Legal issues involved: Entitlement to continued medical care and reimbursement for unpaid medical care and unpaid mileage
6. Unusual aspects: _____
7. Witnesses (designate if expert):* See attached Notice of Witnesses and Written Medical Reports To Be Introduced As Direct Evidence On Behalf of Claimant
8. Exhibits: See attached Notice of Witnesses and Written Medical Reports To Be Introduced As Direct Evidence On Behalf of Claimant
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Witnesses and Written Medical Reports To Be Introduced As Direct Evidence On Behalf of Claimant
10. Name, address, and specialty, if any, of the treating physician: See attached Notice of Witnesses and Written Medical Reports To Be Introduced As Direct Evidence On Behalf of Claimant
11. Impairment rating(s); body part(s); physician and date of opinion: 15% of lower extremity given by Dr. McCallum - 10/26/05
12. I am amending my Form 50/51 in the following manner: No amendment at this time; Claimant reserves the right to amend her Form 50 and Amended Form 50 upon reaching MMI.

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

Signature: [Signature]

Email: lcb.brandt@lawfirm.att.net

Date of hearing: November 23, 2010 @ 11:30 A.M.

Time needed for hearing: One (1) hour

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0922023

Kimberly Mahaffey,

Claimant,

vs.

Onetone Telecom, Inc.,

Employer,

and

State Automobile Mutual Insurance Co.,

Carrier.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF CLAIMANT**

**TO: South Carolina Workers' Compensation Commission;
Commissioner T. Scott Beck and Alton L. Martin, Jr., Esquire, Attorney for the
Employer/Carrier:**

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, 1985, as amended (South Carolina Administrative Procedures Act), herewith submit the following medical reports and documents as direct evidence on behalf of the Claimant:

**NAME OF REPORTS(S)/PHYSICIAN DATE NUMBER OF PAGES
OR OTHER EVIDENCE**

1. Upstate Medical Associates	06/29/10	Pages 1 - 8
2. P. Sean McCallum, M.D. Blue Ridge Orthopaedics	08/11/10 - 09/08/10	Pages 9 - 15
3. Mountainview Medical Imaging	09/03/10	Pages 16 - 17
4. Oconee Medical Center	08/17/10	Pages 18 - 19
5. Wal-Mart Pharmacy	06/29/10 - 09/21/10	Pages 20 - 21
6. Outstanding Medical Expense and Mileage Summary		Page 22

YOU ARE FURTHER NOTIFIED that you have the right of cross-examination and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination. The following depositions will be submitted as evidence on behalf of the Claimant.

1.	Deposition of Kimberly Mahaffey
2.	Deposition of Kimberly Smagala
3.	Deposition of Seth Chea
4.	Deposition of Denae Leslie Lane (To Be Taken)

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians and/or others are being submitted to the South Carolina Workers' Compensation Commission, for insertion in the file and inclusion into evidence on behalf of the Claimant.

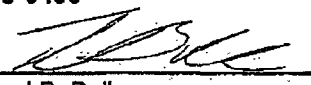
YOU ARE FURTHER NOTIFIED that the following documents will be submitted as other evidence on behalf of the Claimant:

A.	Claimant's Personnel Records from the Onetone Telecom, Inc.
----	---

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of Claimant:

1.	Claimant, Kimberly Mahaffey
2.	Claimant's mother, Janis K. Mahaffey

LARRY C. BRANDT, P.A.
3691 BLUE RIDGE BLVD.
POST OFFICE BOX 738
WALHALLA, SC 29691
864/638-5406

BY: 
 Thad B. Ball
 Larry C. Brandt
 Attorneys for Claimant

Date: November 8, 2010
 Walhalla, South Carolina



Claimant's Name: Kimberly Mahaffey Employer's Name: Onetone Telecom, Inc.
Address: _____ Address: 100 Century Plaza
City: _____ State: SC Zip: _____ City: Seneca State: SC Zip: 29672
Home Phone: (864) 247-2301 Work Phone: () Carrier: State Auto Insurance Company
Preparer's Name: Alton L. Martin, Jr. Preparer's Phone #: (864) 271-1822

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$229.66 2. AWW: \$344.47 Date of Injury: 7/21/09
3. Type of injury and body part(s): Alleged right and left knees and right and left shoulders
4. Facts in controversy: This is a denied claim. Claimant suffered a minor accident at work. She missed no time from work and sought no medical treatment. She treated with her own doctor for other ailments months later and made no mention of any injuries. Approximately one year after the accident, she told her employer she needed to be checked out and was diagnosed with a torn meniscus and torn rotator cuff. Defendants deny her injuries arose from the accident at work on 07/21/09.
5. Legal issues involved: Compensability
6. Unusual aspects: None.
7. Witnesses (designate if expert):* Claimant, Scott Loggins, Seth Chea, Kim Smagala, Keith Nichols, any identified by Claimant.
8. Exhibits: Claimant's personnel file, Claimant's South Carolina Employment Security Commission file, Claimant's SLED report, Claimant's deposition transcript, Deposition transcripts of Kimberly Smagala and Seth Chea, computer records, email, and Facebook documents from Claimant.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See Attached APA Submissions
10. Name, address, and specialty, if any, of the treating physician: Dr. Henry Ramirez, Upstate Medical Associates, 15575 Wells Highway, Seneca, SC 29678.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: N/A

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

Signature: [Signature]

Email: al@martinbrasington.com

Date of hearing: November 23, 2010

Time needed for hearing: 1.5 hours

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA)
)
)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Kimberly Mahaffey,)
)
Claimant,)

v.)

W.C.C. FILE NO: 0922023

HEARING DATE: November 23, 2010

Onetone Telecom, Inc.,)
)
Employer,)

and)

NOTICE OF WITNESSES AND WRITTEN
MEDICAL REPORTS TO BE INTRODUCED
AS DIRECT EVIDENCE ON BEHALF
OF DEFENDANTS

State Auto Insurance Companies)
)
Carrier.)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THAD B.
BALL AND LARRY C. BRANDT, ATTORNEYS FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE defendants, pursuant to the provisions of the
South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as
amended) herewith submits the following medical reports and documents as direct evidence on
behalf of the defendants to wit:

	PROVIDER	DATES	PAGES
APA # 8	Hummel Physical Therapy	01/04/05-02/07/05	61-74
APA # 9	Mountainview Medical Imaging	01/31/05-02/16/06	75-76

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination;
and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of
the physicians, whose reports are submitted, for the purpose of cross-examination.

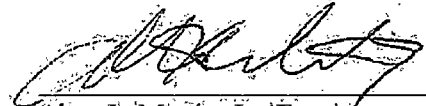
YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein or
photocopies received from said physicians/others, are being herewith forwarded to the South

Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants:

Claimant
Scott Loggins
Seth Chea
Kim Smagala
Keith Nichols
Any identified by Claimant

Defendants reserve the right to amend.



Alton L. Martin, Jr., Esquire
MARTIN & BRASINGTON, P.A.
Post Office Box 8220
Greenville, SC 29604
(864) 271-1822
Attorney for Employer/Carrier

Greenville, South Carolina
November 11, 2010

COPY



RECEIVED
3-31-2011

Carrier File #: WCP 2111697-02
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kimberly Mahaffey SSN: _____ Employer's Name: Onetone Telecom, Inc.
Address: _____ Address: 100 Century Plaza
City: _____ State: SC Zip: _____ City: Seneca State: SC Zip: 29672
Home Phone: (864) 247-2301 Work Phone: () - Insurance Carrier: State Automobile Mutual Insurance Company
Preparer's Name: Larry C. Brandt Law Firm: Larry C. Brandt, P.A. Preparer's Phone #: (864) 638-5406

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of Injury: 07/21/2009 (m/d/yyyy)

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

(See attached Claimant's Grounds For Review)

*Cert Recd 3/25/11
date stamped 3/28/11
V Deller*

SCWCC

MAR 28 2011

JUDICIAL

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Alton L. Martin, Jr., Esquire
Name

Martin & Brasington, P.A., Post Office Box 8220 Greenville, South Carolina 29604

on the 25th day of March, 2011 by ☐ first class mail ☐ personal service ☒ certified mail.

Larry C. Brandt Attorney for Claimant March 25, 2011
Preparer's Signature Title Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

(Continuation from Form 30)

CLAIMANT'S GROUNDS FOR REVIEW:

1. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the greater weight of the evidence clearly shows that she did.
2. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when his finding is not supported by substantial evidence.
3. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the only credible evidence shows that she, at least, injured her right shoulder and right knee as a result of the July 21, 2009 accident.
4. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proof when there is substantial evidence which clearly proves her claims even if the testimony of Claimant is completely disregarded.
5. The Hearing Commissioner erred in placing significance on the issue of when the incident report (Def. Exh. #2) was created as there is substantial evidence which shows that she suffered injury to, at least, her right shoulder and right knee, notwithstanding Claimant's testimony concerning same and/or consideration being given to the incident report (Def. Exh. #2).
6. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when there is no credible or substantial evidence whatsoever that it was created on January 23, 2010.
7. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when Keith Nichols testified that, if Claimant saved her own files, wiped everything out of her computer, uploaded microsoft and then put it back on the computer, the date she put it back on the computer would be the creation date (T., pg.86, ll.4-19); that he could not say that the document was not on Claimant's computer prior to January 23, 2010 (T., pg.88, ll.1-4), and that he could not say what would show as

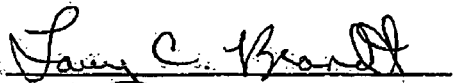
the origination date if the file was copied on a flash drive and then taken from the flash drive back over to the original computer (T., pg.94, ll:4-10).

8. The Hearing Commissioner erred in conducting his in-hearing experiment with his own computer as it did not replicate what Claimant testified that she did in downloading her files to a flash drive; reinstalling Windows on her computer; and then reloading the file on the computer via the flash drive.
9. The Hearing Commissioner was clearly in error and was unfairly prejudiced against Claimant as a result of the issue that was raised concerning the origination date of the incident report (Def. Exh. #2) as there was no credible evidence whatsoever that the document was created on any other date other than as Claimant testified.
10. The Hearing Commissioner erred in finding that Claimant lacked credibility as there was no substantial evidence whatsoever to impeach her.
11. The Hearing Commissioner erred in finding that Claimant's explanation for not advising her doctor of her symptoms on her visit to him on March 19, 2010 to be unreasonable and contrary to common sense as there is no substantial evidence to support that finding.
12. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proving compensable injury to her shoulders and knees, particularly her right shoulder and right knee; therefore, denying her request for benefits under the South Carolina Worker's Compensation Act as there is no substantial evidence to refute her claims.
13. The Hearing Commissioner erred in finding that Claimant had failed to carry her burden of proving compensable injury to her shoulders and knees and, as such, denying her request for benefits under the South Carolina Worker's Compensation Act inasmuch as the only credible evidence is that the injuries, at least as to her right shoulder and right knee, were proximately caused by the fall of July 21, 2009.
14. The Hearing Commissioner erred in finding that Claimant, under S.C. Code §42-1-160, was not entitled to any benefits under the worker's compensation act and is not entitled to past and future medical treatment for her shoulders and knees pursuant to §42-15-60 when her claims are, in fact, supported by substantial evidence.
15. The Hearing Commissioner erred in denying worker's compensation benefits to Claimant inasmuch as the claim has been clearly proven by all of the other evidence and the admissions of the Employer/Carrier even if the testimony of Claimant is disregarded.
16. The Hearing Commissioner erred in failing to consider the testimony of Janice Mahaffey, mother of Claimant, whose testimony was stipulated to by Employer without reservation or challenge to her credibility and which fully corroborated Claimant's claim of injuries resulting from Claimant's fall at work on July 21, 2009.

17. The Hearing Commissioner erred in refusing to hold the record open for Claimant to produce the flash drive upon motion of Employer's attorney and/or the taking of the deposition of Beth Moore upon motion of Claimant's attorney inasmuch as an accurate determination of the origination date of the incident report (Cl. Exh. #2) was considered by the Hearing Commissioner to be an important aspect of the case and obviously affected his opinion concerning Claimant's credibility and his decision to deny her benefits under the worker's compensation act.

Respectfully submitted,

LARRY C. BRANDT, P.A.

By: 

Larry C. Brandt
3691 Blue Ridge Boulevard
Post Office Box 738
Walhalla, South Carolina 29691
(864) 638-5406
Attorney for Claimant

Walhalla, South Carolina
March 25, 2011

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0922023

EMPLOYEE/CLAIMANT: KIMBERLY MAHAFFEY

EMPLOYER: ONETONE TELECOM, INCORPORATED

INSURER: STATE AUTOMOBILE INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING
BEFORE THE FULL COMMISSION PANEL

PURSUANT TO NOTICE OF THE WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 15TH
DAY OF AUGUST, 2011, COMMENCING AT THE HOUR OF 3:05
PM AT THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION, COLUMBIA, SOUTH CAROLINA, ATTENDED BY
COUNSEL AS FOLLOWS:

KATHRYN BOSTROM,
VERBATIM COURT REPORTER

BOSTROM REPORTING

241 CHEROKEE POND TRAIL
LEXINGTON, S.C. 29072
803-446-7040

APPEARANCES

THE SOUTH CAROLINA
WORKERS' COMPENSATION
FULL COMMISSION
APPELLATE PANEL:

COMMISSIONER SUSAN S. BARDEN, CHAIR
COMMISSIONER DAVID W. HUFFSTETLER
COMMISSIONER DERRICK WILLIAMS

FOR THE CLAIMANT/
APPELLANT:

NO APPEARANCE

FOR THE DEFENDANT/
RESPONDENT:

ALTON L. MARTIN, ESQUIRE
MARTIN & MARTIN, PA
PO BOX 8220
GREENVILLE, SC 29604

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CERTIFICATE... 7

EXHIBITS

THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.

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

5 * * * * * * * * * * * * * * *

6 COURT REPORTER :

7 TODAY IS MONDAY, AUGUST 15, 2011. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION CASE
9 NUMBER 0922023. THIS IS THE CASE OF KIMBERLY
10 MAHAFFEY, THE CLAIMANT, VERSUS ONETONE TELECOM,
11 INCORPORATED, THE EMPLOYER. THE STATE
12 AUTOMOBILE INSURANCE COMPANY IS THE CARRIER.
13 THE APPELLATE IS THE CLAIMANT -- REPRESENTING
14 THE CLAIMANT, LARRY C. BRANDT, WHO IS NOT HERE.
15 THE RESPONDENT IS REPRESENTED BY ALTON L.
16 MARTIN, JUNIOR --

17 COMMISSIONER BARDEN

18 WHO IS HERE.

19 COURT REPORTER:

20 WHO IS HERE. EACH SIDE IS ALLOWED TEN MINUTES
21 FOR ORAL ARGUMENT AND THE APPELLATE THREE
22 MINUTES IN REPLY. YOU ARE REQUESTED TO ARGUE
23 TO GROUNDS OF EXCEPTION AND STAY WITHIN THE
24 RECORD.

25 COMMISSIONER BARDEN:

1 ALL RIGHT, I WILL NOTE FOR THE RECORD, THIS
2 APPEAL WAS SCHEDULED TO START AT THREE O'CLOCK.
3 IT IS NOW 3:05. MR. BRANDT HAS NOT PRESENTED
4 HIMSELF EITHER IN THIS HEARING ROOM OR IN THE
5 LOBBY. WE HAVE TAKEN THE EFFORTS OF HAVING OUR
6 STAFF TAKE TIME OUT FROM THEIR SCHEDULE TO CALL
7 MR. BRANDT TO FIND OUT WHY HE IS NOT HERE, BUT
8 HE IS NOT HERE. I UNDERSTAND FROM MY
9 COLLEAGUES THAT THEY WISH TO JUST GO AHEAD AND
10 DECIDE THIS MATTER ON THE RECORD SINCE MR.
11 BRANDT IS HERE, AND I JUST WANT TO MAKE SURE
12 THAT IS CORRECT?

13 COMMISSIONER WILLIAMS:

14 THAT'S CORRECT.

15 COMMISSIONER HUFFSTETLER:

16 I AGREE WITH THAT.

17 COMMISSIONER BARDEN:

18 COMMISSIONER HUFFSTETLER, DID YOU WANT TO ADD
19 ANYTHING, SIR?

20 COMMISSIONER HUFFSTETLER:

21 I AGREE WITH THAT.

22 COMMISSIONER BARDEN:

23 COMMISSIONER WILLIAMS?

24 COMMISSIONER WILLIAMS:

25 WE'VE GOT BRIEFS FROM BOTH PARTIES, SO I THINK

1 THAT IS GOOD.

2 COMMISSIONER BARDEN:

3 ALL RIGHT, THANK YOU. THAT CONCLUDES THIS
4 PROCEEDING. THANK YOU MR. MARTIN, FOR COMING.

5 (THERE BEING NO FURTHER QUESTIONS, THIS
6 HEARING WAS CONCLUDED AT THE HOUR OF 3:06
7 AM.)

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CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0922023

EMPLOYEE/CLAIMANT: KIMBERLY MAHAFFEY

EMPLOYER: ONETONE TELECOM, INCORPORATED

INSURER: STATE AUTOMOBILE INSURANCE COMPANY

I, KATHRYN B BOSTROM, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 6 PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF KIMBERLY MAHAFFEY TAKEN ON THE 15TH DAY OF AUGUST, 2011.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 17TH DAY OF FEBRUARY, 2012.

KATHRYN B BOSTROM
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8-5-2012

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

State of South Carolina
 Before the
 South Carolina Workers' Compensation Commission
 WCC File No.: 0922023

Kimberly Mahaffey,
 Claimant,
 vs.
 Onetone Telecom, Inc.,
 Employer,
 and
 State Automobile Mutual
 Insurance Company,
 Carrier, Defendants.

HEARING

December 1, 2010

COPY

Hearing reported by Deborah S. Thomas,
 Certified Verbatim Reporter and Notary Public in and
 for the State of South Carolina; said hearing held
 before Commissioner T. Scott Beck, and in accordance
 with the South Carolina Workers' Compensation Laws,
 at the South Carolina Workers' Compensation
 Commission, 100 South Main Street, Anderson, South
 Carolina, on December 1, 2010, at the hour of 11:16
 a.m.

ABACTIS REPORTING SERVICES
 2117 PINE LAKE DRIVE
 WEST COLUMBIA, SOUTH CAROLINA 29169
 (803) 206-7390

Appearances

Representing the Claimant:

LARRY C. BRANDT, ESQUIRE
Larry C. Brandt, P.A.
P.O. Box 738
Walhalla, South Carolina 29691

Representing the Defendants:

ALTON LAMAR MARTIN, JR., ESQUIRE
Martin & Brasington, PA
P.O. Box 8220
Greenville, South Carolina 29604

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* * * * *

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1 This hearing is conducted in
2 accordance with the South Carolina Workers'
3 Compensation Commission Laws.

4 (MARKED CLAIMANT'S EXHIBIT NO. 1.)

5 (MARKED CLAIMANT'S EXHIBIT NO. 2.)

6 (MARKED CLAIMANT'S EXHIBIT NO. 3.)

7 (MARKED DEFENDANT'S EXHIBIT NO. 1.)

8 COMMISSIONER BECK: Today's date is
9 December 1st, 2010. This is Workers' Compensation
10 File Number 0922023. The Claimant in this matter is
11 Kimberly Mahaffey represented today by Attorney
12 Larry Brandt. The Employer is Onetone Telecom, Inc.
13 The Carrier is State Automobile Mutual Insurance
14 Company both represented today by Attorney Al
15 Martin, Junior.

16 The date of accident in this matter is
17 7/21/09. The average weekly wage is \$344.47. The
18 compensation rate is \$229.66.

19 I received A.P.A.s from both the Claimant
20 and the Defendant in this matter as well as the
21 deposition testimony of the Claimant marked as
22 Defendant's Exhibit Number 1, the deposition
23 testimony of Kunniseth Chea.

24 MR. BRANDT: Seth Chea.

25 COMMISSIONER BECK: Yes, sir.

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1 MR. BRANDT: Is it Seth?

2 MS. MAHAFFEY: It could be Seth.

3 MR. BRANDT: Kunniseth. They call
4 him Seth.

5 COMMISSIONER BECK: Okay. Marked as
6 Claimant's Exhibit Number 1. The deposition
7 testimony of Kimberly Smagala, marked as Claimant's
8 Exhibit Number 2. And what appears to be a work
9 injury incident report form marked as Claimant's
10 Exhibit Number 3.

11 Are there any objections to those items,
12 jurisdiction, venue, or any other matter, Mr.
13 Brandt.

14 MR. BRANDT: None, Your Honor.
15 Obviously -- and I cross over a lot in circuit
16 court. And I wanted to make sure that I'm not
17 submitting it on my behalf. Certainly there is no
18 reason to put two markings on those depositions
19 supporting -- that I would offer in support of my
20 claim only on Smagala and Chea are the pages of --
21 Smagala Pages 11 and 23 and Chea Page 12.

22 COMMISSIONER BECK: All right, sir.

23 MR. BRANDT: But rest of it -- I
24 don't want to be stuck with that at all as testimony
25 or evidence in my case. That is why I offered just

Mahaffey vs. Onetone Telecom

1 those pages.

2 COMMISSIONER BECK: All right, sir.
3 Mr. Martin?

4 MR. MARTIN: Your Honor, that's okay
5 with us.

6 COMMISSIONER BECK: All right.
7 Without any further -- any objections, the
8 Commission file becomes a part of the record with
9 the exception of self-serving declarations and
10 unstipulated medical reports.

11 During a prehearing conference in this
12 matter the respective positions of both the parties
13 was discussed. From the standpoint of the Claimant,
14 she is here seeking a finding of compensability to
15 both knees and both shoulders, asking for
16 causally-related medical care, asserting that she is
17 not at M.M.I. And she is currently not seeking any
18 temporary total disability benefit.

19 Mr. Brandt, anything in addition to that
20 that I need to get on the record, sir?

21 MR. BRANDT: The only thing is we had
22 in the prehearing conference reached a stipulation
23 of counsel concerning testimony of one of my
24 witnesses. And I'd like to put that on the record
25 at the present time.

Mahaffey vs. Onetone Telecom

1 COMMISSIONER BECK: Please proceed.

2 MR. BRANDT: Janice Mahaffey, the
3 mother of the Claimant, was to be -- intended to be
4 called to testify. Her testimony basically if
5 called to testify, she would testify that from the
6 date of 7/21/2009, the date of the alleged work
7 injury, that my Claimant -- the Claimant constantly
8 complained and repetitively complained of pain in
9 her knees and her shoulders. And that has continued
10 through the present day.

11 COMMISSIONER BECK: All right. Mr.
12 Martin?

13 MR. MARTIN: Your Honor, he would
14 agree to that stipulation that the mother's
15 testimony would be supportive of her daughter and
16 would be cumulative.

17 COMMISSIONER BECK: All right. Thank
18 you, gentlemen. All right. From the Defendants'
19 standpoint, they admit a minor accident on
20 July 21st, 2009. However, contend that the
21 Claimant's current complaints are not the result of
22 that minor accident and therefore are denying
23 compensability of her claim.

24 Mr. Martin, anything in addition to that I
25 need to get on the record, sir?

Mahaffey vs. Onetone Telecom

1 MR. MARTIN: No, sir.

2 COMMISSIONER BECK: All right. Mr.
3 Brandt, you may call your witness.

4 MR. BRANDT: Kimberly, if you would
5 go take the stand here.

6 COMMISSIONER BECK: Please have a
7 seat, ma'am. Would you raise your right hand,
8 please. Do you swear or affirm that the testimony
9 you are about to give today is the truth, the whole
10 truth, and nothing but the truth?

11 MS. MAHAFFEY: I do.

12 COMMISSIONER BECK: All right.
13 Please state your full name for the record.

14 MS. MAHAFFEY: Kimberly Mahaffey.

15 COMMISSIONER BECK: All right. Mr.
16 Brandt?

17 WHEREUPON:

18 KIMBERLY MAHAFFEY, being duly sworn
19 and cautioned to speak the truth, the whole truth
20 and nothing but the truth, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. BRANDT:

23 Q. Kimberly, how old are you?

24 A. I am 40 years old.

25 Q. Are you married or single?

Mahaffey vs. Onetone Telecom

1 A. I am single.

2 Q. And where do you presently reside?

3 A. In Seneca.

4 Q. And what is the address?

5 A. 435 Singing Pines Road.

6 Q. And does anyone else live there with you?

7 A. My parents live there.

8 Q. How long have you lived with your parents?

9 A. About eight years now.

10 Q. At the time of this injury on -- or fall
11 on 7/21/2009, were you living in the household with
12 your parents?

13 A. Yes, I was.

14 Q. And you have lived continuously in that
15 household since that time?

16 A. Yes, I have.

17 Q. Kimberly, at the time of this accident
18 were you working with Onetone Telecom?

19 A. Yes, I was.

20 Q. When did you first go to work with them?

21 A. I believe it was in 2008.

22 Q. And on -- when did you terminate your
23 employment with Onetone?

24 A. October of 2010.

25 Q. Do you have a specific date in October?

Mahaffey vs. Onetone Telecom

1 A. I believe October 4th was my last day.

2 Q. And what was the reason that you
3 terminated employment on that day?

4 A. I was offered a position in another
5 employment.

6 Q. And are you working there now?

7 A. Yes, I am.

8 Q. Kimberly, tell us what happened on
9 7/21/2009.

10 A. I was in the process of leaving the
11 office. And in order to leave we normally walk
12 through a middle office where our phone system was,
13 and ensure that it was turned off and night service
14 and across that office over a counter and across the
15 hallway was a phone cord. It was about knee high
16 and we had been walking over it all day long. And I
17 had to step over it to continue through the office
18 and out the door. And when I did my foot caught and
19 I fell on to all fours.

20 Q. And you say your foot caught. What did it
21 catch on?

22 A. On the cord.

23 Q. And tell us what happened after you fell,
24 how you fell.

25 A. I felt like I was going to be sick or pass

Mahaffey vs. Onetone Telecom

1 out.

2 Q. How long -- were you able to get up by
3 yourself?

4 A. I had a little bit of help from Kimberly
5 Smagala.

6 Q. Who is Kimberly Smagala?

7 A. She was my manager at the time.

8 Q. Was she present when you fell?

9 A. Yes, she was.

10 Q. Or at least in the same area of the room?

11 A. Yes, she was.

12 Q. And did she assist you to get up?

13 A. Some. She helped get my bags for me and
14 helped me up a little.

15 Q. Okay. And what did you do after you fell?

16 A. She helped me to a chair. And I sat there
17 with -- while she got me some water and trying to
18 get my bearings where I could go on.

19 Q. Were you hurting?

20 A. Yes, I was.

21 Q. Where were you hurting?

22 A. In my knees and my shoulder.

23 Q. And did you tell Ms. Smagala about your
24 pain at that time or where you were hurting?

25 A. Yes, I did.

Mahaffey vs. Onetone Telecom

1 Q. What did you tell her?

2 A. I told her that my knee was hurting me
3 very badly and so badly that I thought I was going
4 to be sick.

5 Q. Which knee?

6 A. At that time my right knee was hurting me
7 the most.

8 Q. Was the left knee also hurting?

9 A. Yes.

10 Q. When you fell, you say you fell on all
11 fours?

12 A. Yes, I did.

13 Q. Landing with palms down --

14 A. Palms down.

15 Q. -- on your knees? Did you complain at all
16 about your shoulders at that time?

17 A. I don't think that I did at that time, no,
18 sir.

19 Q. To Ms. Smagala?

20 A. Not that day. I think I complained about
21 my knee only.

22 Q. If -- how long did you sit in that chair?

23 A. I think it was about 20 to 25 minutes.

24 Q. What did you do then?

25 A. I got up and left and went home.

Mahaffey vs. Onetone Telecom

1 Q. Did Ms. Smagala give you any instructions
2 on what you needed to do concerning medical care or
3 filing any kind of claim at that time?

4 A. She told me to just go home and put my
5 feet up.

6 Q. The next day did you report for work?

7 A. Yes, I did.

8 Q. And when you reported for work did you
9 have any discussions with anyone at Onetone
10 concerning what had happened the following -- the
11 last evening?

12 A. Yes, I did.

13 Q. Who did you talk with?

14 A. I spoke with two, Ms. Smagala and the
15 other girl that was in her office at that time,
16 Donnay Booth.

17 Q. And at that time did you request medical
18 attention?

19 A. I told Kimberly I thought I needed to go
20 to the doctor.

21 Q. What did she say to you?

22 A. She informed me that they were looking for
23 people to fire and not to rock the boat.

24 Q. Did you go to the doctor then?

25 A. No, I did not.

Mahaffey vs. Onetone Telecom

1 Q. Let me show you what has been marked
2 Claimant's Exhibit Number 3. Can you identify that
3 document?

4 A. Yes, I can.

5 Q. What is it?

6 A. It's an incident report that I created.

7 Q. Why did you create that?

8 A. Because I asked Kimberly about an incident
9 report and she told me that they didn't have those
10 at Onetone.

11 Q. When did you create that report?

12 A. The day after my accident.

13 Q. And that was on 7/22/09?

14 A. Yes, it was.

15 Q. Did you fill that out on that day, 7/22?

16 A. Yes, I did.

17 Q. What did you do with it once you filled it
18 out?

19 A. I offered it to Kimberly, and she told me
20 to keep it.

21 Q. Why? Did she offer an explanation as to
22 why you needed to keep it?

23 A. No, she didn't.

24 Q. Did she give you any other instructions as
25 to about what you should did about reporting?

Mahaffey vs. Onetone Telecom

1 A. She just told me that I needed to file it
2 under my own insurance and not complain about it.

3 Q. And this is your signature on the bottom?

4 A. Yes, it is.

5 Q. And so this is what you offered to Ms.
6 Smagala the day after the accident?

7 A. Yes, it is.

8 Q. The day after the accident were you still
9 feeling pain?

10 A. Yes, I was.

11 Q. And where were you hurting that day?

12 A. All over. I was sore everywhere.

13 Q. Were your shoulders and knees still
14 hurting?

15 A. Yes.

16 Q. Do you recall when you first or finally
17 went to the doctor the first time to seek medical
18 attention about either your shoulders or your knees?

19 A. The first time I went for specifically
20 those situations was June of this year.

21 Q. Why did you wait so long to go to the
22 doctor?

23 A. Because the pain was becoming unbearable
24 at that time.

25 Q. Okay. But in the meantime, why hadn't you

Mahaffey vs. Onetone Telecom

1 gone to the doctor before June of this year?

2 A. Because every time that I had mentioned it
3 at Onetone I was told to not complain about it.

4 Q. Who would tell you that?

5 A. Kimberly Smagala as long as she was my
6 supervisor. The second supervisor we had after her
7 finally went and asked for me to go to the doctor.

8 Q. And did you ever have any discussions with
9 Mr. Loggins concerning medical care?

10 A. Not until after June.

11 Q. After June when did you first have a
12 conversation with him?

13 A. When he told me to go to the doctor.

14 Q. When was that, do you recall?

15 A. About the very end of June maybe. I went
16 to the doctor on the 28th or 29th.

17 Q. Of June of 2010?

18 A. Uh-huh.

19 Q. Tell us all you can remember about the
20 conversation with Mr. Loggins at that time.

21 A. I asked him about going to the doctor.
22 And he told me to go ahead and that they would pay
23 for it.

24 Q. Have they paid for it to your knowledge?

25 A. Not that I know of. I have no knowledge

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1 of it.

2 Q. When you told him you needed to go to the
3 doctor, did you tell him why?

4 A. Yes.

5 Q. What did you tell him in that regard?

6 A. I told him that it was from the injury
7 that I had the previous year, that I had not gotten
8 any better and it was getting worse.

9 Q. Did he question whether or not you had
10 been hurt at that time?

11 A. No, he did not.

12 Q. Did he tell you or say anything else to
13 you about seeking medical care?

14 A. No, he did not.

15 Q. Did he relate to you anything about
16 reporting the -- filing any kind of written
17 paperwork to report the injury at that time?

18 A. Not at that time, no, sir.

19 Q. All right. Were you ever asked to submit
20 Exhibit Number 3 to any of your employers or any of
21 your supervisors after June of 2010?

22 A. Yes, I was.

23 Q. Who asked you to submit the report?

24 A. I received an e-mail from Mitzi Worley,
25 Human Resources, asking me to give it to her.

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1 Q. And that was the same report that was
2 marked as Exhibit Number 3?

3 A. Yes, it was.

4 Q. And did you give it to her at that time?

5 A. Yes, I did.

6 COMMISSIONER BECK: Could you repeat
7 when --

8 BY MR. BRANDT:

9 Q. Do you know why she asked for it?

10 COMMISSIONER BECK: Excuse me, Mr.
11 Brandt. Could you repeat when that was, if you
12 stated.

13 THE WITNESS: I think it was in July
14 of this year, the middle of July.

15 COMMISSIONER BECK: Thank you. Mr.
16 Brandt?

17 BY MR. BRANDT:

18 Q. And that was after you had asked
19 Mr. Loggins about medical attention?

20 A. Yes.

21 Q. Had you gone to the -- by the time you
22 gave that report to Ms. Worley, had you gone to the
23 doctor by then?

24 A. Yes, I had.

25 Q. Are you being treated by any doctors for

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1 injuries at the present time?

2 A. Yes, I am.

3 Q. Who is treating you?

4 A. Dr. John McCullum.

5 Q. And he is an orthopedist from Blue Ridge
6 Orthopaedics --

7 A. Yes, sir.

8 Q. -- in Seneca?

9 A. Yes.

10 Q. Who was the first doctor that or medical
11 provider that you first sought attention from?

12 A. Henry Ramirez.

13 Q. And I believe that he's just a physician's
14 assistant?

15 A. Yes, he is.

16 Q. I believe Upstate Medical or --

17 A. I believe that is correct.

18 Q. And he is -- and he -- wasn't it he -- did
19 he refer you to anyone?

20 A. No, he didn't at that time. He was
21 wanting to send me to physical therapy.

22 Q. Kimberly, we have the medical records in
23 evidence and they can speak to it from a medical
24 standpoint, but tell us what your problems are today
25 and exactly what injuries or what parts -- body

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1 parts have been affected and need medical attention.

2 A. My right shoulder, I have a torn rotator
3 cuff. And I have a torn meniscus in my right knee.
4 The orthopedic has not done a scan of left shoulder
5 or left knee, yet.

6 Q. Are they still bothering you?

7 A. Yes. They are bothering me more the less
8 I use my right side.

9 Q. And during -- prior to 7/21/09, have you
10 had any injuries to any of those body parts?

11 A. My knee about five years prior to that.

12 Q. And what happened at that time with that
13 knee?

14 A. I had a torn A.C.L., and I had a torn
15 meniscus.

16 Q. Did you have an A.C.L. repair and the
17 meniscus repaired at that time?

18 A. Yes, I did.

19 Q. And was there any kind of traumatic event
20 between the day that you had that meniscus repaired
21 before and the A.C.L. repair to 7/21/09?

22 A. None whatsoever.

23 Q. Have you had any other falls, traumatic
24 experiences or whatever, that affected your knees or
25 shoulders since 7/21/09?

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1 A. No, I have not.

2 Q. Have you ever had a prior injury to either
3 of your shoulders prior to 7/21/09?

4 A. No, I have not.

5 Q. Have you had any injuries or trauma to
6 either of your shoulders since 7/21/09?

7 A. No, I have not.

8 Q. So you believe that the problems you are
9 experiencing with your shoulders and knees was
10 caused by the fall that you experienced on 7/21/09?

11 A. Yes, I do.

12 Q. And you are here seeking medical attention
13 for same?

14 A. Yes, I am.

15 MR. BRANDT: I have nothing further
16 at this time, Your Honor.

17 COMMISSIONER BECK: Mr. Martin?

18 MR. MARTIN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. MARTIN:

21 Q. Ms. Mahaffey, I have a few things
22 regarding your testimony I want to go over with you
23 first. The day of your accident was there -- was
24 the office being moved? Was there something going
25 on with the call center?

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1 A. The call center was being moved from one
2 office to another. I didn't work in the call center
3 at the time.

4 Q. Okay. And the call center, was it being
5 moved from the room where you tripped to a different
6 room?

7 A. Yes, it was.

8 Q. Okay. And there were two doors to that
9 room that led to the back door; is that right?

10 A. There was two ways to get to the back
11 door, but they weren't in that room. One was and
12 one was in another hallway.

13 Q. Okay. There are two doors off of that
14 room, one you stepped over the phone cord and went
15 straight back to the call center. The other you
16 went about five feet down a hallway and turned right
17 and went down a hallway to the call center; is that
18 right?

19 A. Yes.

20 Q. Okay. And at the time this accident
21 happened was at the end of the day. That is why you
22 left afterwards was because it happened around
23 6:00 o'clock in the evening; is that right?

24 A. That is correct.

25 Q. All right. You were preparing to leave

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1 when it occurred?

2 A. Yes.

3 Q. Okay. And I believe you said you felt
4 sick. Did you tell Kim Smagala that you were dizzy?

5 A. Yes, I did.

6 Q. Okay. And I believe I heard you say you
7 fell on all fours, palms down?

8 A. Yes.

9 Q. Okay. You also mentioned the name Booth?

10 A. Yes.

11 Q. As someone that witnessed this incident
12 with -- where you came back in and talked to Kim
13 Smagala --

14 A. Yes.

15 Q. -- about the problem? So she overheard
16 this and she was a person that witnessed it. And,
17 as I understand it, she's a friend of yours?

18 A. Well, work. Work-related friends. We are
19 not close friends, no.

20 Q. Okay. Do either one of you work there at
21 Onetone now?

22 A. No, we do not.

23 Q. Okay. And did you -- did she get married
24 after this accident?

25 A. Yes, she did.

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1 Q. Okay. What is her name now?

2 A. I think it is -- I do not remember.

3 Q. Okay. Did you serve as a photographer at
4 her wedding?

5 A. I came and filmed it with a video camera,
6 yes.

7 Q. Okay. I'm going to ask you some more
8 about that incident report in one second, but the
9 Dr. McCullum that you are seeing right now, he's the
10 same doctor that did the surgery at your first
11 Workers' Comp claim; is that right?

12 A. On my A.C.L., yes.

13 Q. And that was -- who was that involving,
14 what Employer?

15 A. Crystal Geyser for C.G. Roxane.

16 Q. Okay. And as a result of that, you had
17 screws put in your knee?

18 A. Yes, I did.

19 Q. Okay. But you did not leave that Workers'
20 Comp claim open to your right knee. You clinchered
21 it; is that right?

22 A. Yes, that's correct.

23 Q. And you also did a voluntary resignation?

24 A. Yes, I did.

25 Q. Okay. So any problems with your right

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1 knee now related to the hardware from that first
2 accident, you wouldn't be able to get it covered
3 under that first Workers' Comp claim that you
4 clinchered?

5 A. No, I would not.

6 Q. Okay. We mentioned Dr. Henry Ramirez. He
7 is actually your family doctor?

8 A. Yes, he is.

9 Q. You've been going to see him for about
10 four years now?

11 A. Yes.

12 Q. Okay. And he is the doctor that you went
13 to see in June of 2010 related to this injury when
14 Mr. Loggins approved for you to go for one visit?

15 A. Yes, he is.

16 COMMISSIONER BECK: Go off the record
17 for just a second.

18 (Discussion off the record.)

19 COMMISSIONER BECK: All right. We
20 are back on the record.

21 MR. MARTIN: Thank you, Commissioner.

22 BY MR. MARTIN:

23 Q. All right. Let's start with the incident
24 report. You said that that is a document that you
25 prepared and provided to Kim Smagala the day after

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1 the accident?

2 A. Yes, it is.

3 Q. Okay. And she told you that -- I believe
4 that was -- you came in the next day and you asked
5 for an incident report. And she told you we don't
6 do those?

7 A. Yes.

8 Q. So then you created the document there at
9 work that same day?

10 A. Yes, I did.

11 Q. And when you created that document at work
12 the next day, then you provided it to Kim Smagala?

13 A. Yes.

14 Q. And she declined to take it?

15 A. Yes, she did.

16 Q. And then you didn't provide it to anybody
17 else until June 30th of 2010?

18 A. Right.

19 Q. And that is when you e-mailed it to Mitzi
20 Worley?

21 A. Yes.

22 Q. She is the H.R. manager?

23 A. Yes.

24 Q. Okay. And at that time you e-mailed her
25 an unsigned copy of the form. And she asked you to

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1 come sign it?

2 A. Yes.

3 Q. Okay. And that is what we have as
4 Exhibit 3 here today?

5 A. Yes.

6 Q. Okay. Now, I provided some documents to
7 your attorney regarding the e-mail that you sent and
8 the form.

9 MR. MARTIN: And --

10 COMMISSIONER BECK: Defendant's 2.

11 MR. BRANDT: I don't have any
12 objection to that.

13 COMMISSIONER BECK: Without
14 objection.

15 (MARKED DEFENDANT'S EXHIBIT NO. 2.)

16 MR. BRANDT: You are putting in how
17 many pages? Three?

18 MR. MARTIN: Three pages.

19 MR. BRANDT: That is the form?

20 MR. MARTIN: Yes, sir.

21 MR. BRANDT: And the e-mail and this
22 working -- this?

23 MR. MARTIN: Yes, sir.

24 MR. BRANDT: Okay. And that is going
25 to be Exhibit what?

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1 MR. MARTIN: That is Exhibit 2.
2 Defendant's 2. And we will just mark it all as one
3 exhibit. Thank you.

4 BY MR. MARTIN:

5 Q. Okay. I'm showing you what has been
6 marked as Defendant's Exhibit Number 2. It's a
7 three-page exhibit. The first page of which is an
8 e-mail. And that is the e-mail from Mitzi Worley on
9 the bottom asking you to provide her a description
10 of what happened and include a contact number; is
11 that right?

12 A. That is correct.

13 Q. And then after that you sent her an e-mail
14 and said attached is the work injury form I
15 downloaded and offered to Kim Smagala at the time.
16 If you need more info please let me know. And you
17 gave your cell phone number?

18 A. Yes.

19 Q. Okay. And then this is the second page of
20 that exhibit. It's the unsigned form that you sent
21 to Mitzi?

22 A. Yes.

23 Q. And that is the same form that you
24 subsequently signed and it's been submitted as
25 Exhibit 3?

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1 A. Yes.

2 Q. Let's go back to this e-mail right here.

3 This says that the e-mail was sent on June 30th,
4 2010, at 1:57 p.m.?

5 A. Uh-huh.

6 Q. Is that --

7 A. That's correct.

8 Q. Okay. Now, this third page is a form that
9 was printed off of your computer by the I.T.
10 director for the company, Keith Nichols. Are you
11 familiar with him?

12 A. Yes, I am.

13 Q. Okay. And this shows that this document
14 was created on January 23rd of 2010, which would be
15 a good bit after the accident of July of 2009,
16 right?

17 A. That would have been the day that my
18 computer was reloaded with Windows.

19 Q. Okay. And the day that it was modified
20 was Wednesday, June 30th, 2010, at 1:57?

21 A. Yes.

22 Q. That is the exact same time that the
23 incident report was e-mailed to -- by you to Mitzi
24 Worley; is that right?

25 A. Yes.

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1 Q. Okay. But it's your position that on
2 January 23rd Windows was reloaded and that is why
3 that is the creation date; is that right?

4 A. Yes. It was reloaded and that file was
5 put back on the computer.

6 Q. So the creation date -- and Mr. Nichols is
7 here. He's going to testify in just a few minutes,
8 but your testimony is that the date the document was
9 created would have been changed by the software
10 being reloaded?

11 A. Yes.

12 Q. Okay. And that is not what you mention in
13 your deposition, is it?

14 A. No. This wasn't available at the time.

15 Q. Okay.

16 MR. MARTIN: Let's go on.

17 COMMISSIONER BECK: Admitted without
18 objection.

19 BY MR. MARTIN:

20 Q. Now, according to the description of the
21 accident, I believe you said that you fell on both
22 hands and both knees; is that right?

23 A. Yes.

24 Q. Okay. But that is not what you told Dr.
25 McCullum, is it?

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1 A. I don't remember exactly what I told him.

2 Q. Well, let's go to Page 14 of the A.P.A.s.
3 This is A.P.A. Number 2, Page 14, of the Claimant's
4 A.P.A. And this says, history. Kimberly is a very
5 pleasant 39-year-old woman who is status post A.C.L.
6 reconstruction to the right knee in 2004. She
7 tripped about a year ago twisting her right knee and
8 falling onto her right shoulder. Do you remember
9 telling him that?

10 A. I remember telling him that I fell, but I
11 didn't tell him that exactly. I told him that I
12 went down on all fours.

13 Q. You didn't tell him you twisted your knee
14 and fell on your right shoulder?

15 A. No, I did not say I twisted my knee.

16 Q. Because there is a questionnaire back here
17 on Page 10 of the Claimant's A.P.A.s. A.P.A. Number
18 2, Page 10. And this was provided to Dr. McCullum,
19 I believe, by your attorney. And he's got that in
20 quotes. Number 1 talks about what is causing your
21 knee problems. And it says, quote, twisting her
22 knee and falling onto her right shoulder. That is
23 in each one of these. So twisting her knee and
24 falling onto her right shoulder. So you didn't
25 twist your knee and fall onto your right shoulder?

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1 A. No, I fell on all fours.

2 Q. Okay. So this -- this is inaccurate?

3 A. Well, that is an inaccurate description of
4 it.

5 Q. Okay. That is not what you told Dr.
6 McCullum when you saw him?

7 A. I told him that I fell on all fours.

8 Q. Okay. Now, let's go back to the point
9 about your concern over seeking medical treatment.
10 You came in the day after the accident and told Ms.
11 Smagala, here is an incident report. That is your
12 testimony, right?

13 A. Yes.

14 Q. And you told her I need to go to the
15 doctor. I'm in a lot of pain?

16 A. Yes, I did.

17 Q. And you sat in Ms. Smagala's deposition,
18 right?

19 A. Yes, I did.

20 Q. And you heard her deny that you ever did
21 that, correct?

22 A. Yes, I did.

23 Q. Okay. And you said that she told you you
24 don't want to bring that up right now. They are
25 looking for somebody to fire?

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1 A. That is correct.

2 Q. Okay. But you apparently weren't very
3 intimidated by that if you then went and printed off
4 an incident report and provided it to her the next
5 day, were you?

6 A. I was intimidated by it, but I felt that
7 needed to be on file.

8 Q. Did you go back to her again? According
9 to your deposition you went back to her again that
10 same week on Friday and told her again, I need to go
11 to the doctor?

12 A. Yes, I did. I told her I still was not
13 feeling better.

14 Q. And she told you to go on your own and put
15 it on health insurance?

16 A. Yes, she did.

17 Q. But you didn't?

18 A. No, I did not.

19 Q. You did not go to the doctor in June --
20 excuse me. July of 2009?

21 A. No, I did not.

22 Q. Or August, September, October, November,
23 December of 2009?

24 A. No, I did not.

25 Q. Or January or February of 2010?

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1 A. No.

2 Q. In March of 2010, you did good to your
3 family doctor though, didn't you?

4 A. Yes, I did.

5 Q. That was Dr. Ramirez?

6 A. Yes.

7 Q. Your family doctor?

8 A. Yes.

9 Q. The same doctor that you saw in June?

10 A. Yes.

11 Q. And let's look at that. That would be
12 Page 7 of the A.P.A.s. And this was on March 19th
13 of 2010. Now, let me go back a little bit. You
14 testified during your deposition that your knees --
15 I believe you testified that your knees have gotten
16 progressively worse?

17 A. Yes.

18 Q. That is why you had to get treatment in
19 June was because your knees and shoulder got
20 progressively worse than they were when the accident
21 occurred?

22 A. Correct.

23 Q. Okay. But in March of 2010, which would
24 be, let's see, August -- eight months after the
25 accident, you went and saw your doctor. And your

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1 chief complaint according to this right here was
2 your asthma was getting worse and swelling in the
3 legs and check right foot?

4 A. Correct.

5 Q. Okay. And I believe under the
6 musculoskeletal portion of the exam it says no
7 musculoskeletal symptoms?

8 A. That is what it says.

9 Q. And then on the next page, Page 8, under
10 Musculoskeletal System it says normal movement of
11 all extremities. Is that what it says?

12 A. Yes, it is.

13 Q. And below that under Neurological Motor it
14 says strength was normal, gait and stance normal?

15 A. Yes.

16 Q. And the swelling in your legs, is that why
17 Dr. Ramirez prescribed the Lasix?

18 A. Yes, it is.

19 Q. Okay. So eight months after this accident
20 you went in to the doctor, your doctor which you
21 paid for on your own insurance, and you complained
22 about problems with your leg, but you didn't mention
23 anything about your knee or your shoulder?

24 A. Not at that time, no.

25 Q. Either knee?

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1 A. No.

2 Q. Or either shoulder?

3 A. No.

4 Q. Okay. Now, this was something that you
5 were paying for under own insurance, right?

6 A. Yes.

7 Q. Okay. And this was your doctor. So there
8 was no reason for you to be concerned about
9 describing to him any problems you were having with
10 your knee or shoulder at that time, was there?

11 A. No.

12 Q. Okay. You just chose not to mention those
13 things?

14 A. I was ready to go through the proper
15 channels. And I thought Workers' Comp was the
16 proper channel.

17 Q. Okay. But that -- you said they didn't
18 accept your incident report almost a year earlier.
19 And they told you to go to your own doctor?

20 A. Yes, but I didn't know that that was a
21 possibility without causing problems with Workers'
22 Comp.

23 Q. But didn't Kim Smagala tell you to go to
24 your own doctor?

25 A. Yes.

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1 Q. Okay. Did you go talk to anybody else
2 about the accident?

3 A. Not at Onetone.

4 Q. You didn't talk to Scott Loggins?

5 A. No, sir.

6 Q. Isn't he a friend of yours?

7 A. We went to school together.

8 Q. You went to high school together?

9 A. Yes.

10 Q. And you had talked to him previously when
11 there were concerns. There were some headsets that
12 you wanted to order?

13 A. Yes.

14 Q. And you had gone in and told Scott, we
15 need new headsets?

16 A. Yes.

17 Q. And he had taken care of that for you?

18 A. Yes.

19 Q. And that was prior to June of 2009, right?

20 A. Yes.

21 Q. But you didn't go mention anything to
22 Scott about having injured yourself, did you?

23 A. No, I did not. We were told that --

24 Q. You didn't tell Mitzi Worley, did you?

25 A. No, I did not.

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1 Q. What was her job?

2 A. H.R.

3 Q. H.R. manager?

4 A. Yes.

5 Q. Okay. And you had had a prior Workers'

6 Comp claim that you had resolved with another

7 Employer involving a knee surgery. So you were

8 familiar with the process?

9 A. Somewhat. I didn't have to do a lot with
10 that one. They did everything.

11 Q. Okay. You -- and in the course of that
12 Workers' Comp claim you had had surgery to your
13 knee, right?

14 A. Yes.

15 Q. You had had medical treatment that had to
16 be approved, correct?

17 A. Yes.

18 Q. Okay. In your deposition you had -- you
19 knew this case was denied. We filed a answer to
20 your attorney's request that it was denied. And
21 before that you got the letter, right?

22 A. Yes.

23 Q. I believe that letter was from July 13th
24 of 2010 that you got denying the case?

25 A. Yes.

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1 Q. Okay. And that was because you had waited
2 for over a year before seeking any medical
3 treatment?

4 A. Almost a year, yes.

5 Q. Okay. I'm sorry. You are right. It was
6 not over a year. And in your deposition you
7 identified a number of witnesses. You mentioned
8 Donnay. You also mentioned several other ladies who
9 you had complained about your knee and shoulder to;
10 is that right?

11 A. That's correct.

12 Q. Okay. But none of them are here today?

13 A. No, they are not.

14 Q. Okay. None of them have been listed as
15 witnesses?

16 A. No.

17 Q. And there was some discussion about taking
18 Donnay's deposition. I believe your attorney was
19 going to take Donnay's deposition --

20 A. Yes.

21 Q. -- prior to the hearing?

22 A. Yes.

23 Q. But that didn't occur?

24 A. No.

25 Q. Okay. Is that because Donnay wasn't going

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1 to support your testimony?

2 A. No, it's because Donnay was having a
3 difficult pregnancy at the time.

4 Q. Okay. What about the other folks that you
5 listed as witnesses or that you mentioned as
6 witnesses in your deposition?

7 A. I'm not -- can you briefly rephrase that?

8 Q. Sure. There were a number of people that
9 you identified as witnesses like Crystal, Angela,
10 Beth. None of them work at the company anymore, so
11 they wouldn't have any fear of repercussions from
12 coming here and testifying obviously, so why are
13 none of them here?

14 MR. BRANDT: I object to that form of
15 that question. That was a statement.

16 COMMISSIONER BECK: The basis of your
17 objection?

18 MR. BRANDT: Yes, sir. It's an
19 improper question. He made a -- he drew a -- he
20 said they wouldn't have any reason.

21 COMMISSIONER BECK: All right.
22 Rephrase the question, Mr. Martin.

23 MR. MARTIN: Yes, sir.

24 MR. BRANDT: Other than that, the
25 form of the question.

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1 BY MR. MARTIN:

2 Q. Why aren't any of those people here?

3 A. I don't believe that they were asked to
4 come.

5 Q. Do you know why they weren't asked to
6 come?

7 A. No, I don't know why.

8 Q. Okay. Now, you were not happy about your
9 employment at Onetone, were you?

10 A. No, I was not.

11 Q. And in the -- I believe you testified
12 around April or May of 2010 they cut your hours?

13 A. Yes, I did.

14 Q. And at that time -- this was before you
15 went back to the doctor in June and had the --
16 right?

17 A. Yes.

18 Q. Okay. So we've gone from July of 2009
19 until May of 2010, and you haven't mentioned
20 anything about needing any medical treatment other
21 than the week following the accident you say you had
22 tried to report it to Kim Smagala and she says you
23 didn't. So that is --

24 A. I believe it would have been around April
25 or May when I went to see my manager at the time,

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1 Beth Moore.

2 Q. Okay. And she is not here to testify, is
3 she?

4 A. No, she's not.

5 Q. She doesn't work at the company anymore,
6 does she?

7 A. No, she does not.

8 Q. And you still are friends with her and
9 have FaceBook contact with her on a regular basis?

10 A. Yes, I do.

11 Q. Okay. And the -- the time when your hours
12 were reduced, you were not happy about that and you
13 filed a complaint, did you not?

14 A. I filed Workers' Comp -- I mean, excuse
15 me, Unemployment. I wasn't sure if I could get it.

16 Q. You filed --

17 A. Several people filed it.

18 Q. Right. You and Crystal and Angela filed
19 complaints with the Employment Security Commission
20 based on the reduction in the wages or was it wage
21 and hours that you filed that complaint?

22 A. I don't know that that's a complaint. It
23 was just filing for Unemployment to compensate for
24 the lost hours.

25 Q. Okay. So you were still working there.

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1 You were just working -- instead of 36 hours, you
2 were working 32 hours?

3 A. Instead of 40, I was working 32.

4 Q. And you filed an Unemployment or a request
5 for Unemployment based on the hours that you had
6 been reduced to; is that right?

7 A. Yes.

8 Q. Okay. And that was denied?

9 A. Yes.

10 Q. And then you filed a Workers' Comp claim
11 in June?

12 A. Yes, after I saw the doctor.

13 Q. And then in July you filed an OSHA
14 complaint?

15 A. I believe the complaint was filed prior to
16 that, I'm not sure, but yes.

17 Q. Okay. You and Angela filed that OSHA
18 complaint?

19 A. Yes.

20 Q. Okay. And then after you -- you quit
21 working for Onetone on October 4th; is that right?

22 A. Correct.

23 Q. And we took your deposition on
24 November 2nd?

25 A. Yes.

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1 Q. And at the beginning of that deposition
2 there was a discussion about your not having
3 received a paycheck?

4 A. Yes.

5 Q. You said that you had not gotten your
6 check for the last two days; is that right?

7 A. Yes.

8 Q. You were owed two days and they were in
9 violation of the law because they wouldn't pay you
10 that final two days?

11 A. Well, I didn't say they were in violation.
12 I said that they owed me two days.

13 Q. Okay. Did your attorney say that?

14 A. I don't remember. I think he may have.

15 Q. Okay. Isn't it true that you had e-mailed
16 Scott Loggins and told him he could not mail you
17 your checks, that you would come by and pick them
18 up?

19 A. I remember asking him for the first one
20 that I was supposed to receive, but I did not
21 remember asking for the second one to not be mailed.

22 Q. I've got some documents I'm going to show
23 you in a second, but while Mr. Brandt is looking
24 over that, you continued to make comments about
25 Onetone on FaceBook; is that right?

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1 A. I don't make comments. There have been
2 other people who have made comments to me about it.

3 Q. Isn't it true that you and Angela and
4 Crystal have made a number of negative comments
5 about the company on FaceBook?

6 A. There have been other people who have made
7 comments. I have not made comments myself.

8 Q. You quit on October 4th. When did -- when
9 did Angela leave the company?

10 A. It was before then. I don't know the
11 exact date.

12 Q. Would it have been the second week?

13 A. I do not know. It was around the same
14 time.

15 Q. Okay. And Crystal, she was terminated I
16 believe on the -- was it the 30th of September?

17 A. It may have been.

18 Q. Okay. So within a four or five-day period
19 you, Angela, and Crystal, the same people that made
20 the complaints against the Employment Security
21 Commission, the same people that made the OSHA
22 complaint all fired or all quit, excuse me. One of
23 you was fired, the other two quit, all within a
24 four-day period?

25 A. That may be correct.

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1 Q. Okay. And you have continued to make
2 negative comments about the company on FaceBook with
3 these people and to others?

4 A. I myself have not made negative comments.

5 Q. Okay.

6 MR. MARTIN: I'd like to mark these.

7 COMMISSIONER BECK: Mr. Brändt, any
8 objection?

9 MR. BRANDT: I don't have any
10 objection. Whatever you want to do.

11 COMMISSIONER BECK: That will be
12 Defendant's three without objection.

13 (MARKED DEFENDANT'S EXHIBIT NO. 3.)

14 BY MR. MARTIN:

15 Q. I'm showing you an e-mail, is this from
16 you, dated October 5th of 2010?

17 A. Yes, it is.

18 Q. And if you would just read that out loud,
19 please?

20 A. I would ask that you do not mail my final
21 two checks. I will come by June 15th between
22 4:30 and 5:00 and the same time on June 29th for my
23 final check.

24 Q. Okay. And your deposition was on
25 November 2nd?

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1 A. Yes.

2 Q. And that is when you complained that your
3 second check hadn't been mailed to you?

4 A. Yes. And I did not remember asking for
5 the last check to not be mailed.

6 Q. Okay. You had a conversation with
7 Mr. Loggins after this incident around June or July
8 of 2010. We talked about it in your deposition. I
9 think you mentioned it again during your testimony
10 with Mr. Brandt where you went to Mr. Loggins'
11 office and discussed with him the claim?

12 A. Yes.

13 Q. Okay. And it's your testimony that he
14 asked you to come in there so that he could tell you
15 that he wished he could admit the claim? Is that
16 basically what you --

17 A. On one of our conversations we had that.
18 I don't remember if it was first time I went to his
19 office or --

20 Q. Were you actually counseled when you went
21 to his office about calling your attorney from the
22 call center?

23 A. I was the second time I went to his
24 office, yes.

25 Q. Okay. When I took your deposition I asked

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1 you if you were ever counseled when you went to
2 Mr. Loggins' office. You said no?

3 A. I had called my attorney. That was all I
4 had done. There wasn't -- gave me any information.
5 Just asked me to come in.

6 Q. Okay. Let me go back a little bit. When
7 I took your deposition I asked you if you had ever
8 been counseled and you said no. Do you recall that?

9 A. Yes.

10 Q. I asked you if you had any conversations
11 with Scott specifically and you said that you had a
12 couple of conversations where he said that you were
13 waiting on the insurance company to make a decision
14 on your claim. And then the third conversation was
15 when he called you in to tell you I'm sorry, they
16 denied it. They told me it was out of my hands, but
17 if it was up to me they would have admitted it,
18 something like that?

19 A. Yes, sir.

20 Q. And I asked you was there any other
21 conversation that you ever had with Mr. Loggins.
22 And you said no.

23 A. Not that I recall.

24 Q. But, in fact, I mean you just admitted a
25 minute ago you were called in his office and

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1 counseled because you were in the middle of the call
2 center calling your attorney to complain.

3 A. I was called by my -- by an attorney that
4 I had contacted.

5 Q. You were speaking with your attorney in
6 the call center --

7 A. Yes, sir.

8 Q. -- about this claim?

9 A. Yes, I was.

10 Q. And you were called to Mr. Loggins' office
11 and asked not to do that?

12 A. Yes.

13 Q. In fact, he told you something to the
14 effect of I understand that you want to file a
15 claim, but we would appreciate it if you treat us
16 the same way you expect us to treat you, and not
17 call your attorney in the middle of the call center
18 in front of other employees. Is that the gist of
19 the conversation?

20 A. Yes.

21 Q. Okay. Isn't that actually the
22 conversation you are now saying was when he told you
23 I wish we could have admitted the claim?

24 A. I don't remember if they were the same
25 day. I think they were different days.

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1 Q. There was never such a conversation that
2 you are recalling, was there?

3 A. I'm sorry?

4 Q. No such conversation ever occurred, did
5 it?

6 A. Which conversation?

7 Q. The one where Mr. Loggins, you claim, said
8 I wish we could have admitted the case?

9 A. No, there was a conversation like that.

10 Q. Okay. And Angie Gibson and Stephanie,
11 they are co-workers of yours?

12 A. Yes.

13 Q. They are the ones who complained to
14 management about you calling your attorney in the
15 middle of the call center?

16 A. I don't know who it was that complained to
17 the company.

18 Q. Okay. All the medical treatment you are
19 receiving now you paid for with your health
20 insurance?

21 A. Yes.

22 Q. Okay. You paid for treatment with Dr.
23 McCullum with health insurance?

24 A. Yes.

25 Q. You treat -- you paid for the treatment

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1 with Dr. Ramirez with health insurance?

2 A. Yes.

3 Q. And according to your testimony, Kim
4 Smagala told you to go to the doctor and pay for the
5 treatment with your health insurance?

6 A. Yes.

7 Q. But you didn't do that from June -- July,
8 excuse me, of 2009, until June of 2010?

9 A. Correct.

10 Q. Okay. You did go to the doctor, your
11 doctor, and have him treat you -- your legs in March
12 of 2010, but you didn't mention anything to him
13 about your knees or your shoulders?

14 A. No, I did not.

15 Q. Okay. And you did go to Dr. McCullum.
16 And according to his notes, you said that you
17 twisted your right knee and fell on your right
18 shoulder, but that is not what happened?

19 A. No, it's not.

20 Q. You fell on all fours?

21 A. Yes.

22 Q. And you've injured your left knee and your
23 left shoulder?

24 A. Yes.

25 Q. But you haven't received any medical

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1 treatment for either of those?

2 A. Just pain management, so far.

3 Q. Okay. Is there any documentation of that
4 that you are aware of?

5 A. I do not know. I'm on Naprosyn right now.

6 Q. Okay. Were you counseled for FaceBook
7 usage during work?

8 A. We had evaluations and they discussed
9 FaceBook usage.

10 Q. Was that when your hours were reduced?

11 A. It was around the same time.

12 Q. Okay. And were you also counseled for
13 giving a credit to or giving too much of a credit to
14 one of the customers, I think it was \$9, and there
15 should have been a charge-back of like \$60 or
16 something like that? Do you remember what I'm
17 talking about?

18 A. I was counseled for not telling them the
19 correct amount. I told them the amount that the
20 software told me.

21 Q. Okay. And in your deposition again I
22 asked you if you had ever been counseled and you
23 said no, correct?

24 A. I don't remember you asking me if I had
25 ever been reprimanded at work.

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1 Q. Did I ask you if you had ever been
2 counseled at work? Do you remember that?

3 A. No, I do not.

4 Q. You don't remember that. So if it says it
5 in your deposition would you agree that I asked you
6 that?

7 A. Yes.

8 Q. Okay. Did you talk to Crystal about
9 filing a Workers' Comp claim?

10 A. Yes, I have.

11 Q. Do you know if that is why Crystal who
12 also -- she's the one that got terminated like four
13 days before you quit, right?

14 A. Yes.

15 Q. Is that why she is calling the company now
16 and saying that she had a fall at work that wasn't
17 witnessed about a year before she got fired?

18 A. No, she had a fall at work that was
19 witnessed by several people. And she has continued
20 to hurt.

21 Q. And that was how many years before she was
22 fired?

23 A. That was only a few months before she was
24 fired.

25 Q. Okay. So, you are aware of that then.

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1 Did you suggest to her that she call the company and
2 try and get them to approve her to go back to the
3 doctor, too?

4 A. No, I didn't suggest that. I just told
5 her if she felt she needed to go to the doctor, she
6 should contact them and let them know.

7 Q. But you told the Commissioner, I think,
8 that you were in the chair for about 20 to 25
9 minutes after the accident occurred?

10 A. Yes.

11 Q. And in your deposition you originally said
12 30 minutes. And then you changed it to 20 minutes
13 from the time the accident happened until the time
14 that you left. You were also present during Ms.
15 Smagala's deposition where she testified that you
16 said that you were dizzy. She gave you a drink of
17 water, and you left two or three minutes later?

18 A. Yes, I was there for that.

19 Q. Okay. Dr. Ramirez thought that you had a
20 broken screw?

21 A. Yes, he did.

22 Q. But you testified that that is not the
23 case?

24 A. That is not the case.

25 Q. Okay. Has any doctor told you that that

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1 is not the case?

2 A. Dr. McCullum has said that.

3 Q. Okay. Did he document that in his
4 records?

5 A. I do not know if he documented it. He
6 told me that my screws were fine.

7 Q. Did you have a car wreck after your first
8 surgery?

9 A. After my knee surgery?

10 Q. Yes, ma'am.

11 A. I don't recall having a car wreck after
12 it.

13 Q. You did not?

14 A. No.

15 Q. Okay. And you posted comments on FaceBook
16 about your fall at work?

17 A. I've posted like pray for me, I'm going to
18 court today.

19 MR. MARTIN: That is all the
20 questions I have.

21 COMMISSIONER BECK: Mr. Brandt,
22 anything further, sir?

REDIRECT EXAMINATION

24 BY MR. BRANDT:

25 Q. Ms. Mahaffey -- Ms. Mahaffey, the OSHA

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1 complaint that you filed, what was that about?

2 A. Mold in the building.

3 Q. And is that why you sought treatment from
4 Henry Ramirez on March 19th of 2010?

5 A. That was part of it. My asthma was
6 getting worse.

7 Q. And you believe that to be attributable to
8 the mold?

9 A. Yes, because my asthma has gotten better.

10 Q. How is your asthma now that you've been
11 removed from that workplace?

12 A. I have only used my rescue inhaler twice
13 since leaving and I no longer use nebulizer.

14 Q. How often were you using it during the
15 time that you were there?

16 A. During the time that I was there I was
17 using my rescue inhaler daily and nebulizer almost
18 daily.

19 Q. But we're not making a complaint for the
20 asthma-related symptoms, are we?

21 A. No, we aren't.

22 Q. Now, when Mr. Ramirez examined you on
23 3/19/2010, what did he do to physically examine you?
24 You went and had your chief complaint listed as
25 asthma and I think he put something about the mold

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1 in the building in his record. That was your chief
2 complaint?

3 A. Yes.

4 Q. Did he do anything else other than -- I
5 mean, did he touch you, look at you?

6 A. I told him that my ankles were swelling
7 and asked if that had anything to do with me using
8 my medicine over and over again, and he looked at my
9 ankles.

10 Q. Did he examine your knees, move around --

11 A. No, he did not.

12 Q. See if he could make them move around, try
13 to rotate anything?

14 A. No, he did not.

15 Q. Arms or anything?

16 A. No.

17 Q. So his entry in his records that the
18 orthopedics or whatever the physiological range of
19 motion and all of that, do you know how he gathered
20 up that information for the record?

21 A. He looked at my right ankle. That is all
22 he looked at.

23 Q. Okay. The -- I want to go back and clear
24 up the thing about your hard drive. Did you have a
25 virus in your computer sometime December, January of

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1 2010?

2 A. Yes, I did.

3 Q. And did you lose -- did it crash?

4 A. It didn't crash, but it would reboot and
5 go to a blue screen several times a day.

6 Q. Okay. And did you then have to reload it
7 from a flash drive?

8 A. I had to reload windows. My manager told
9 me to. And then I had to reload all of my documents
10 back to the computer.

11 Q. And the January 23rd, 2010, date, would
12 that be the date that you --

13 A. Yes, because I did it on a Saturday.

14 Q. That you reloaded it?

15 A. Yes.

16 Q. Okay. And is it still unequivocally your
17 testimony that that Exhibit Number 3 that you
18 created it on 7/22/2010 -- I mean 2009 --

19 A. Yes, sir.

20 Q. And offered it to Ms. Smagala on that day?

21 A. Yes.

22 Q. It was unsigned when you offered it to
23 her?

24 A. Yes.

25 Q. But later when they asked you to resubmit

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1 that -- how did they ask you to resubmit that claim?

2 A. Through e-mail.

3 Q. Through an e-mail?

4 A. Yes.

5 Q. What did you recall that e-mail saying?

6 A. She asked me to give her her date and
7 information on the incident and contact information.
8 And I sent her my incident report that I had
9 created.

10 Q. Okay. And then she called you in to sign
11 it?

12 A. Yes.

13 Q. I believe the exhibit that we put in
14 concerning your final paycheck, that is not here
15 today and we are not asking the Commission to
16 consider the fact that they failed or didn't pay you
17 in any form or fashion, are we?

18 A. No, we are not.

19 Q. And that will be another issue at another
20 time and another place, if there is an issue,
21 correct?

22 A. Yes.

23 MR. BRANDT: I don't have anything
24 further.

25 COMMISSIONER BECK: Mr. Brandt,

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1 anything -- or, I'm sorry, Mr. Martin, anything
2 further?

3 MR. MARTIN: Yes, sir.

4 RECROSS EXAMINATION

5 BY MR. MARTIN:

6 Q. You have received your check since then
7 haven't you, you got it in the mail?

8 A. For the two days that I worked, yes.

9 Q. Yes, ma'am. So you are not owed anything
10 else as far as days?

11 A. As far as days, no. Vacation, yes.

12 Q. All right. A couple things. If I
13 understood you correctly, you said that Dr. Ramirez
14 on March 19th, 2010, only looked at your right
15 ankle?

16 A. Yes.

17 Q. But you complained of swelling in both
18 legs when you saw him, right?

19 A. Yes, into my ankles.

20 Q. And he prescribed Lasix?

21 A. Yes.

22 Q. But he didn't look at anything but your
23 right ankle even though he prescribed you medication
24 for swelling and you complained about problems with
25 both legs?

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1 A. Yes.

2 Q. He didn't look at that?

3 A. No, he just looked at the ankles.

4 Q. Okay. And he didn't do any kind of
5 musculoskeletal exam despite the fact that he
6 documents on that?

7 A. He looked at my film.

8 Q. Okay. And this was the other thing that I
9 wanted to make sure that I got correctly. You said
10 that you reloaded the Microsoft software?

11 A. Yes, I did.

12 Q. So this wasn't something that the I.T. guy
13 that is here to testify did for your company?

14 A. No, it's not. We waited two weeks and he
15 had not done anything. And my manager told me to
16 load it myself.

17 Q. Okay. That manager I'm guessing is one of
18 the people that is not here today?

19 A. Correct.

20 Q. Okay. So as far as the incident report
21 being created on January 23rd, it's your testimony
22 that you rebooted the software on your own computer
23 on January 23rd?

24 A. Yes.

25 Q. What day of the week was that?

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1 A. That was a Saturday. We worked 10:00 to
2 1:00 on Saturdays.

3 Q. Okay. There is very little supervision on
4 Saturdays, right?

5 A. Correct.

6 Q. Okay. Kind of get on the computer and do
7 whatever you want to?

8 A. Usually.

9 Q. Yeah. So you could make an incident
10 report?

11 A. I could, but I used my own laptop to do my
12 work. And I reloaded my desktop.

13 MR. MARTIN: Okay. That is all the
14 questions I have.

15 COMMISSIONER BECK: Anything further,
16 sir?

17 MR. BRANDT: I think that is all.

18 COMMISSIONER BECK: All right. You
19 may step down, ma'am. Thank you very much.

20 MR. BRANDT: That is all I have, Your
21 Honor.

22 COMMISSIONER BECK: Thank you, sir.
23 All right. Mr. Martin, you may call your first
24 witness, please.

25 MR. MARTIN: Yes, sir. I would call

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1 Mr. Loggins, Scott Loggins.

2 COMMISSIONER BECK: All right.

3 Mr. Loggins, come on up and have a seat, please.

4 Please raise your right hand. Do you swear or
5 affirm that the testimony that you are about to give
6 today is the truth, the whole truth, and nothing but
7 the truth, sir?

8 MR. LOGGINS: I swear.

9 COMMISSIONER BECK: All right.

10 Please state your full name for the record.

11 MR. LOGGINS: Roger Scott Loggins.

12 COMMISSIONER BECK: Okay. Mr.
13 Martin?

14 MR. MARTIN: Thank you, Your Honor.

15 WHEREUPON:

16 SCOTT LOGGINS, being duly sworn and
17 cautioned to speak the truth, the whole truth and
18 nothing but the truth, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. MARTIN:

21 Q. Mr. Loggins, what is your position with
22 Onetone?

23 A. I'm president of the corporation.

24 Q. Okay. And how long have you been in that
25 position?

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1 A. That position about three years.

2 Q. Okay. So you would have been president
3 over the course of this entire incident from --

4 A. That's correct.

5 Q. -- July of 2009 until now?

6 A. That's correct.

7 Q. Okay. Do you know Ms. Mahaffey?

8 A. Yes.

9 Q. How do you know her?

10 A. We went to school together, high school.

11 Q. And has she on occasion during the course
12 of your presidency come into your office and
13 discussed issues with you?

14 A. We have -- I have an open door. I mean,
15 my door is always open. And we speak -- we are a
16 small company. We speak -- we see each other every
17 day or may not have conversations, but, yes, there
18 have been times where at times they needed things in
19 the call center or whatever that she has come into
20 my office.

21 Q. Okay.

22 A. Or sent an e-mail requesting it. And
23 after we finish corresponding back and forth with
24 e-mail we will pass each other in the hallway and
25 talk about it or whatever.

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1 Q. Okay. But she's e-mailed you directly?

2 A. Yes, that's correct.

3 Q. As far as this -- I believe she's already
4 testified that she never mentioned an accident or an
5 injury to you until around June of 2010. What was
6 your first time that you had any conversation or
7 correspondence with her about her claimed accident?

8 A. The very first conversation was that if
9 she had fallen you need to go see a doctor and we
10 would pay for it. And as we have with other
11 employees in the past, if people have minor bruises
12 and things happen around the office. Any time
13 anyone had a complaint or an injury of any nature I
14 have paid for an initial doctor visit just to, you
15 know, help save on the insurance cost.

16 Q. Does your company have a handbook?

17 A. Yes, sir, we do.

18 Q. Okay.

19 COMMISSIONER BECK: Have a what, sir?

20 MR. MARTIN: A handbook.

21 COMMISSIONER BECK: Handbook? Thank
22 you.

23 THE WITNESS: An employee manual.

24 COMMISSIONER BECK: Yes, sir.

25 BY MR. MARTIN:

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1 Q. And do you have incident forms for work
2 accidents?

3 A. I don't think that there is an actual
4 incident form in there, but there is -- it does
5 address incidents and issues and what the policy is,
6 how you should go about reporting those. I'm pretty
7 sure that they are in there.

8 Q. Okay. And would the Human Resources
9 person, Mitzi Worley, be the person to communicate
10 with regarding that?

11 A. Yes, that would be correct.

12 Q. Okay.

13 A. I mean, we are a small company, but we do
14 have a manual that addresses as many of the larger
15 corporation type things that we can.

16 Q. Okay. What other conversation did you
17 have with Ms. Mahaffey regarding her injury?

18 A. Regarding her injury, the first one was
19 that she was hurt. Go to the doctor. After she
20 went to the doctor, I realized that there was going
21 to be ongoing issues. It wasn't just a simple go to
22 the doctor for a bruise, everything is okay. Just
23 get checked out. And then, you know, told our
24 people that we needed to get in contact with the
25 insurance company and find out what the process is

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1 for a Workers' Compensation claim because we had
2 never been involved in one.

3 So we did the -- the next conversation I
4 had with Kim was that I had gotten reports that she
5 was in the call center making telephone calls to an
6 attorney in front of the other employees. And I
7 asked her to come into my office. And told her that
8 if she was going to file a Workers' Compensation
9 claim, to realize that that wasn't Onetone. It was
10 an insurance company. And that it did not matter
11 what I said or how I responded. It would not matter
12 if I called the insurance company and said that, you
13 know, we want you to honor a claim. That was not
14 us. It was between her and the insurance company.

15 And that if I was going to -- if she was
16 going to stay employed and she was going to work
17 with us to conduct herself as she would want me as
18 the Employer to conduct myself because it was
19 between her and the insurance company and not us.
20 And that I didn't feel that it was appropriate for
21 her to be making those calls in the call center.

22 Q. Did you ever tell her if it was up to you
23 you would have admitted the claim?

24 A. No, the comment was that it did not
25 matter. Even if I called the insurance company and

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1 said we wanted to do something on the claim or we
2 want you to acknowledge the claim, that it was not
3 my decision. It was her and dealing with the
4 insurance company.

5 Q. Okay. Was there any -- let me ask you
6 this. How did it come up? How did you find out?
7 Where was the -- what was going on when she told you
8 that she needed to go to the doctor?

9 A. A normal day.

10 Q. Was there a meeting in the call center?

11 A. No, that was a totally -- that was a
12 totally separate incident when Beth Moore, the
13 supervisor, left that day. Everything -- it was one
14 of the busier days of the month. Every -- I was
15 getting text messages and e-mails from every girl.
16 They were all -- everybody was in a panic back
17 there. And I went back to say, look, everybody calm
18 down. Relax.

19 People leave their employment and their
20 positions all the time. If you have issues, you
21 know, you are more than welcome to come in my office
22 and we'll talk about it one-on-one. We will address
23 whatever issues you guys have, but everybody just
24 stay focused on answering the phone and taking care
25 of customers.

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1 Q. Was there ever an occasion when you were
2 meeting with the call center where Kim raised her
3 hand and said I want to know when I'm going to go to
4 the doctor?

5 A. I know that Kim participated in the
6 conversation in the call center. As to what
7 specifically she said started or raised or anything,
8 I don't recall that.

9 Q. Okay.

10 A. I don't remember.

11 Q. Had this all -- all of this conversation
12 we're talking about, it was around June of 2010?

13 A. It all happened within two or three weeks
14 when there was -- that June, yes.

15 Q. Tell me about the OSHA complaint. What
16 was that regarding?

17 A. I have no idea where that came from. That
18 was a complete curve ball. I had taken a half a day
19 off that day out of the office. I was with my
20 children at home. And we were going -- a father/son
21 thing. I had a phone call from the office from Seth
22 and Mitzi that there was an OSHA inspector there.
23 And I was like okay.

24 So he got on the phone and proceeded to
25 tell me that I had the right because I was not

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1 present to refuse him into the building at that time
2 to do his inspections, if it needed to be
3 rescheduled when I was there. And I told him that
4 we had nothing to hide. There was no reason, I
5 mean, that he was more than welcome and review
6 anything or look and do anything he needed. And
7 throughout that morning I got updates from Seth or
8 from Mitzi that they had met with him. That he
9 interviewed employees.

10 He interviewed the same employees who
11 initiated the call, the complaint to him. Since
12 then I have gotten e-mails from them saying if I
13 would not protest their Unemployment claims because
14 they helped with the OSHA complaint. Not Kim, but
15 the other employees.

16 Q. Okay. I'm going to dial you in a little
17 bit. On the OSHA complaint, what was the results of
18 it.

19 A. That there was nothing. It was an air
20 conditioning drainage pipe that on one occasion that
21 had gotten backed up. The very next day the
22 H.V.A.C. company was there, repaired the damage,
23 fixed the system.

24 The second issue was that there was a leak
25 in a front office on the other end of the building

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1 where some water had run through one of the
2 fluorescent lights and which we made numerous calls,
3 like two or three calls over a week's period to the
4 landlord just keeping him posted and informed until
5 the roofers could get there and fix the building.

6 Q. And those were the only two times that you
7 had problems with it?

8 A. To my -- yes. In the recent -- you know,
9 in the recent memory bank that I can remember, yes.

10 Q. And just to make sure I've got this right,
11 the OSHA inspector told you what at the conclusion
12 of his investigation?

13 A. That his findings were that there was
14 no -- there was no issues or no merit or anything.
15 And gave me his personal number as far as if I had
16 any more questions or concerns or needed to talk to
17 him or anything else.

18 Q. Since this incident occurred, have you
19 gotten any contact from Crystal about a Workers'
20 Comp injury?

21 A. Not that -- related to Workers' Comp.
22 I've gotten a request to fill out some paperwork for
23 her -- I guess her benefits or D.S.S. I'm not sure
24 which group, which we filled the paperwork out
25 probably. I got a request that would I give her a

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1 referral or if she put me as a reference for a
2 future Employer, would I give her a good reference.

3 Q. This was the lady that was terminated?

4 A. Yes.

5 Q. Okay. Let me ask you. Who was it that
6 contacted you about wanting to go back to the doctor
7 because they had a fall at work?

8 A. It was Crystal. Realize that I did not
9 respond to these text messages.

10 Q. Okay. So you did get a text message from
11 Crystal asking you if she could go back to the
12 doctor after she was terminated?

13 A. The final after -- there had been several.
14 And then the final text message was that she is
15 really hurting and she was going to have to go see a
16 doctor about her fall.

17 Q. And Angela Carmona, she is the other lady
18 that left at the same time?

19 A. That's correct.

20 Q. And has she contacted you about
21 Unemployment?

22 A. She sent a text message to Seth. She, if
23 I'm not mistaken forwarded the same text to me or
24 the same e-mail the day following or a couple days
25 following saying that because -- that we may be

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1 contacted for an Unemployment issue and that she
2 would appreciate it if we would support her in that
3 since she supported us in the OSHA complaint.

4 Q. And she was one of the ones that actually
5 made the OSHA complaint; is that right?

6 A. That is correct, yes, sir.

7 Q. Okay. And all of these ladies that sent
8 you e-mails and texts, they texted you directly?

9 A. Yes, that is correct. Not -- Angela
10 Carmona was an e-mail. Crystal's was a text. And
11 then I've had a couple other e-mail correspondence
12 with Kimberly Mahaffey.

13 Q. Okay.

14 A. Over the paycheck and the final check.

15 MR. MARTIN: All right. That is all
16 the questions I have.

17 COMMISSIONER BECK: Mr. Brandt?

18 CROSS EXAMINATION

19 BY MR. BRANDT:

20 Q. Can you tell me when the conversation was
21 when you told her if she was going to stay with you
22 all, that you would expect her to conduct herself
23 differently?

24 Now, I'm paraphrasing your statement,
25 but I understood that you said something to the

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1 effect of when you called her in to counsel her
2 about calling her lawyer or talking to her lawyer in
3 the conference center, that you made some statement
4 that if you are going to stay with us?

5 A. And your question is what did I say?

6 Q. Tell us what happened in that
7 conversation, what you said to her.

8 A. If she is going to continue working with
9 us --

10 Q. Continue working with you?

11 A. Yes.

12 Q. Okay. What else?

13 A. That I would ask that she realize that her
14 issue or her ongoing battles with an insurance
15 company and not with Onetone or any of our
16 employees. And that I would appreciate it if she
17 would conduct herself while doing that in a
18 professional manner and not discuss a Workers' Comp
19 case in front of all her other co-workers.

20 Q. That did upset you that she did that,
21 didn't it?

22 A. No, absolutely not. My demeanor with
23 Kimberly is the same as it is right now. And
24 throughout the whole thing, that was my point, I had
25 no reason to be upset because any medical expenses

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1 or anything is going to have to come from the
2 insurance company, not from us directly. So I told
3 my people, I told all of them we are not on trial
4 here. You just answer the questions honestly,
5 truthfully, do the right thing, and that is how we
6 approached it.

7 Q. Let's go back to the conversation where
8 Kimberly said that you stated that you would like to
9 admit the claim but you couldn't or words to that
10 effect that I think she testified to. You testified
11 differently. Do you think that basically what was
12 said between you and her at that conversation, that
13 there might be reasonable room for her to
14 characterize or walk away with the impression that
15 you would approve the claim if you could?

16 A. Absolutely not. It's not up to me. That
17 would be a decision that I have no bearing on.

18 Q. You knew this injury -- when did you first
19 learn that she had fallen?

20 A. When she requested to go to the doctor in
21 June.

22 Q. Okay. So none of your people, Ms. Smagala
23 or Chea had ever told you that she had fallen on
24 7/21/09 until way over in '10?

25 A. I had no idea that she had fallen.

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1 Q. And you all hadn't filed a first report of
2 an injury even though she fell and may not have had
3 a -- had any physical damage though, you didn't file
4 a first report of injury, did you, until after this
5 claim was filed?

6 A. I don't understand.

7 Q. Do you know what a first report of injury
8 is?

9 A. No. That is the initial -- the initial --
10 when an employee has a -- feels like they have been
11 injured on the job, the initial incident report.

12 Q. Have you -- you were present at Ms.
13 Smagala's deposition?

14 A. Yes.

15 Q. You heard her testify that she was in the
16 room when she fell?

17 A. Yes.

18 Q. So you admit that she did fall?

19 A. I admit that Kim saw her fall, yes.

20 Q. And then you were there when Ms. Smagala
21 said that she came in the next day complaining of
22 pain, weren't you?

23 A. Yes.

24 Q. But notwithstanding that she was
25 complaining the following day, your company didn't

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1 file a first report of injury?

2 A. We did not because over the course of
3 employment there were numerous days that Kim
4 couldn't take phone calls because of her asthma way
5 prior to any leaks that may have happened from an
6 air conditioning system.

7 Q. No, I'm talking about way back in 2009.

8 A. I'm talking about throughout the whole
9 employment there was numerous medical conditions
10 which hindered her from doing her job, so no.

11 Q. Angela Carmona, does she work for you now?

12 A. No, sir.

13 Q. Did you -- I understand you to say that
14 she was one of those that filed an OSHA complaint?

15 A. To my understanding. I had no knowledge
16 of who filed it. They don't reveal that
17 information. I found out through some -- this case
18 as to who actually filed that.

19 Q. And you stated that the e-mail said
20 something you got from her would she help -- in
21 essence, would you help her because she supported
22 you in the OSHA complaint?

23 A. Yes. She was interviewed by the
24 inspector.

25 Q. What do you think that she meant when she

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1 said she supported you in the OSHA complaint?

2 A. My honest testimony is that I think she
3 was saying I didn't push the issue and try to sink
4 you guys or get you in any kind of trouble. And in
5 return I would like for you not to do that on my
6 employment claim.

7 Q. Could it have been because she received
8 pressure from her superiors not to tell the truth to
9 OSHA?

10 A. Absolutely not.

11 Q. When was the OSHA complaint filed?

12 A. In the midst of all of this, end of June,
13 July. I don't know the exact date.

14 Q. 2010?

15 A. Yes, sir, that's correct. I'm assuming
16 that is when all of this -- that is when he came to
17 the office. I don't know the actual day that it was
18 filed.

19 Q. Do you have any personal knowledge of
20 anything the OSHA inspector did to try to determine
21 whether or not there was a mold problem in the
22 building other than talk to the people?

23 A. No. I was not in the office.

24 Q. Do you know whether they tore into
25 anything and tried to look in air conditioning vents

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1 or anything like that?

2 A. I have no idea.

3 Q. Do you know whether they even took air
4 samples?

5 A. No, sir. I was not present in the office.
6 I have no -- that's every conversation I had with
7 him.

8 Q. You are the president of the company?

9 A. Yes, sir, that's correct.

10 Q. Has anybody ever reported to you what OSHA
11 did?

12 A. No.

13 Q. What kind of investigation or examination
14 of the air conditioning systems that may have
15 occurred?

16 A. The only thing that was reported was that
17 he interviewed employees and talked with some folks
18 there in the office. No.

19 Q. Okay. Have you paid for that first visit
20 to Ramirez that you told her --

21 A. To my knowledge, yes. I have -- to my
22 knowledge that has been paid, yes, sir.

23 Q. And when you say to my knowledge, you
24 believe that it's been paid, but you don't know for
25 sure or you know for sure?

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1 A. I approved for it to be paid. I spoke to
2 the doctor's office when she set up her initial
3 appointment. I made the phone call and said we will
4 be responsible for this visit. And then after that
5 he came back with on going treatment or whatever.
6 And I said that is the point when I said we need to
7 call the insurance company and find out how to
8 handle this.

9 Q. Did that -- let me ask you this. If that
10 Bill, that initial treatment, has not been paid, are
11 you still willing to pay it?

12 A. Yes.

13 Q. Okay.

14 A. Absolutely.

15 COMMISSIONER BECK: Anything further,
16 Mr. Martin?

17 MR. MARTIN: Yes. Just one thing.

18 REDIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. On the OSHA complaint, I believe it was
21 during Ms. Mahaffey's deposition when I asked her
22 about the OSHA complaint that she said she and Angie
23 Carmona were the ones who had filed it. And you
24 were present during that deposition, correct?

25 A. That's correct, yes, sir.

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1 Q. And the OSHA complaint process is
2 anonymous so there was no way for you to have known
3 who made the OSHA complaint until you heard that
4 from Ms. Mahaffey in her deposition, right?

5 A. I never even asked the inspector.

6 Q. So it may be that Ms. Carmona thought you
7 didn't know who made the complaint and was making
8 this suggestion --

9 A. Absolutely, yes.

10 Q. That she would help you out --

11 MR. BRANDT: Object to the leading
12 question to his witness.

13 COMMISSIONER BECK: Rephrase it if
14 you would like, Mr. Martin.

15 MR. MARTIN: I've covered it. Thank
16 you.

17 COMMISSIONER BECK: Anything further,
18 Mr. Brandt? You may step down, sir. Thank you very
19 much. Your next witness, sir?

20 MR. MARTIN: Mr. Keith Nichols. Do
21 have a seat in that chair by the microphone.

22 COMMISSIONER BECK: Mr. Nichols,
23 would you raise your right hand, please. Do you
24 swear or affirm that the testimony you are about to
25 give today is the truth, the whole truth, and

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1 nothing but the truth, sir?

2 MR. NICHOLS: Yes, sir.

3 COMMISSIONER BECK: Please state your
4 full name for the record.

5 MR. NICHOLS: Keith William Nichols.

6 COMMISSIONER BECK: All right. Mr.
7 Martin?

8 MR. MARTIN: Thank you.

9 WHEREUPON:

10 KEITH NICHOLS, being duly sworn and
11 cautioned to speak the truth, the whole truth and
12 nothing but the truth, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. MARTIN:

15 Q. Mr. Nichols, what do you do? What is your
16 job?

17 A. The director of information technology.

18 Q. Okay. And that is with Onetone Telephone?

19 A. Yes, sir.

20 Q. Do you have any other jobs that you do?

21 A. I have my own business as well, Nichols
22 Solutions Computer Programming.

23 Q. Okay. I want to show you a document that
24 has been marked as an exhibit.

25 MR. MARTIN: Thank you, Commissioner.

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1 COMMISSIONER BECK: Uh-huh.

2 BY MR. MARTIN:

3 Q. This is Exhibit -- Defendant's Exhibit
4 Number 2. And there is a third page on that. It's
5 kind of blacked down one side. It looks like a
6 screen shot that's been printed out. Can you tell
7 us what that is?

8 A. Yes, sir. This is the file properties of
9 the work injury report Form 722. And basically
10 shows the created date was Saturday, January 23rd,
11 2010, at 1:06 p.m. It was modified on Wednesday,
12 June 30th, 2010. And the access date is the date
13 that I pulled this file up.

14 Q. Okay. So that third date it's got at the
15 bottom, November 2nd --

16 A. Yes, sir.

17 Q. -- 2010, that is when you printed that
18 off?

19 A. Yes.

20 Q. Okay. And looking at the modified date
21 there, there is -- there is another two pages to
22 this Defendant's Exhibit 1, 1 of those being an
23 e-mail. If you would look at that. Is the modified
24 date on the e-mail the exact same day or date and
25 time as the -- I'm sorry. Is the date on the e-mail

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1 the exact date and time as the modified date and
2 time on the screen shot there?

3 A. Yes, sir.

4 Q. What does that indicate to you?

5 A. That the document was modified, saved, and
6 closed out and then immediately e-mailed.

7 Q. All right. Ms. Mahaffey has testified
8 that on January 23rd of 2010, she rebooted or
9 re-uploaded Microsoft on her computer. And that as
10 a result of that, that changed the dates and that is
11 why it says January of 2010. Were you made aware of
12 any changes to the software?

13 A. No, sir.

14 Q. Did you -- were you ever asked to do
15 anything with her computer around that time period?

16 A. Not that I remember, no, sir.

17 Q. Okay. What effect would it have -- let me
18 ask you this. Do the employees have access to the
19 Microsoft software?

20 A. Only if they brought in their own personal
21 copy.

22 Q. Okay. So you would not hand them copies?

23 A. No, sir.

24 Q. And they wouldn't be able to go to your
25 office and get a copy of it?

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1 A. No, sir.

2 Q. Okay. What effect would it have if she
3 did bring in her own copy?

4 A. She would have reloaded and -- but she
5 would have had to save her own files to be able to
6 put those back on the machine if she wiped
7 everything out.

8 Q. How would that have affected that document
9 that you printed out? Would it --

10 A. Whatever date she put it back on the
11 computer, if that is indeed what happened, then --

12 Q. So that would be the creation date?

13 A. Yes, sir.

14 Q. So it could say it was created on
15 January 23rd if she up loaded Microsoft to her
16 computer on January 23rd?

17 A. If she reloaded the entire Windows
18 operating system then that would be the only way
19 to -- just Microsoft Office, no, sir.

20 Q. Okay. So she would have to do the whole
21 operating system?

22 A. Yes, sir.

23 MR. MARTIN: All right. That is all
24 the questions that I have of this witness.

25 COMMISSIONER BECK: All right. Mr.

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1 Brandt?

2 RECROSS EXAMINATION

3 BY MR. BRANDT:

4 Q. Just that modification date, does it show
5 how it was modified?

6 A. It does not.

7 Q. Can you tell how it was modified at all?

8 A. It does not, no, sir.

9 Q. Would it just have been basically if she
10 went back in there and printed it up again, would
11 that show a modification?

12 A. Not just pulling it up to print. If you
13 just pull it up to print, that would be the access
14 date and time, but if you actually make a change to
15 the document, whether it be spacing or add a
16 sentence, anything.

17 Q. Spacing or anything would cause a
18 modification?

19 A. Yes.

20 Q. Even if the words on it and everything was
21 the same, it would show a modification if the
22 spacing was changed?

23 A. Yes, sir.

24 Q. And that is the margins, head, everything?

25 A. Yes, sir.

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1 Q. Okay. But you can't say that that
2 document was not on that computer prior to
3 January 2010, can you?

4 A. Not unless it was reformatted, no, sir.

5 Q. So you are not here to say that that was
6 the date of the original creation of that document
7 if, in fact, a reload occurred?

8 A. To the best of my knowledge it was done on
9 the --

10 Q. Excuse me?

11 A. To the best of my knowledge it was done on
12 the 23rd of January.

13 Q. But have you not been asked to come down
14 there and work on that computer for about two weeks
15 and you didn't show up?

16 A. No, sir. I would have been --

17 Q. If Beth Moore had called you to come down?

18 A. No, sir.

19 Q. Do you have records of when anybody in the
20 company asks you to come and do any kind of
21 maintenance or work on a computer, is any records
22 kept?

23 A. Usually I generally have an e-mail that
24 would be sent.

25 Q. If she e-mailed you there could be a

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1 record?

2 A. Yes, sir.

3 Q. Okay. And have you checked to see about
4 e-mails, about when the last service date on that
5 computer was prior to January of 2010?

6 A. No, sir.

7 Q. Or any complaints at all? What if the
8 person just complained to you, my computer is acting
9 up, can you fix it? Would you require them to put
10 it in writing before you went down there and worked
11 on it?

12 A. Not necessarily, no, sir.

13 Q. You would just go do it?

14 A. Correct.

15 Q. And there would be no record of it?

16 A. Correct.

17 Q. Correct? Now, I want to make sure that I
18 understand, did you reload Windows?

19 A. Not on that machine, no, sir.

20 Q. What program is that, that you pulled up?

21 A. This is just her computer, Windows.

22 Q. Windows?

23 A. Yes, sir.

24 Q. And she could have reloaded it, couldn't
25 she?

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1 A. She could have, yes, sir.

2 MR. BRANDT: I have nothing further.

3 COMMISSIONER BECK: I've got a
4 question. And I'm by know means a techy. Computers
5 scare the daylights out of me to try to figure out
6 how they work, but one of the things I did when I
7 was listening to the testimony earlier, and I'm not
8 sure I'm comparing an apple with an apple, and that
9 is what I want to try to figure out here because I
10 think this is an important aspect of this case.

11 Let's assume for arguments sake that I
12 created a document in June of this year.

13 THE WITNESS: Okay.

14 COMMISSIONER BECK: On a computer
15 that had Windows XP is the earlier version before
16 Seven; is that correct?

17 THE WITNESS: Correct.

18 COMMISSIONER BECK: Let's say I
19 created that on Windows XP. And that data base was
20 transferred to another computer with Windows XP.
21 Would that affect the created or modified date of a
22 document? And am I comparing an apple with an apple
23 or am I completely off base in that scenario?

24 THE WITNESS: There are a few
25 different ways. If you -- if you move a file with

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1 the same name to a new machine, that will have
2 the -- a new created date from a new name to a new
3 machine. If you move a file from say your My
4 Documents folder to your desktop, it will retain
5 that information of the created, modified, and
6 access dates.

7 COMMISSIONER BECK: And that is what
8 is throwing me a little bit because I've done that
9 while we were -- while I was listening to some
10 testimony. I have a document that was created on
11 June 11, 2010. It was moved from a computer that
12 had Windows XP -- had XP operating system to a
13 different computer with a Seven system, and it still
14 shows the date that document was originally created
15 under my properties section.

16 THE WITNESS: Right. It has to do
17 with the name change and going to a new -- a fresh
18 copy. It's not moving from one to another.

19 COMMISSIONER BECK: I guess what I'm
20 trying to get to in my line of questioning here is
21 what effort has to take place to change that
22 original date that that document was created to a
23 completely different date? What effort has to be
24 undertaken to do that?

25 THE WITNESS: You would have to

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1 understand a great deal about it.

2 MR. BRANDT: I didn't hear the
3 answer.

4 COMMISSIONER BECK: You would have to
5 know a great deal about it, he said. And what do
6 you mean by that?

7 THE WITNESS: In the computer
8 industry, I mean, there are a lot of smart people,
9 but you would have to know -- it would be a great
10 deal of trouble to go through to change something
11 like that.

12 COMMISSIONER BECK: To change the
13 original date the document was created?

14 THE WITNESS: Yes, sir. Right.

15 COMMISSIONER BECK: Okay. Mr.
16 Martin, anything further?

17 MR. MARTIN: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. The computer that you took this off of --

21 A. Yes, sir.

22 Q. -- what computer was it?

23 A. It was a Dell machine like our standard
24 office ones that we have. And once an employee
25 leaves for a few days after that we remove that and

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1 send it to Mr. Loggins' office.

2 Q. So this was, you are sure, the actual
3 computer that she used while she was there?

4 A. Yes, sir.

5 Q. Is the point I'm trying to get to. Okay.
6 So there wasn't any moving this document from one
7 machine to another. This is the machine that she
8 used while she was there?

9 A. Correct.

10 Q. Okay. And if I understood the modified
11 date, the only way -- if she just pulled that
12 document up, accessed it --

13 A. Right.

14 Q. -- it would have an access code?

15 A. Correct.

16 Q. To modify it she would have to make a
17 change to it?

18 A. That is correct.

19 Q. Some change. It would take more than just
20 printing it off or pasting it on to an e-mail or
21 anything like that?

22 A. Correct.

23 Q. They would have to modify it? Okay.

24 MR. MARTIN: That is all the
25 questions I have.

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1 COMMISSIONER BECK: Mr. Brandt?

2 RECROSS EXAMINATION

3 BY MR. BRANDT:

4 Q. Would it matter if you transferred it to a
5 machine and copied it on a flash drive and then took
6 the flash drive back over to the original one?

7 A. I am not sure on that. I would have to
8 check and see if it does that.

9 Q. But you can't say today?

10 A. No, sir.

11 MR. BRANDT: Okay. Thank you.

12 COMMISSIONER BECK: Now, Mr. Brandt,
13 was your question whether that would alter the
14 modified date?

15 MR. BRANDT: No. Altered the
16 creation date.

17 COMMISSIONER BECK: The creation
18 date? Okay.

19 MR. BRANDT: Well, affecting any --
20 well, we know when it got back in now to the
21 creation date, that those two dates were pulled off
22 of whatever was there. So the only date in issue
23 would be the creation date, and that is what I was
24 asking. If it was taken from another computer while
25 the computer was put into another computer, then put

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1 on a flash drive there, and then brought back to the
2 original computer for the reload. You reload it off
3 the flash drive, would that creation date get
4 changed in the process?

5 COMMISSIONER BECK: All right. Any
6 other questions?

7 MR. BRANDT: And he said no.

8 MR. MARTIN: I think that is it.

9 COMMISSIONER BECK: All right. You
10 may step down, sir. Thank you very much. Mr.
11 Martin, any other witnesses?

12 MR. MARTIN: I'm going to stick with
13 the depositions and that will be it, Commissioner.

14 COMMISSIONER BECK: All right.
15 Anything else we needed to today?

16 MR. BRANDT: I would just like to
17 call Ms. Mahaffey back to explain exactly how it was
18 done.

19 COMMISSIONER BECK: All right.
20 Thought you might.

21 MR. BRANDT: If I may.

22 COMMISSIONER BECK: Ms. Mahaffey?
23 Remind you you are still under oath, ma'am.

24 MS. MAHAFFEY: Yes, sir.

25 COMMISSIONER BECK: Mr. Brandt?

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1 WHEREUPON:

2 KIMBERLY MAHAFFEY, having been
3 previously duly sworn and cautioned to speak the
4 truth, the whole truth and nothing but the truth,
5 testifies as follows:

6 REBUTTLE DIRECT EXAMINATION

7 BY MR. BRANDT:

8 Q. Ms. Mahaffey, tell us the process you went
9 through, what happened to your computer, and how it
10 got back -- that information got back around and
11 when you reloaded it on your computer at work?

12 A. At the beginning of this year my computer
13 started having a blue screen and rebooting several
14 times a day. And it was asked of I.T. to fix it.
15 And he said that he would be there shortly. Two
16 weeks later it was getting worse and he hadn't come
17 yet. And Beth told me to go ahead and reload it
18 that weekend when I worked. And I reinstalled
19 Windows, freshly installed. And had to reload all
20 of my documents on to the computer.

21 Q. Okay. And how did you do that? Did you
22 come back with a flash drive from another computer?

23 A. Yes. I had copied the documents to a
24 flash drive, reloaded the Windows, and then put the
25 flash drive back on it and put the documents back on

Mahaffey vs. Onetone Telecom

1 to the computer.

2 Q. And Beth Moore is aware of the request for
3 I.T. to come to re-do your computer?

4 A. Yes. She is the one that requested him to
5 come.

6 MR. BRANDT: Okay. I have nothing
7 further of this witness.

8 COMMISSIONER BECK: Mr. Martin?

9 CROSS EXAMINATION

10 BY MR. MARTIN:

11 Q. Beth Moore is not here; is that right?

12 A. Correct.

13 Q. Okay. You did not identify her as a
14 witness?

15 A. No.

16 Q. Okay. And where did you get this copy of
17 Microsoft Windows?

18 A. It was my copy. They do not have copies
19 there at Onetone.

20 Q. So Beth told you -- your supervisor told
21 you that it would be okay for you to load your own
22 Microsoft Windows onto the computer?

23 A. Yes. Onetone had used my copy before.

24 Q. So why do they have an I.T. guy?

25 A. I do not know.

Mahaffey vs. Onetone Telecom

1 Q. All right. And what modification did you
2 make to the document?

3 A. The only thing I did was open it and check
4 it. And then when I went to close it it asked me to
5 save it because that is the first time that it had
6 been opened in awhile.

7 Q. So you didn't make any modifications to
8 it?

9 A. No.

10 Q. Okay. And was that a registered version
11 of Microsoft that you used?

12 A. The Windows? Yes.

13 Q. Who is it registered to?

14 A. It's registered to me.

15 Q. Well, then it would reflect that, wouldn't
16 it?

17 A. Well, you put the name yourself in the
18 computer when you load Windows.

19 Q. Okay. So wouldn't the computer then
20 reflect that that system was registered to you?

21 A. When you load windows you create a name
22 for it and I created it as Onetone call center, I
23 believe.

24 Q. And you are not saying that you created
25 this document on a different computer?

Mahaffey vs. Onetone Telecom

1 A. No, I created it on that computer.

2 Q. Okay. You created it on that computer.

3 You loaded Microsoft Windows on that computer on a

4 Saturday in January while you were at work?

5 A. Yes.

6 Q. And then you took all of your documents

7 and put them on a flash drive --

8 A. Yes.

9 Q. -- when you were doing this?

10 A. Yes.

11 Q. And then put them back to the computer.

12 Do you still have that flash drive?

13 A. Yes, I do.

14 Q. Do you have it with you?

15 A. It may be the one in my pocketbook. I'm

16 not sure. It may be the one I have at home.

17 MR. MARTIN: Okay. I think that

18 could probably get to the bottom of it,

19 Commissioner, if we could get a copy of that flash

20 drive I would think that it would have the actual

21 creation date on it.

22 COMMISSIONER BECK: Mr. Brandt?

23 MR. BRANDT: I don't have any

24 objection to that. I think also I was going to ask

25 you to hold this open and give us the chance to take

Mahaffey vs. Onetone Telecom

1 the deposition of Beth Moore. She has knowledge of
2 all of this.

3 COMMISSIONER BECK: You had that
4 opportunity to get her here today.

5 MR. BRANDT: Well, I didn't know this
6 issue was coming up today, but -- and get as, I
7 guess, convoluted as it was with the computer stuff,
8 but anyway that is obviously we don't have the flash
9 drive here. He didn't ask for it.

10 MR. MARTIN: That is fine.

11 COMMISSIONER BECK: All right. Any
12 other questions?

13 MR. MARTIN: No, sir.

14 COMMISSIONER BECK: All right. You
15 may step down, ma'am. Thank you very much. Any
16 other witnesses?

17 MR. MARTIN: No, sir.

18 COMMISSIONER BECK: That will
19 conclude this proceeding. Thank you all very much.

20 (Whereupon, the hearing
21 was concluded at 1:00 p.m.)
22
23
24
25

Mahaffey vs. Onetone Telecom

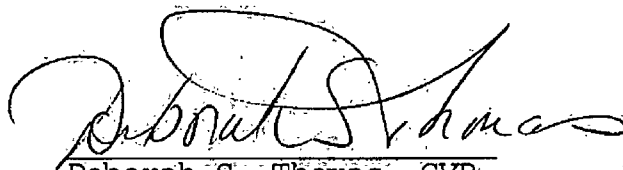
Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Mahaffey vs. Onetone on the 1st day of December, 2010; that the witnesses were first duly sworn, and that the foregoing 100 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Commissioner T. Scott Beck, South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina 29201.

In witness whereof I set my hand and seal this 23rd day of January, 2011.



My Commission
expires 1/4/18

Deborah S. Thomas, CVR
and Notary Public for the
State of South Carolina

1 Note 6/29/2010 10:04:00 AM

Kimberly Mahaffey, Gender: F, DOB: 10/14/1970, Encounter Date and Time: 6/29/2010 10:04AM, Examiner: Henry M. Ramirez, P.A.C.

Chief complaint

The Chief Complaint is: Fell last part of July 2009 injuring her both shoulder and knees. She did not seek any medical attention and has complained of pain in all extremities since her fall getting progressively worse.

History of present illness

Kimberly Mahaffey is a 39 year old female.

- Musculoskeletal symptoms pain in both knees and shoulders.

Physical findings

Normal movement of all extremities decrease rom in both shoulders and knees with swelling and tenderness at bursae site.

Assessment

- Sprained acromioclavicular joint
- Knee sprain

Broken Screw Right Knee:

Therapy

- Injection - Dexamethasone Acetate - 1 mg 8 units total.
- Continue current medication x-ray are normal and will start pt three times a week and will check in two weeks

Right knee screw is broken and will send to orthopedist and will send to dr mcallum the md who did the surgery 2004

She probably broke the screw when she fell and this has continued to give her problems since her fall.

Plan

- Complete, two or more views of the shoulder both
- A complete knee x-ray both

Celebrex 200 mg capsule, SIG: 1 cap(s) orally once a day for 30 day(s). Dispense: 30 cap(s). Refill: 5.

Cathryn McAlpine, MD
Henry Ramirez, PA-C
April Ross, PA-C



UPSTATE MEDICAL ASSOCIATES, P.A.

Cathy Hurray, MD
Tommy Small, FNP
Nancy Smith, FNP

TO BE COMPLETED BY MEDICAL PROVIDER:

Date Seen:

6/29/10

Patient Name:

Kim Mahoney

DOB:

Diagnosis / Complications:

SpRAIN both shoulder & knee
Broken screw @ knee

X-ray made: ☐ Yes

☐ No

Area:

X-ray diagnosis: ☐ No Fracture

☐ Fracture

☐ Other:

Surgical Procedure: ☐ No

☐ Yes

Procedure:

Rx/ Injections: ☒ No

☐ Yes

Details:

Decidua LA is
Celebraz 200 mg

Referred to:

Appt: Date

Time

Estimate of disability:

☐ None

☐ Out of work (must call the HR director of the company before pt leaves)

☐ Light Duty

Restrictions:

Stop PT 3x a week X 4 wks
Regular duty

Can return to work: ☒ Today

☐ Tomorrow

☐ Other:

Return to UMA for recheck:

☐ Tomorrow

☐ Next week

☐ Other:

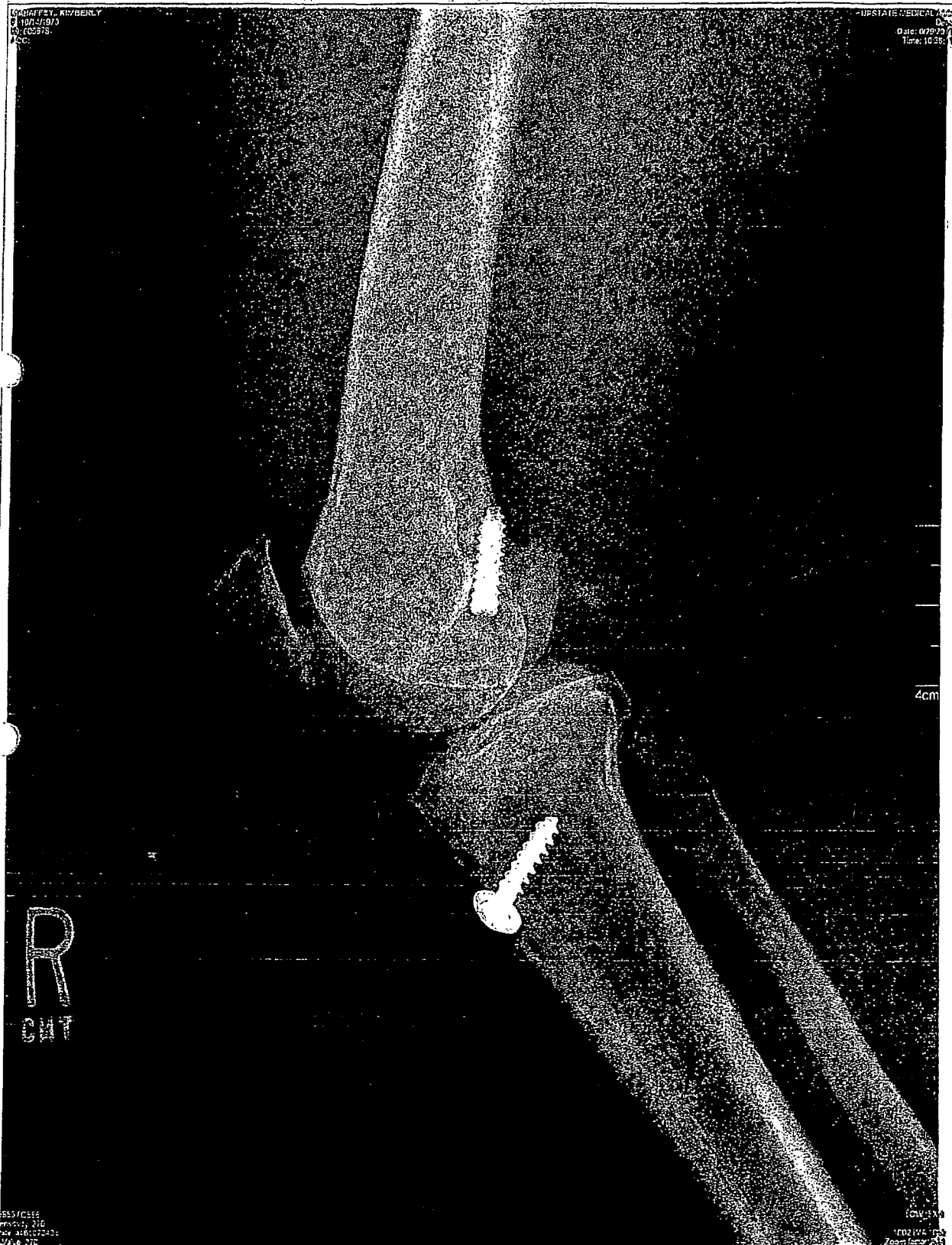
Cathryn McAlpine, MD
Henry Ramirez, PA-C
April Ross, PA-C

Cathy Hurray, MD
Tommy Small, FNP
Nancy Smith, FNP

Date

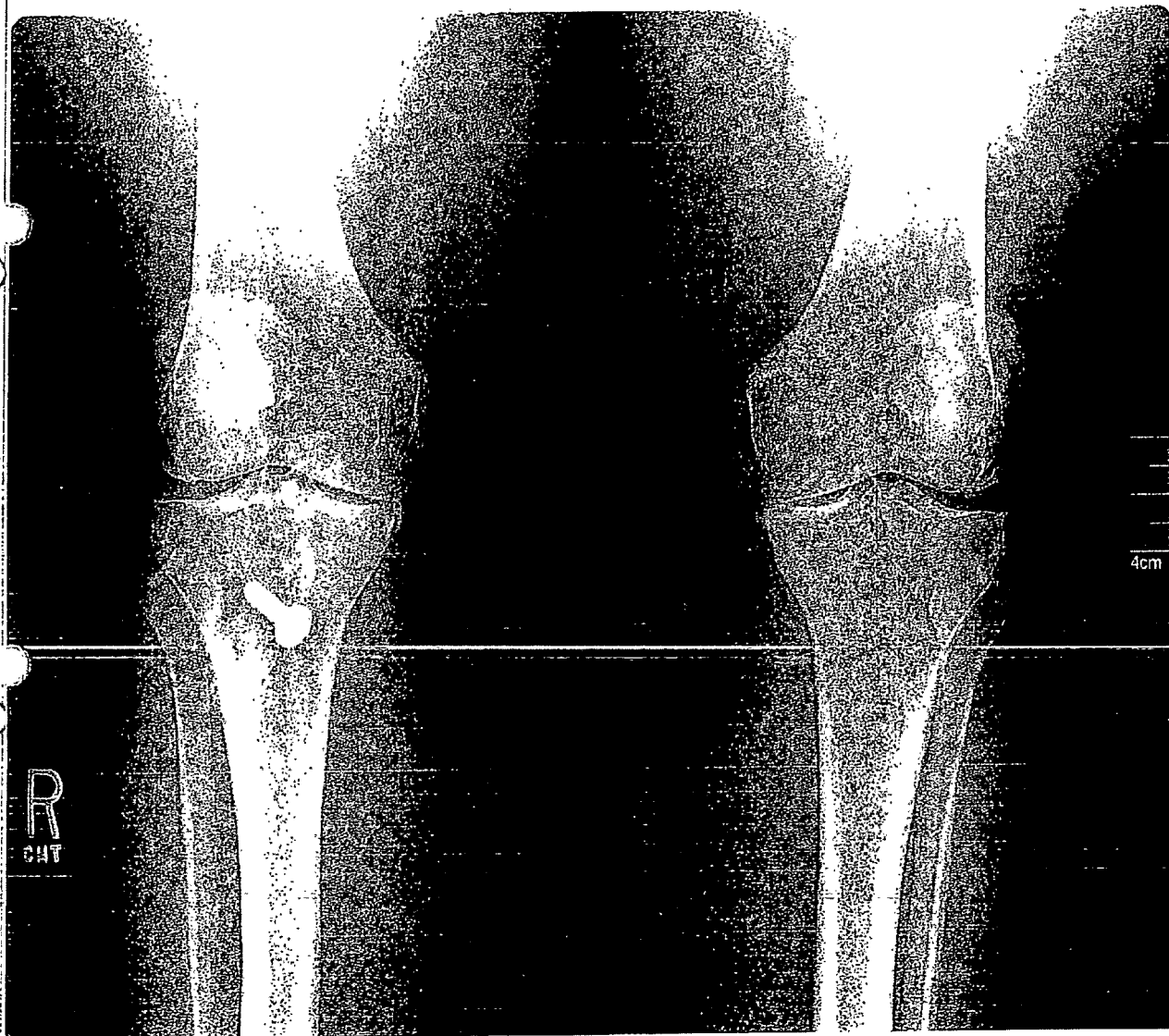
Appt 2nd
6/29/10

WORKERS COMPENSATION CLAIM



MAHAFFEY, KIMBERLY
P 10/14/2010
R 09:00:00
0000

ADDITIONAL INFORMATION
DATE: 10/14/2010
TIME: 09:00:00
PAGE: 000001



10/14/2010
10:00:00
10/14/2010
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10/14/2010
10:00:00
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1 Note 3/19/2010 10:46:00 AM

Kimberly Mahaffey, Gender: F, DOB: 10/14/1970, Encounter Date and Time: 3/19/2010 10:46AM, Examiner:
Henry M. Ramirez, P.A. C

Chief complaint

The Chief Complaint is: Asthma seems to be progressively worse - has to use her rescue inhaler 2x's a day - thinks it is related to the building she works in, swelling in legs, and check right foot.

History of present illness

- Kimberly Mahaffey is a 39 year old female.
- Pulmonary symptoms asthma acting up.
 - Skin symptoms swelling in ankles.

Personal history

No recent change in medical history.
Family history unchanged.
Social history unchanged.

Review of systems

Head: No head symptoms.
Neck: No neck symptoms.
Eyes: No eye symptoms.
Otolaryngeal: No otolaryngeal symptoms.
Breasts: No breast symptoms.
Cardiovascular: No cardiovascular symptoms.
Gastrointestinal: No gastrointestinal symptoms.
Genitourinary: No genitourinary symptoms.
Endocrine: No endocrine symptoms.
Hematologic: No hematologic symptoms.
Musculoskeletal: No musculoskeletal symptoms.
Neurological: No neurological symptoms.
Psychological: No psychological symptoms.

Physical findings**Vital Signs:**

Vital Signs/Measurements	Value	Date
Tympanic membrane temperature	97.7 F	3/23/2010
PR	96 bpm	3/23/2010
Blood pressure	126/90 mmHg	3/23/2010
Weight	335 lbs	3/23/2010
Height	68 in	3/23/2010

General Appearance:

• Well developed. • Well nourished. • In no acute distress.

Head:

Appearance: • Head normocephalic.

Neck:

Suppleness: • Neck demonstrated no decrease in suppleness.
Thyroid: • Showed no abnormalities.

Eyes:

General/bilateral:

Pupils: • PERRLA.

Page 1

Lymph Nodes:

- ° No adenopathy.

Lungs:

- ° Pulmonary auscultation revealed abnormalities wheezing.

Cardiovascular:

- Jugular Venous Distention:* ° JVD not increased.
- Heart Rate And Rhythm:* ° Normal.
- Heart Sounds:* ° No gallop was heard. ° No pericardial friction rub heard.
- Murmurs:* ° No murmurs were heard.
- Carotid Arteries:* ° No bruit in the carotid artery.
- Arterial Pulses:* ° Normal.
- Edema:* ° Not present.

Abdomen:

- Auscultation:* ° Bowel sounds were normal.
- Palpation:* ° Abdomen was soft. ° No abdominal tenderness. ° No mass was palpated in the abdomen.
- Liver:* ° Not enlarged.
- Spleen:* ° Not enlarged.

Musculoskeletal System:

- General/bilateral:* ° Normal movement of all extremities.

Neurological:

- Sensation:* ° No sensory exam abnormalities were noted.
- Motor:* ° Strength was normal.
- Coordination / Cerebellum:* ° No bilateral incoordination was noted.
- Gait And Stance:* ° Normal.

Psychiatric:

- Mood:* ° Not anxious.
- Affect:* ° Congruent with the mood.

Skin:

- ° General appearance was normal 2 plus edema. ° No generalized cyanosis. ° Not dry. ° Not generally warm.

Assessment

- Edema

Therapy

- Continue current medication see me in one month and weight is 335 today
- rx for nebulizer qid.

Allergies and Adverse Reactions

No Known Allergies.

Plan

Symbicort 160/4.5 solution. SIG: 2 puff(s) inhaled 2 times a day for 30 day(s) . Refill: 5.
Proventil HFA CFC free 90 mcg/inh aerosol with adapter. SIG: 2 puff(s) inhaled 4 times a day for 30 day(s). Refill: 5.
Singulair 10 mg tablet. SIG: 1 tab(s) orally once a day (in the evening) for 30 day(s) . Dispense: 30 tab(s). Refill: 5.
Lasix 40 mg tablet. SIG: 1 tab(s) orally once a day for 30 day(s). Dispense: 30 tab(s). Refill: 5.
DuoNeb 2.5 mg-0.5 mg/3 mL solution. SIG: 3 mL inhaled 4 times a day for 30 day(s) . Refill: 5.

*Dr. P. Sean McCallum, M.D.
Blue Ridge Orthopedics
10630 Clemson Blvd., Suite 100
Seneca, SC 29678*

Workers' Compensation Injury Questionnaire
Patient: Kimberly Dawn Mahaffey / Date of Injury: 7/21/2009

1. Based upon your evaluation and treatment of Ms. Mahaffey, were the injuries and condition for which you have treated Ms. Mahaffey's right knee since August 2010 caused or exacerbated by the work accident she was involved in on July 21, 2009, in which she tripped, "twisting her knee and falling onto her right shoulder"?

 ✓ Yes OR No

2. Based upon your evaluation and treatment of Ms. Mahaffey, were the injuries and condition for which you have treated Ms. Mahaffey's right shoulder since August 2010 caused or exacerbated by the work accident she was involved in on July 21, 2009, in which she tripped, "twisting her knee and falling onto her right shoulder"?

 ✓ Yes OR No

3. Are the opinions you provided above expressed to a reasonable degree of medical certainty?

 ✓ Yes OR No

Date: 10/1/10


Dr. P. Sean McCallum, M.D.

Acct No.: Patient...: Kimberly Mahaffey
Date Of Birth: 10/14/1970
Doctor...: P. Sean McCallum, MD Visit Date: 9/8/2010

HISTORY: Kimberly returns in followup after MRI scan of the right shoulder and knee did confirm a rotator cuff tear of the supraspinatus of the right shoulder, full thickness with mild retraction as well as medial meniscal tear of the right knee. Her symptoms remain unabated.

PLAN: We discussed options at length including operative arthroscopy with probable arthroscopic cuff repair. She would like to hold off on arthroscopy to the knee until after her cuff rehab is progressing. We will schedule her shoulder surgery at her convenience. Her work restrictions remain in effect.

P. Sean McCallum, MD

Date: 9/8/2010

DR. Sean P. McCallum



WORK STATEMENT

PATIENT'S NAME: Mahaffey, Kimberly

OUT OF WORK FROM: _____ TO: _____

RETURN TO WORK: _____

WORK RESTRICTIONS:

- | | |
|--|--|
| ☐ no walking _____ | ☐ no stooping _____ |
| ☐ no standing _____ | ☐ no lifting _____ |
| ☐ no climbing _____ | ☐ light duty _____ |
| ☐ no bending _____ | |

COMMENTS: Patient to continue current work status for 3 weeks.

9/8/2010

Today's Date

Physician's Signature

If a disability form will be required, it is the policy of Blue Ridge Orthopaedics to have such a form completed in 7 working days.

Acct No.: Patient...: Kimberly Mahaffey
Date Of Birth: 10/14/1970
Doctor...: P. Sean McCallum, MD Visit Date: 8/11/2010

HISTORY: Kimberly is a very pleasant 39-year-old woman who is status post ACL reconstruction to the right knee in 2004. She tripped about a year ago twisting her right knee and falling onto her right shoulder. She is having significant pain in both areas since then, but has had progressive weakness with lifting the arm above the shoulder level. No neck pain or radicular symptoms and significant catching mechanical symptoms in the right knee. It has persisted despite oral antiinflammatories and activity modifications. She comes today for evaluation.

PAST MEDICAL HISTORY: She has a history of right knee ACL reconstruction in 2004 and was treated for pneumonia in 2008.

MEDICATIONS: She takes Symbicort, Singulair, and Proventil inhaler.

SOCIAL HISTORY: She notes no tobacco or alcohol use. She is single and lives in Seneca. Works at One Touch Telecom. Her referring physician is Henry Ramirez.

ALLERGIES: No allergies to medications.

REVIEW OF SYSTEMS: Otherwise noncontributory.

PHYSICAL EXAMINATION: On exam of the right knee today, she has well-healed scars from her previous ACL reconstruction. She has good endpoint to Lachman's testing, but diffuse medial and lateral joint line tenderness reproduced with McMurray's testing. Her neurovascular exam is intact to the foot. Her range of motion is from 0 to 130 degrees of flexion. Examination of the right shoulder has marked discomfort with any impingement maneuvers to the shoulder with some weakness with supraspinatus testing. No discomfort with labral provocative maneuvers. Her neurovascular exam is intact in the upper extremity as well.

ASSESSMENT: Possible rotator cuff tear of the right shoulder and possible meniscal tear of the right knee.

PLAN: We will proceed with an MRI scan of both. She has had significant symptoms for the last year. They are only getting worse. We will see her back after her scans are completed.

P. Sean McCallum, MD

Oconee Memorial Hospital / MRI Department
Phone: 864-885-7632
FAX: 864-885-7672

Dear Dr. — MAHAFFEY, KIMBERLY DA F
A1022800065 38Y 10/14/70
PHYS: MCCALLUM, SEAN P
MR: 000081781 PROC8/17/10 -

Date: 8-17-10

Your patient (above reference) had a scheduled appointment with our office. We wish to bring the following item(s) to your attention and ask for your assistance as indicated:

____ Your patient failed to report for their MRI study and we have rescheduled them for _____

____ Your patient failed to report for their MRI study and we have been unable to contact them to reschedule. Please contact the patient and have them call us to reschedule.

✓ Your patient was unable to complete the MRI study for the following reason: Due to size MRI Rt shoulder only

____ Please prescribe pre-medication / sedation for your patient (as you feel indicated) and reschedule.

____ Other: Completed MRI Rt Knee

We wanted to bring this matter to your attention to help you with scheduling your patient for their follow-up appointment at your office.

Thank you,

Ki Brissey

Oconee Memorial Hospital
MRI Department

864-885-0551 864-885-1822 - fax	 MOUNTAINVIEW MEDICAL IMAGING 1059 By-Pass 123+ Seneca SC 29678	James Hardy, M.D. O. Alex Hicklin, III, M.D. Thomas M. Doud, M.D.
------------------------------------	---	---

NAME: Mahaffey, Kimberly
DOB: 10/14/1970
Physician: MCCALLUM, PATRICK S

DATE OF EXAM: 09/03/2010
SSN:
Chart No: 35188

RIGHT SHOULDER MRI:

INDICATION: 39 year-old-female with right shoulder pain. Limited range of motion;

Open MRI is performed due to patient's size and body habitus which somewhat limits the images. Axial T1 and T2, oblique sagittal T2, and oblique coronal T1, T2 and STIR-weighted sequences are examined.

There does appear to be increased signal and thickening within the supraspinatus tendon of rotator cuff anteriorly. No significant retraction or atrophy of supraspinatus is confirmed, but there does appear to be some extravasated fluid into subacromial/subdeltoid bursa raising suspicion for at least a focal full-thickness tear in this region. Infraspinatus and subscapularis appear intact. No significant appearing osteophyte formation at AC joint is currently appreciated. Undersurface of the acromion process remains relatively smooth. No large joint effusion is seen. No definite glenoid labral tear is confirmed. Long head biceps tendon remains within the bicipital groove. No other more significant abnormal signal within bones or surrounding soft tissues is currently appreciated.

IMPRESSION:

INCREASED SIGNAL AND THICKENING SUSPICIOUS FOR TEAR OF SUPRASPINATUS TENDON WITH EXTRAVASATED FLUID INTO SUBACROMIAL/SUBDELTOID BURSA SUSPICIOUS FOR AT LEAST A FOCAL FULL-THICKNESS COMPONENT TEAR. IMAGES SOMEWHAT LIMITED DUE TO PATIENT SIZE AND OPEN MRI.



O. Alex Hicklin, III, M.D.

O. Alex Hicklin, III, M.D.
DS: Sep 3 2010 2:25PM

Thank you for using Mountainview Medical Imaging

DD: 09/03/2010/DT: 09/03/2010 CAH/lb
Mahaffey, Kimberly



298 Memorial Drive
Seneca, SC 29872
864-885-7113

Radiology Report

Patient Name	Medical Record #	Date of Birth/Sex	Patient Type/Room#
Mahaffey, Kimberly Dawn	000091781	October 14, 1970/F	PRO/

Exam Date/Time: 08/17/2010 09:02
Ordering Physician: P. SEAN MCCALLUM, MD

Account Number:
Admitting Physician:
Consulting Physician:

Checkin #:
Ordering Diagnosis: SHOULDER PAIN
Exam: 7374R MR ANY JOINT LOWER EXT WO CONT

MR OF THE RIGHT KNEE:

INDICATION: Trauma. History of ACL repair in 2005.

FINDINGS: The ACL graft appears to be intact. The PCL is intact. The extensor mechanism is intact. There is metallic artifact. Extensor mechanism is believed to be intact. Knee joint effusion is present. The collateral ligaments are believed to be intact. There is osteoarthritis about the knee. Degenerative spurring is present, and there is subchondral disk formation in the medial femoral compartment. The medial meniscus appears to be thin, and there is abnormal signal in the undersurface of the body. There is potentially a radial tear as well with abnormal high T2 signal in the body. I believe signal reaches the inferior articular surface and posterior horn adjacent to this. No definite tear of the lateral meniscus is present.

IMPRESSION:

1. Osteoarthritis of the knee especially involving medial femoral compartment. I believe there is a tear of the medial meniscus.
2. Knee joint effusion.
3. The graft appears to be intact.

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
8/17/2010 1:55 PM: BLAKE C POLEYND, MD

THIS REPORT IS PRELIMINARY UNTIL ELECTRONICALLY VERIFIED

BCP/lb Job #: 584356
T: 08/17/2010 10:52

Dictated By: BLAKE C POLEYND, MD

Copy for MCCALLUM, P. SEAN, MD

Page 1 of 1

1 **KUNNISETH CHEA, having first been duly sworn to tell**
2 **the truth, testified on his oath as follows:**

3 **EXAMINATION**

4 **By Mr. Brandt:**

5 Q: Mr. Chea, my name is Larry Brandt and I'm an
6 attorney here in Walhalla. I represent Kimberly Mahaffey in
7 this workers' comp claim against One Tone. The rules require
8 me at a deposition to give you a few basic rules to start.
9 Have you ever given a deposition before?

10 A: No, sir.

11 Q: Have you ever testified in a trial before?

12 A: No, sir.

13 Q: Okay. You've been placed on oath. This lady's
14 going to take down everything you say, everything I say
15 verbatim and, of course, you're under oath and the laws of
16 perjury apply. You must tell the truth. There's no right or
17 wrong answers. I don't know or don't recall are good answers,
18 as long as they're truthful. We're merely trying to find out
19 what happened, get the facts down. Also, the way depositions
20 are used in workers' comp is that we can submit your deposition
21 in lieu of testimony at the hearing if necessary. Also, if you
22 do testify at the hearing and you've given a deposition and
23 it's inconsistent with what you testified in deposition, we'll
24 pull that up and try to impeach your testimony with it, to show
25 that you're less than truthful. So it's important that you

1 understand my questions. So if I ask a question and you're not
2 sure what I'm asking, please slow me down, stop me, and ask for
3 me to repeat that question or change the question, but don't
4 answer it until you're sure about what I'm asking. The
5 deposition has started. You can't talk to anyone else but me
6 about your testimony, either what you testified to or what
7 you're going to testify to. I'll ask the questions. I get to
8 ask the questions and you get to give the answers. But you
9 can't, if we take a break, it's not an endurance test and if
10 you need a break or need anything to make you comfortable, tell
11 me, we'll stop and we'll take that break, but during that
12 break, you can't talk to anybody about your testimony. You can
13 talk to them about the weather, ball games, whatever you want
14 to do, but not that. Any questions you want to ask me before
15 we start?

16 A: No, not at this time.

17 Q: Also, it's good if you give, you need to say yes or
18 no, she can't get uh-huh or uh-uh and sometimes those can be
19 confused and the court reporter can get the wrong one in the
20 record and then it changes, flips completely what you're trying
21 to say, so it's imperative that you have a verbal answer rather
22 than a ...

23 A: Yes, sir.

24 Q: Okay. ... a sound. All right, Mr. Chea, state
25 your name in full.

1 A: Kunniseth Chea.

2 Q: And how old are you, sir?

3 A: 40.

4 Q: And where do you presently reside?

5 A:

6 Q: And that's where?

7 A:

8 Q: Do you have a brother that's an attorney?

9 A: Yes, sir.

10 Q: Chet?

11 A: Yes, sir.

12 Q: I guess he's much younger than you, huh?

13 A: No, he's one year older.

14 Q: Is he? All you guys look young to me.

15 A: Still look 29, right?

16 Q: Where do you presently work?

17 A: One Tone Telecorp.

18 Q: And how long have you worked at One Tone?

19 A: Second time around, three years, three and a half,
20 four years.

21 Q: Three and half, four? Okay. And you said second
22 time around, have you worked with them before?

23 A: Yes, sir.

24 Q: When did you work with them before, just
25 approximately?

1 A: I think about nine, I'm trying to think when my
2 child was born. Probably '98, '99, I think is when I started
3 the first time.

4 Q: 1998 or '99?

5 A: Yes, sir.

6 Q: And how long did you work for them then?

7 A: About two or three years also.

8 Q: What did you do in between those employments?

9 A: I started a company, business.

10 Q: What kind of company?

11 A: Same type. Competitor. Vertex.

12 Q: Excuse me.

13 A: Vertex Communications.

14 Q: And it was a competitor with One Tone?

15 A: Yes.

16 Q: And what happened to it? Did you sell it, close it?

17 A: No. I got fired. I was one of the shareholders.

18 Q: Excuse me.

19 A: I was one of the shareholders, got fired, we settled
20 out of court, and I went back to One Tone.

21 Q: So you were one of the partners and y'all kind of
22 got a business divorce, basically?

23 A: Right. I was a minority shareholder.

24 Q: Minority shareholder and so you get forced out ...

25 A: That's correct.

1 Q: ... and all those kind of things. Who were the
2 other people in business with you then?

3 A: Brent Saxon, Paul Nalley.

4 Q: Paul Nalley?

5 A: Yes, sir.

6 Q: Okay.

7 A: Those were the two primary shareholders that I do
8 remember.

9 Q: Are they still in business?

10 A: No.

11 Q: Vertex?

12 A: No, they are not.

13 Q: What's your job position at One Tone now?

14 A: Director of Operations.

15 Q: And as Director of Operations, how long have you
16 been in that position?

17 A: Second, the whole time, second time around. Been
18 over the CLAK.

19 Q: Did you occupy that position before, in that '98,
20 '99 employment?

21 A: Yes, sir. Well, I started as a call center and then
22 agent support and then took over the operations of CLAK.

23 Q: And how long did you serve in Director of Operations
24 that first time around? I think you told me it was two to
25 three years.

1 A: About two to three years, but I started ...

2 Q: But you started somewhere else, so what portion of
3 that two to three years do you think you were ...

4 A: Probably the last year, year and a half.

5 Q: And as Operations, Director of Operations, do you
6 have employees that report directly to you?

7 A: Yes, sir.

8 Q: Who?

9 A: I have the employees and the staff members, like the
10 managers.

11 Q: How about Ms. Smagala, does she ...

12 A: Yes.

13 Q: ... report directly to you?

14 A: Yes, sir.

15 Q: Do you write her a review of her job performance at
16 regular intervals?

17 A: When we hired her at that, we did meet and write
18 down job responsibilities and duties and we meet several times.

19 Q: Yes, but I'm talking about, you wrote down, gave her
20 her job responsibilities, but as she works, do you periodically
21 go back like once a year and have a written evaluation of her
22 job performance? Do you perform that?

23 A: I don't think she's had it for more than a year, in
24 that, in that position she was at as a manager.

25 Q: How about others, do you write ...

1 A: Yes.

2 Q: Do you write?

3 A: Employee wise?

4 Q: Yes

5 A: Yes.

6 Q: Have you ever written one on Ms. Smagala that you
7 recall?

8 A: I don't think, I don't think I have yet.

9 Q: Any of the employees that report directly to Ms.
10 Smagala, do you have, do you participate in writing up their
11 job performance reports?

12 A: Yes.

13 Q: Do you have, are you a reviewing official or do you
14 actually write it?

15 A: I'm the one who writes them and I'm one who talks to
16 the employee.

17 Q: How about Ms. Mahaffey, did you write a job
18 performance report on her?

19 A: Yes.

20 Q: What kind of job performance reports did you write
21 on her, were they good, bad, indifferent?

22 A: The most recent one we meet, I meet with all
23 employees.

24 Q: Excuse me.

25 A: The most recent one, I meet with all employees

1 individually. On Ms. Mahaffey, I did state what I saw, what
2 needs improvement, and kind of went with a general, like with
3 everybody, watch your computer usage, watch your breaks, just
4 to all the employees.

5 Q: Okay. This was a group meeting?

6 A: No. No. This was individual.

7 Q: Individual. And that individual meeting, you called
8 them in and went over that with them?

9 A: Yes.

10 Q: Did you give them a written report or a written
11 evaluation or was this just an oral report?

12 A: No. It was written, each individual had their own.

13 Q: Had their own thing?

14 A: Yes.

15 Q: And do the individual, are the individuals there
16 required to sign those written evaluations?

17 A: Yes. I did and they did sign it. There's a place
18 there and any, any comments they wanted to put on there,
19 they're able to do that.

20 Q: How about did, how often do you do these written
21 evaluations on employees?

22 A: We do it yearly. Now, after a 90-day probation
23 period, we do meet with them about the 90-days probation.

24 Q: Does that mean that when they're hired, then at the
25 end of the 90 days, you do an evaluation and then from then on

1 it's yearly?

2 A: No, not exactly full 90 days, around within the 90
3 days, yes. Sometimes the employees will let me know, hey, it's
4 my 90 days.

5 Q: And the, how many job evaluations have you written
6 on Ms. Mahaffey during the two and a half or three and a half
7 to four years that you've been there?

8 A: Myself, possibly two. We've been through, during
9 that time frame, we've probably had three managers.

10 Q: You're talking about three managers being in the
11 position of Ms. Smagala? You said we had three managers.
12 She's been identified as a manager. Are you talking about
13 you've had three people in Ms. Smagala's position during this
14 three and a half to four years?

15 A: I've had three people to occupy the same position
16 that Ms. Smagala's doing.

17 Q: Okay. So there was two behind Ms. Smagala in that
18 position during that period?

19 A: There was one after Ms. Smagala.

20 Q: Excuse me?

21 A: There was one after Kim Smagala and I believe there
22 might have been one before and one after.

23 Q: Is Kim Smagala, is she still in as the manager?

24 A: No, sir.

25 Q: What is she in now?

1 A: Agent support.

2 Q: And is it Op Support, Sales Support or what?

3 A: Agent, Agent Sales.

4 Q: Agent, okay. As of July 21, 2009, who was the
5 manager?

6 A: Kim Smagala.

7 Q: And you were Director of Operations, correct?

8 A: Yes, sir.

9 Q: Do you remember Ms. Mahaffey being injured at work?

10 A: I don't remember that. The day after, it was
11 brought to my attention by someone and I remember asking is she
12 okay and I was told she's fine, she's here at work today.

13 Q: Okay. Were you present when the injury occurred?

14 A: No, sir.

15 Q: Who reported it to you?

16 A: That I can't recall, the next, I don't remember. I
17 remember the day after, someone had mentioned, hey, did you
18 know Kim Mahaffey fell. And for the life of me, I cannot
19 remember who it was.

20 Q: Did anybody give you any other details about the
21 fall?

22 A: No.

23 Q: Did anybody ever tell you how it occurred?

24 A: No.

25 Q: Did you ever inquire of anyone as to how it

1 occurred?

2 A: No.

3 Q: What did you say to Ms. Mahaffey?

4 A: I have not spoken to Ms. Mahaffey about it.

5 Q: I thought you said you asked her if she ...

6 A: No, I asked whoever told me, is she okay.

7 Q: Okay.

8 A: I can't, because sometimes, Kim, the manager would
9 let me know, but in the mornings when the employees come in,
10 employees will stick their head in and let me know stuff.

11 Q: Let me get it straight now. Somebody told you,
12 another employee, Ms. Mahaffey didn't tell you?

13 A: No.

14 Q: And Ms. Mahaffey, but somebody told you that she had
15 fallen?

16 A: Yes.

17 Q: Did they tell you that she had gotten hurt?

18 A: No.

19 Q: What did you, and then when you asked the other
20 employee was she okay?

21 A: I asked if she's okay.

22 Q: And what did the other employee tell you?

23 A: That she's fine, she's at work today.

24 Q: Have you ever, has anyone ever come to you and asked
25 or reported to you that Ms. Mahaffey wanted to go to the doctor

1 to see about injuries in the fall.

2 A: Not until this year.

3 Q: When was that? Month will be good enough.

4 A: June, July

5 Q: How about April?

6 A: April.

7 Q: Could it have been April, as early as April? I
8 mean, kind of put it according to holidays, the way I break it
9 down, close to Easter or you know?

10 A: When Ms. Mahaffey went to the doctor, it was brought
11 to my attention.

12 Q: She had already been to the doctor?

13 A: Yes.

14 Q: Do you know which doctor?

15 A: I know now, yes. I did not, I know now, I did not
16 know then.

17 Q: How do you know it now?

18 A: Mitzi, which is the human resource, accounts
19 payable, the lady who handles all that left me word.

20 Q: Have you ever talked, well, what's the policy down
21 there at One Tone? If someone gets hurt on the job and asks to
22 go to the doctor, who do you all send them to?

23 A: I talk to each employee when they're first hired. I
24 tell them who handles what responsibilities. Mitzi handles all
25 the human resource, all our accounts payable, and all insurance

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Kimberly Mahaffey,)
)
 Claimant,)
 vs.)
)
 One Tone Telecorp,)
)
 Employer,)
 and)
)
 State Automobile Mutual)
 Insurance Company,)
)
 Insurance Carrier,)
 Defendants.)

WCC File No.: 0922023

COPY

DEPOSITION OF KIMBERLY SMAGALA

Tuesday, November 2, 2010

PURSUANT to Notice and/or agreement between the parties, the deposition of **Kimberly Smagala**, called by the Plaintiff, was taken commencing at the hour of 2:10 p.m. on Tuesday, November 2, 2010, at the Law Offices of Larry C. Brandt, P.A., 3691 Blue Ridge Boulevard, Walhalla, South Carolina.

SUE N. HAYNIE, Reporter

Irveta J. Shouse/GWC

Post Office Box 9177 • Greenville, South Carolina 29604
864/233-2341

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.....On behalf of the Claimant

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BY Alton L. Martin, Jr, Esquire

.....On behalf of the Employer

ALSO PRESENT:

Kimberly Mahaffey
Janis Mahaffey
Scott Loggins

STIPULATIONS:

This deposition is taken pursuant to the Federal Rules of Civil Procedure; reading and signing of the deposition by the witness are hereby waived.

EXHIBITS:

Defendant's Exhibit Number 1, Drawing, is attached hereto as part of this record.

INDEX OF EXAMINATION

By Mr. Brandt Page 3

1 **KIMBERLY SMAGALA, having first been duly sworn to**
2 **tell the truth, testified on his oath as follows:**

3 **EXAMINATION**

4 **By Mr. Martin:**

5 Q: Ms. Smagala, I'm Larry Brandt and I represent
6 Kimberly in this matter, workers' comp claim. Have you ever
7 had your deposition taken before?

8 A: I have not.

9 Q: Ever testified in a trial before?

10 A: No.

11 Q: To begin with, I need to give you a few rules of the
12 deposition and if you then have any questions, just direct them
13 to me, okay? This is not an endurance test. I don't think
14 I'll take very long, but if you feel that you need to take a
15 break at any time, you tell me and we will take a break. The
16 deposition is now started. You've been sworn in, so I'm the
17 only person that you can talk to about your testimony. If I
18 ask a bad question, and I sometimes do that more often than I'd
19 like, and you don't understand it, you ask me to clarify it.
20 If not, I'll assume you understood what I was asking and that
21 your answer was responsive to that. Sometimes questions and
22 answers don't match and you did not mean it that way, so it's
23 important to get it right. Depositions are used in a variety
24 of ways. One, it tells the lawyers, it helps if you take bunch
25 of depositions and learn about the case and what everybody has

1 got to say and what they recall. So all we're looking for is
2 the truth and "I don't know," "I don't recall," is a good
3 answer as long as it's the truth. You are under oath and the
4 laws of perjury apply here as if you were in a courtroom. We
5 take the depositions, obviously, and in workers' comp matters
6 we use them a little differently than we do in circuit court,
7 because we are using these and can submit depositions in lieu
8 of witness testimony in workers' comp. But if you do testify,
9 those depositions can then be used to what we call impeach your
10 testimony if you give inconsistent answers and that's another
11 reason it's important that you understand, you know, what I'm
12 asking and you answer it correctly. The deposition has
13 started. If we do happen to take a break, you can not talk
14 about your testimony and what you've already testified to or
15 what you may be asked in the future with anybody at all. You
16 can talk about anything else, but you can't talk about your
17 testimony. Once the deposition has ended, you can talk to
18 anyone you wish about your testimony. Okay?

19 A: Uh-huh (affirmative response).

20 Q: Again, any questions that you have to ask, you have
21 to direct them to me. Okay?

22 A: Yes.

23 Q: And your lawyer can't help you answer any of the
24 questions I'm giving you. Now, from time to time lawyers
25 object during depositions. We have certain rules, rules of

1 taking depositions. We object for the record. You still get
2 to answer the question, but you should, if the lawyer starts
3 object, give him time to finish his objection, then you answer
4 the question as best you can and we'll argue about it later
5 as to whether or not that question was fair and whether or
6 not it can be admitted. Okay. Any questions you have to ask
7 me?

8 A: No, sir.

9 Q: Please state your name in full.

10 A: Kimberly Paige Smagala.

11 Q: And how old are you?

12 A: 29.

13 Q: And where do you presently reside?

14 A:

15 Q: And where are you presently employed?

16 A: One Tone Telecorp.

17 Q: How long have you been employed there?

18 A: About a year and a half.

19 Q: And where did you work prior to that?

20 A: I worked for Anderson Interfaith Ministries.

21 Q: And what position do you hold at One Tone?

22 A: I'm an account representative. I work for the
23 agents and I handle all their long distance.

24 Q: And how long have you been in that position?

25 A: Probably about six or seven months.

1 Q: And what did you do prior, what positions did you
2 have with them prior to that?

3 A: Kind of management over the operations in the call
4 center.

5 Q: On July 21, 2009, what was your job title at your
6 place of employment?

7 A: Was the Manager of Operations of the call center,
8 I'm manager.

9 Q: And do you know my client, Kimberly Mahaffey, from
10 your employment?

11 A: Yes, I do.

12 Q: And how long have you known Kimberly?

13 A: The full time, about a year and a half.

14 Q: What is your educational background?

15 A: I have a BA in sociology and I have my first year
16 done in grad school in business management.

17 Q: And where did you get your degree in sociology from?

18 A: At Winthrop University.

19 Q: And you now have one year toward a masters?

20 A: Uh-huh, from American University.

21 Q: Is that an online course or is that...?

22 A: No, sir. It's a reputable school in Washington, DC.

23 Q: I understand it is, but I understood that you were
24 actively going to school now.

25 A: Just one year finished.

1 Q: Just one year, okay. I'm very familiar with
2 American University, but I was trying to tie them together from
3 here to there.

4 A: Okay. Not that I don't like online courses.

5 Q: Do what?

6 A: Not that I don't like the online schools.

7 Q: I understand. On 7/21/2009, did you witness Ms.
8 Mahaffey falling at her place of employment?

9 A: I did. I was in the room when she fell and there's
10 some desk and some things in the way, so I did see her fall,
11 but I did not see every aspect of it.

12 Q: But it was obvious that within your field of view
13 somebody had fallen?

14 A: Absolutely.

15 Q: Did you determine what was the cause of the fall?

16 A: There was a phone cord draped across from the
17 hallway, or there was a walkway, about a foot off the ground
18 and then when we were moving around that office that day, we
19 actually had two walkways that you could have exited from,
20 around the call center or through it and that was the, in the
21 middle is where we were moving things around and it was about a
22 foot off the ground.

23 Q: Okay. When you say we "we were moving things
24 around," who is we?

25 A: Just me and some of the employees. We were in the

1 process of changing our call center from that room to a new
2 back room that we had.

3 Q: So you were just moving the call center from one
4 room to another?

5 A: Basically, yeah.

6 Q: And was that in the room where you were moving to or
7 moving from?

8 A: Moving from.

9 Q: Did you have to go out of that room through a
10 doorway into a hall and then to the other room where you were
11 moving from? You were in one room, going to move to another
12 room. Do you recall?

13 A: Yeah, from that room to get to the new call center,
14 you did go through a hallway.

15 Q: Go through a hallway. Did you just go straight
16 across the hall and go out in the hall, down the hall?

17 A: You went straight out about one foot and then took a
18 left.

19 Q: And how far down that hall did you have to move
20 things?

21 A: One more foot. I mean, it was right into it.

22 Q: Okay. Was Kimberly helping move things?

23 A: She might have earlier that day, but I don't
24 remember anything heavy, you know.

25 Q: How was it that the phone cord was stretched out

1 across --- That was inside the room, not the hallway outside?

2 A: It was inside the room. That's correct.

3 Q: So it was a walkway between desks or between other
4 equipment?

5 A: Yes. It was between.

6 Q: And do you know why the phone cord was stretched out
7 in that fashion?

8 A: We had just moved it from one countertop over to a
9 desk where I was sitting for the mean time and that was it.

10 Q: Just kind of a temporary location?

11 A: Just a temporary thing. Yeah.

12 Q: When you saw Kimberly fall, what did you do?

13 A: I asked her if she was okay.

14 Q: Did you assist her in getting up?

15 A: I don't think I helped her get up or anything. I
16 saw her get up on her own, but I asked her if she was okay.

17 Q: Was there anyone else in the room when that
18 occurred?

19 A: I believe we were the only ones there that night.

20 Q: Tell us what happened then after you saw her fall,
21 you go over to her. And try to give us a play by play of what
22 happen from then until she leaves.

23 A: She said she felt dizzy and I just had her sit down
24 for a little bit. We probably sat there for about two or
25 three minutes until she felt okay and then she left for the

1 evening.

2 Q: Did she have permission to leave by anyone, from
3 anyone?

4 A: I think it was 6. It was past 6 o'clock. I mean,
5 work was closed.

6 Q: What are your normal hours?

7 A: Nine to six.

8 Q: Do you recall what time it was when she fell?

9 A: I don't remember exactly.

10 Q: Was it significantly after 6 o'clock or a few
11 minutes.

12 A: No. I mean, maybe a minute after.

13 Q: Did she make any other complaints about her
14 injuries?

15 A: The only complaint that she told me was that she
16 felt dizzy.

17 Q: Did anybody else come through that room while she
18 was sitting there?

19 A: For that evening, I believe we were the only ones
20 there.

21 Q: Was Mr. Chea there?

22 A: I don't think so. No.

23 Q: You don't recall him coming through?

24 A: Uh-uh (negative response).

25 Q: And speaking to Kimberly or you?

1 A: Uh-huh (negative response).

2 Q: You have to say yes or no, that's another thing.

3 A: No, sir.

4 A: You can't give uh-uh, uh-huh. They can get confused
5 on the record.

6 A: No, sir.

7 Q: Did you later talk with Kimberly about her fall?

8 A: The next day when she came in for work, she was kind
9 of complaining or moaning about some pain and I had addressed
10 her if she needed to go home, you know, let me know. And then,
11 also, if she needed to fill out an incident report, she should
12 do so with HR Department.

13 Q: You told her that?

14 A: If she felt like she needed to, then she should do
15 so with the HR Department.

16 Q: Who was over the HR Department?

17 A: Her name's Mitzi Wurley.

18 Q: Do you know whether or not, do you know the process
19 in HR Department for filing incident reports or claims such as
20 this? Were you familiar with the process?

21 A: With their process?

22 Q: Yeah, if she went, had gone to HR and reported the
23 fall. Do you know ...

24 A: That was not my position to be aware of that.

25 Q: I want to show you Exhibit Number 1, that's been

1 marked to Ms. Mahaffey's deposition. Have you ever seen a
2 document like that before?

3 A: No, sir, I have not.

4 Q: You did not see that the day after the accident?

5 A: No, sir.

6 Q: Have you seen it at all since, before I handed it to
7 you?

8 A: Yes. I have seen it, probably when we, I first
9 found about this case, like about a week or two ago.

10 Q: Okay. And how did first learn about this case?

11 A: I believe it was right before Mr. Martin was coming
12 to meet with us.

13 Q: Can you give me a ...

14 A: I wish I knew the exact date, but I couldn't tell
15 you the exact day.

16 Q: You don't have to give me an exact date, but how
17 many weeks ago?

18 A: Maybe a week or two.

19 Q: A week or two? Were you, at the time of this
20 accident, were you Ms. Mahaffey's reporting official?

21 A: I was.

22 Q: Did you write an efficiency, and I call them an
23 efficiency reports or ratings, of her job performance?

24 A: Did I personally?

25 Q: Yeah.

1 A: No.

2 Q: Did you have, part of your job is that you said sort
3 of the office manager, I suppose. Was that correct?

4 A: Uh-huh (affirmative response).

5 Q: Yes?

6 A: Yes.

7 Q: As a part of your job, how many people reported to
8 you?

9 A: About seven. It fluctuated seven, seven to nine.

10 Q: Were you the person that they asked if they needed
11 to be off?

12 A: Actually, they turned that into the HR Department if
13 they need to be off, to Mitzi Wurley.

14 Q: Who, if they wanted to take a day off, who was the
15 person there that had to bless it?

16 A: Mitzi Wurley or Seth Chea. I would need to know to
17 notify, just to reschedule things, but I wouldn't give them
18 approval one way or the other.

19 Q: So they couldn't come to you and say I want off this
20 afternoon and you told them to go, could you do that?

21 A: If they could. If they did, I would advise them to
22 go to them first and make sure it was okay.

23 Q: But your say was never final as far as a person
24 taking time off?

25 A: No.

1 Q: Those seven to nine people that reported directly to
2 you, can you name them?

3 A: Stephanie. Do you need last names?

4 Q: Yes.

5 A: Stephanie Clement.

6 Q: C-l-e-m-e-n-t-s?

7 A: Just t, just a t, no s.

8 Q: No s. Clement. Okay.

9 A: Uh-huh. Kim Mahaffey, Nicki Ellenburg.

10 Q: Nicki or Mickey?

11 A: Nicki.

12 Q: Nicki.

13 A: Denae Booth. Jana, I'm sorry, I can't remember her
14 last name.

15 Q: Okay.

16 A: Catherine Alexander.

17 Q: With a C or a K?

18 A: With a C. I'm sorry, I'm just blank. Miss Sandra.

19 Q: Who?

20 A: Sandra.

21 Q: Sandra. Okay.

22 A: Miss Sandra, we call her Miss Sandra.

23 Q: You don't remember her last name? Okay, that's fine
24 if you don't.

25 A: Foster. I know her brother, but I don't, I can't

1 remember her last name.

2 Q: Okay. All right. Anybody else?

3 A: Beth Moore, for a time period. Crystal Strickland.
4 Dana. And that's it from the top of my head.

5 Q: That's nine. Good work. You don't remember Dana's
6 last name? If you don't ...

7 A: And I went to high school with her so, no, not off
8 the top of my head.

9 Q: And where did you go to high school?

10 A: West Oak High School.

11 Q: West Oak. What was your maiden name?

12 A: Loftis.

13 Q: Loftis?

14 A: Loftis.

15 Q: L-o-f-t-i-s?

16 A: Yes, Sir.

17 Q: Were any of these people, was Stephanie Clement
18 there at the time in the building or anywhere on the premises
19 on 7/21 at the time of this accident, do you know?

20 A: No one was there the day of the accident.

21 Q: Excuse me.

22 A: No one was there at the time of the accident, except
23 for Kim and I.

24 Q: Just the two of you?

25 A: Just the two of us.

1 Q: Do you, I don't need to know what you, certainly
2 what the lawyer said to you, but did, have you had a meeting
3 with other employees to discuss your deposition here today?

4 A: No, sir.

5 Q: You stated about a week or so ago, that at least you
6 saw this Exhibit Number 1.

7 A: Uh-huh (affirmative response).

8 Q: And indicated to me that --- Well, let me put it
9 this way. Who gave that to you to look at a week ago or so
10 when you first saw that?

11 A: I think it was e-mailed to me from the HR Department
12 when they first filled workers' comp or some time during that
13 asking if I had ever received that and I said no.

14 Q: Had it ever been offered to you by Kim Mahaffey and
15 you refused to take it?

16 A: No.

17 Q: On the day of this accident, or the day after the
18 accident on the 22nd of July 2009, was Exhibit Number 1, copy
19 of that offered to you by Ms. Mahaffey?

20 A: No, sir.

21 Q: Did she ask you about going to the doctor the
22 following day?

23 A: No, sir.

24 Q: Did you tell her that if she wanted to go to the
25 doctor, she could go on her own?

- 1 A: No, sir.
- 2 Q: That they were looking to fire people?
- 3 A: No, sir.
- 4 Q: Do you know, do any of these other people still work
5 there? Does Stephanie Clement still work there?
- 6 A: Yes, sir.
- 7 Q: Nicki Ellenburg?
- 8 A: No, sir.
- 9 Q: Renee Booth?
- 10 A: Denae Booth. No, sir.
- 11 Q: Denae?
- 12 A: Yes, sir.
- 13 Q: D-e ...
- 14 A: D-e-n-a-e.
- 15 Q: ... n-a-e. The lady, a girl named Jana, does she
16 still work there?
- 17 A: No.
- 18 Q: No?
- 19 A: No, sir.
- 20 Q: Catherine Alexander?
- 21 A: No, sir.
- 22 Q: Sandra?
- 23 A: No, sir.
- 24 Q: Crystal?
- 25 A: No, sir.

1 Q: And Dana?

2 A: No, sir.

3 Q: These other people, Nicki Ellenburg, what's your
4 opinion of her reputation for truth and veracity?

5 A: I don't have a high opinion of her work ethic and
6 that's all I can really speak of.

7 Q: Well, if she told you something, would you believe
8 it?

9 A: No. It just depends on what it was, I mean, and the
10 circumstances surrounding them.

11 Q: Denae Booth, would you believe something if she told
12 you?

13 A: Again, it depends on it, but I would believe more
14 about what Denae would say than I would Nicki.

15 Q: Well, have you had any experience with Denae Booth
16 that would cause you concern about her truth and veracity?

17 A: No. I have no question, but I'm not trusting her
18 some as it is already, so I can't say that I would believe
19 anything anyone would tell me without knowing the
20 circumstances.

21 Q: How about Jana?

22 A: Jana?

23 Q: Jana.

24 A: I believe she's pretty trustworthy.

25 Q: Trustworthy. How about Catherine Alexander?

1 A: You know, as trustworthy as someone right out of
2 high school can be. I don't know. No, I mean ...

3 Q: In your opinion, is trustworthiness an age related
4 factor?

5 A: Not necessarily, but it just depends on the person.

6 Q: How about her?

7 A: In that incident, no. No, I wouldn't.

8 Q: You wouldn't believe her, not trustworthy?

9 A: What am I trusting her with?

10 Q: I get to ask questions here.

11 A: You do, okay. Umm, no.

12 Q: To tell the truth about anything she would be asked
13 whether she saw it or heard it?

14 A: Well, I'd give them all ...

15 **MR. MARTIN:** Who are we referring to at this point?

16 **MR. BRANDT:** Sandra. Well, Catherine Alexander is
17 who we were talking about.

18 A: Yeah. Catherine Alexander

19 Q: Moving on to Sandra next.

20 **MR. MARTIN:** Are we still talking about Catherine
21 Alexander?

22 A: Uh-huh (affirmative response).

23 **MR. MARTIN:** Okay.

24 A: So what was your question again?

25 Q: If she were asked what she saw or heard on any

1 particular instant or day, do you think she'd tell the truth or
2 lie about it?

3 A: Yeah, I think she'd probably tell the truth.

4 Q: And Denae Booth, if she was asked what she saw or
5 heard on a particular day, would she tell the truth do you
6 think about that?

7 A: I think she would.

8 Q: And Crystal Strickland?

9 A: I don't have as much faith in that particular one.

10 Q: And Dana?

11 A: I don't have much faith in that one either.

12 Q: Okay. What was the reason that Nicki Ellenburg left
13 the employ?

14 A: Nicki was released of her employment or terminated
15 from her employment.

16 Q: Terminated?

17 A: She was terminated due to going around and verbally
18 talking to employees and wanting to be fired so that she can
19 get unemployment.

20 Q: Denae Booth, what was the reason for her
21 termination?

22 A: Denae was going to nursing school and was starting
23 her masters and was getting married and actually lived two
24 counties over.

25 Q: Did she do a good job while she was there?

1 A: She did a great job.

2 Q: How about Jana?

3 A: Jana, Jana was new to our kind of call center
4 environment and she was let go, she just, it was, it's a multi-
5 tasked environment, a lot priorities, lot of thinking on your
6 feet and she just wasn't cut out for that kind of work.

7 Q: She just couldn't do that?

8 A: No. No.

9 Q: And Catherine Alexander, why?

10 A: Catherine was also going through the nursing
11 program. A lot of our employees were just there part time or
12 pursuing other things.

13 Q: And Sandra?

14 A: Sandra was a working full-time employee at the
15 school cafeteria and did this part time.

16 Q: Did she, why did she, why was she terminated?

17 A: I don't think she was terminated. I think left on
18 her own, but I, I wasn't over the center when she left.

19 Q: But as best you know, she left on her own?

20 A: Yeah.

21 Q: Not aware of any problems she had with management or
22 anyone else?

23 A: I'm not aware of any problems.

24 Q: And Crystal Strickland?

25 A: I believe she was terminated.

1 Q: Terminated. Do you know the reason?

2 A: I do not.

3 Q: And Dana?

4 A: I believe she was terminated.

5 Q: Do you know the reason?

6 A: I do not.

7 Q: And Stephanie Clement?

8 A: She's still there.

9 Q: Still there?

10 A: And a very good employee.

11 Q: Well, what's your regard for her trustworthiness?

12 A: I think she's pretty trustworthy.

13 Q: Do you think if she was asked about what she saw or
14 heard on a particular day or particular incident, she'd tell
15 the truth?

16 A: I think she would tell you the truth.

17 Q: After that first day at any time prior to Kimberly
18 Mahaffey leaving the employment, did you ever have any other
19 conversations with her about her injury?

20 A: I did not.

21 Q: Did you have any other conversations with her
22 concerning whether she could go to the doctor?

23 A: I did not.

24 Q: Did you ever talk with any of your superiors about
25 the fall?

1 A: It seems like Seth Chea, who's our Vice President,
2 found out about it and I don't know who mentioned it to him, if
3 Kim did or someone did the day after, and he did ask if she was
4 okay and I said she seems to be fine.

5 Q: He asked you about it?

6 A: Yeah, and I think he asked her if she was okay.

7 Q: Okay. Do you recall when that occurred in relation
8 to the day of the fall?

9 A: I believe it was the day after.

10 Q: Did he ask you, did he ask Kimberly her questions,
11 did he ask Kimberly the questions or question her about her
12 fall in front of you, in your presence?

13 A: No. It was kind of like a passing thing, like, she,
14 she had said, someone had said she had fallen. He said are you
15 okay, you know.

16 Q: Yeah, but you were present and heard that?

17 A: Yeah, but it was no like conversation, it was just
18 like in passing as he was going.

19 Q: So he said, "Are you okay?" and what did she say?

20 A: I think she said yes. It was kind of like a joking
21 matter. It was kind of like a, you know, like he said don't
22 fall around here or, you know, or it was so very light manner
23 as they were passing.

24 Q: If Denae Leslie Lane stated that she remembers you
25 and Kimberly having a conversation and that you told her to be

1 quiet about it because they were looking to fire people, would
2 that be true?

3 A: No. That would be a lie and I don't know who Denae
4 Leslie Lane is.

5 Q: If she says that you, that you told her to go to the
6 doctor first on your own, her own, before stirring the pot,
7 would that be true?

8 A: That would be a lie.

9 Q: Your testimony is that you never told her to go, she
10 could go to the doctor but she had to use her own insurance or
11 words to that effect?

12 A: I never said any such thing.

13 Q: Okay. You're under oath.

14 A: I'm very aware of that.

15 Q: The laws of perjury. You understand what perjury
16 is?

17 A: I'm very aware of that and there never any such
18 thing said.

19 Q: Okay. Your testimony is then that you never spoke
20 with Kimberly Mahaffey, well, let's go back to April of this
21 year. Did you ever have any conversations with her about her
22 accident or going to the doctor because of that accident in
23 April of this year, 2010?

24 A: No.

25 Q: May?

1 A: No.

2 Q: June?

3 A: No, sir.

4 Q: July?

5 A: No.

6 Q: Okay. Have you ever filed a workers' comp claim?

7 A: No, sir.

8 Q: What do you think of people who file a workers' comp
9 claim?

10 A: I believe if it's a serious injury, then they have
11 every right to.

12 Q: After Kimberly fell, you say within your view, that
13 you saw her or somebody and you knew there was a fall?

14 A: I mean, I knew it was her.

15 Q: Okay. What position was she in when you, how far
16 away were you when you saw this?

17 A: Probably as we are right now.

18 Q: And what, was there anything between you and her?

19 A: There were some desks in between.

20 **MR. MARTIN:** Let the record reflect what distance
21 would you say the two of them were sitting apart.

22 A: I'd say ...

23 Q: Five feet maybe, four foot.

24 A: How About six.

25 Q: I want to ask you to take this and kind of draw a

1 diagram of the room, what was in there, where she was when she
2 fell, and where you were when you saw it.

3 A: Well, I don't know if it's ...

4 Q: Well, I'm not going to hold you to artistic ability,
5 just kind of give us an idea so I'll have an idea.

6 A: This is me.

7 Q: Okay. Okay. You were here?

8 A: Uh-huh (affirmative response).

9 Q: And these, what are these?

10 A: This is kind of a desk and that's a wall and this
11 goes out the hallway right there.

12 Q: All right, this is the door?

13 A: Uh-huh (affirmative response).

14 Q: I want you to write door.

15 A: It's kind of a hallway.

16 Q: Well, write door

17 A: and then a door.

18 Q: Okay. Door. And that was a hallway here, kind
19 of?

20 A: Uh-huh (affirmative response).

21 Q: Put HW there then.

22 A: Just a small little hallway.

23 Q: Okay. And then these are desks?

24 A: Uh-huh (affirmative response).

25 Q: All right. Write desk in there. What was over on

1 the other side of the room?

2 A: There's like a countertop and it's across the whole
3 thing. It's where our computers used to be.

4 Q: And she, this, write, just put a K there so I'll
5 know that's counter.

6 A: And this is countertop

7 Q: Okay. And then where was the phone cord?

8 A: That's it right there.

9 Q: Right across here?

10 A: Uh-huh (affirmative response).

11 Q: Well, just put PC in right there on that thing. And
12 then date, sign it and date it, just sign it that you drew it,
13 that's what I'm asking to and a date that it was done. When
14 you saw the fall, what was the first thing you did?

15 A: I asked her if she was okay.

16 Q: Did you move toward her ...

17 A: Yeah.

18 Q: ... to any degree?

19 A: Yeah. Yeah, I'm sure I was walking towards her to
20 ask her if she was okay.

21 Q: And when you first saw her, was she standing or
22 still in the process of getting up?

23 A: She was in the process of getting up.

24 Q: Did you see how she landed, whether she landed on
25 her front side or on her back or side?

1 A: Well, she went down this way, so she did not land on
2 her back, but all I saw was her kind of getting up from it.

3 Q: Okay. So you don't know what struck first, what
4 part of her body, whether it was knee, hand, shoulder or
5 anything like that, that struck the floor first?

6 A: I don't know what struck the floor first.

7 Q: Okay.

8 (Off the Record)

9 MR. BRANDT: We've got no more for her.

10 MR. MARTIN: I don't have any for Ms. Smagala.

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24 (There being no further questions,
25 the deposition concluded at 2:45 p.m.)

STATE OF SOUTH CAROLINA)

: C E R T I F I C A T E

COUNTY OF GREENVILLE)

Be it known that I took the deposition of KIMBERLY SMAGALA;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

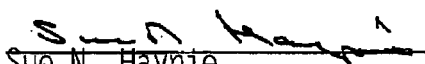
That by virtue thereof, I was duly authorized to administer an oath;

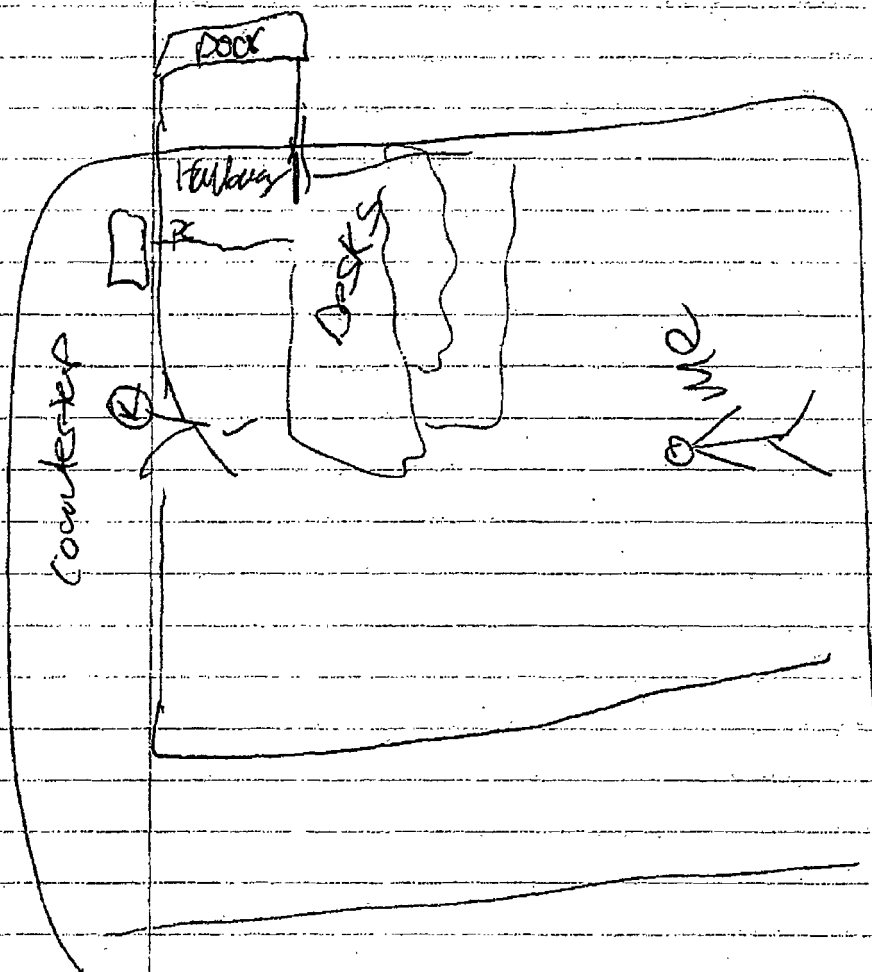
That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 28 pages is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 18th day of November, 2010.


Sue N. Haynie
Notary Public for South Carolina
My Commission Expires: 12/19/11



11-2-10
Mr. [Signature]



**WORK INJURY
INCIDENT REPORT
FORM**

1. DATE REPORT PREPARED: 7/22/2009

2. DATE WORK INJURY OCCURRED: 7/21/2009

3. BODY PARTS INJURED IN WORK ACCIDENT:

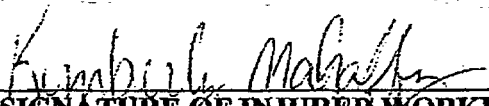
Pain in both knees and shoulders – mostly on right side. Some soreness/stiffness in back

4. INDIVIDUAL(S) AT WORK WHO YOU NOTIFIED:

Witnessed by - Kimberly Smagala - Manager, Informed - Seth Chea - VP of operations

5. HOW DID YOU INJURE YOURSELF ON THE JOB:

a Phone chord was stretched across the office in call center/middle office. I tripped trying to step over chord. I tried to catch myself on counter and ended up landing on hands and knees. Sat in office for another 20 minutes trying to get over the feeling of being sick and passing out.


SIGNATURE OF INJURED WORKER

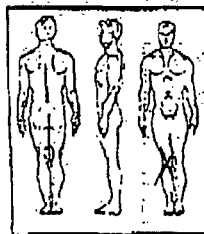
HUMMEL PHYSICAL THERAPY

PATIENT NAME: Kimberly Mahaffey DOCTOR: Hannah Ramirez DIAGNOSIS: (R) ACL Tear (+MRI)

DATE: 2/1/10 TIME IN: 10:54 TIME OUT: 11:50
SUBJECTIVE: R reports went to Blue Ridge ortho. Is scheduled for surgery 3/1/10. Has call in to see if he wants her to continue PT.

PAIN LEVEL: (0-10) _____ PATIENT POSITION: ☐ Prone ☐ Supine ☐ Sitting ☐ Side lying

OBJECTIVE: ☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.3 W/cm² Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 11mA
☐ Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
☐ Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
☐ Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization



☒ Electrode Placement
☐ Pain Site
☐ Iontophoresis

Description/Comments: _____

☒ Exercise/Function Activities Flow Sheet: 30 Min _____ HEP

Description/Comments: Completed per log

ASSESSMENT: ☐ Progressing ☐ No Significant Change ☐ Regressing ☐ Compliant with HEP YES NO

Comments: Tolerating exercises well. Maintaining current ROM, strength & function.

PLAN: ☒ Continue as ordered ☐ Continue current regimen ☐ Change in current treatment status ☐ Discharge

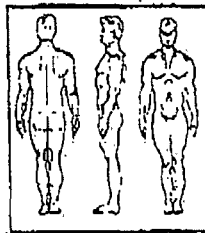
Comments: Mary A Ketterman, PT

2/1/10 CA 11:00 appt - dr. referred to @ Blue Ridge ortho said to D/C until Surgeon completed. GA Mary A Ketterman, PT.
Cont. C-HEP until then.

DATE: _____ TIME IN: _____ TIME OUT: _____
SUBJECTIVE: R reports _____

PAIN LEVEL: (0-10) _____ PATIENT POSITION: ☐ Prone ☐ Supine ☐ Sitting ☐ Side lying

OBJECTIVE: ☐ Moist Heat ☐ Ice _____ Min.
☐ Ultrasound: (8 min) Intensity: 1.3 W/cm² Frequency: 1MHz Duty Cycle: 100%
☐ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: _____
☐ Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
☐ Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
☐ Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization



☐ Electrode Placement
☐ Pain Site
☐ Iontophoresis

Description/Comments: _____

☐ Exercise/Function Activities Flow Sheet: _____ Min _____ HEP

Description/Comments: _____

ASSESSMENT: ☐ Progressing ☐ No Significant Change ☐ Regressing ☐ Compliant with HEP YES NO

Comments: _____

PLAN: ☐ Continue as ordered ☐ Continue current regimen ☐ Change in current treatment status ☐ Discharge

Comments: _____

GOONER FAMILY PRACTICE, P.A.
J.R. HANAHAN, JR., M.D.
DEA # AH 702849 LIC. # 07874
HENRY M. RAMIREZ, P.A.C.
DEA # HR0115358 LIC. # A128
12016 NORTH RADIO STATION ROAD
SENECA, SC 29678
(864) 882-7225 OFFICE, (864) 882-3351 PAGING

NAME King Mahaffey
ADDRESS _____ DATE 2/2/05

☒ ILLEGAL IF NOT SAFETY BLUE BACKGROUND
R

[Signature]
[Signature]
RT 3X sub

Refill _____ times
☐ Label

DISPENSE AS WRITTEN SUBSTITUTION PERMITTED
Start 2/3/05 X 3 43FP4012995

HUMMEL PHYSICAL THERAPY

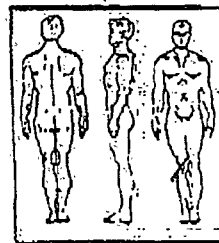
PATIENT NAME: Kimberly Mahaffey DOCTOR: Harahan/Ramirez DIAGNOSIS: @ Knee Strain

DATE: 1/25/05 TIME IN: 8:00 TIME OUT: 8:55
SUBJECTIVE: Pt reports still having some pain & "popping" also a cold affects the @ knee.

PAIN LEVEL: (0-10) 3/10 PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:

☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) (FC) BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 9 mV
Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization



☒ Electrode Placement
☒ Pain Site
☒ Iontophoresis

Description/Comments:

☒ Exercise/Function Activities Flow Sheet: 30 Min HEP

Description/Comments: Completed per log

ASSESSMENT: Progressing No Significant Change Regressing Compliant with HEP YES NO

Comments: Slow to progress further, although improved. Discomfort of @ quadr tendon & medial joint line no. 2.

PLAN: Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments: Returning to doctor for P/O. Await orders.

Mary Ketterman, P.T.

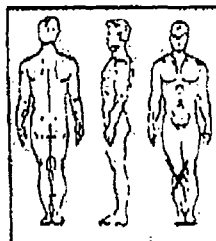
DATE: 2/3/05 TIME IN: 3:45 TIME OUT: 4:42
SUBJECTIVE: Pt reports ACL tear & meniscus tear - had MRI.

Appt at Blue Ridge Ortho 2/10/05. Cont @ PT until then.

PAIN LEVEL: (0-10) PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:

☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) (FC) BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 13 mV
Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization



☒ Electrode Placement
☒ Pain Site
☒ Iontophoresis

Description/Comments:

☒ Exercise/Function Activities Flow Sheet: 30 Min HEP

Description/Comments: Completed per log

ASSESSMENT: Progressing No Significant Change Regressing Compliant with HEP YES NO

Comments: Steady. No ↑ pain & ↑ tolerance of exercises.

PLAN: ☒ Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments: Mary Ketterman, P.T.

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HUMMEL PHYSICAL THERAPY, INC

12016B Radio Station Road

Seneca, SC 29678

(864) 882-5780 tel (864) 882-5708 fax

Physical Therapy Progress Note

Patient: Kimberly Mahaffey

Date: 1/25/2005

Referring Physician: Henny Ramirez, P.A.

Diagnosis: (R) Knee Strain

Progress/Comments:

Continued PT Rx x 3 more visits (9 total).

Reports still some pain, rates 3/10. Notes she is able to bear weight on (R), but not a long time. Stepping up a step & (R) leg leading is difficult for her.

Notes stiffness on awaking in the mornings, but notes cold temperatures aggravating pain.

Objectively: popping on full (R) knee extension & pain on return from extension; tenderness anteriorly over quad tendon at inferior patella & medially to patella at joint line; discomfort on LCL + MCL testing & meniscal testing some discomfort, though she describes most pain as "not bad" just "aggravating."

Recommendation:

Not worse, but is slow to & also. Ortho consult possibly?
Will audit any further orders.

Thanks.

Mary A. Ketterman, P.T.

Copy given to pt to take to Dr's visit 1/25/05 (AK)

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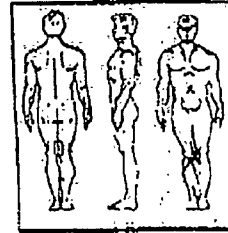
HUMMEL PHYSICAL THERAPY

PATIENT NAME: Kimberly Mahaffey DOCTOR: Harshawn Ramirez DIAGNOSIS: (R) knee strain

DATE: 1/19/05 TIME IN: 8:05 TIME OUT: 8:58
SUBJECTIVE: Pt reports notices a difference in pain out from work for now so she doesn't have to be up & walking a lot.

PAIN LEVEL: (0-10) _____ PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:
☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS:
Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization



☒ Electrode Placement
_____ Pain Site
_____ Iontophoresis

Description/Comments: _____

☒ Exercise/Function Activities Flow Sheet: 15 Min _____ HEP

Description/Comments: Completed per log - "pulling" sensation & sure noted

ASSESSMENT: _____ Progressing _____ No Significant Change _____ Regressing _____ Compliant with HEP YES NO

Comments: Pain p standing up from sitting position, but notes it's pain & more of a tenderness.

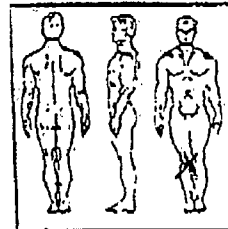
PLAN: ☒ Continue as ordered _____ Continue current Regimen _____ Change in current treatment status _____ Discharge

Comments: Mary A. Ketterman, P.T.

DATE: 1/20/05 TIME IN: 9:00 TIME OUT: 9:51
SUBJECTIVE: Pt reports has had some pain - constant - began sometime yesterday. Not really bad, but is aggravating.

PAIN LEVEL: (0-10) _____ PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:
☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 4mA
Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization



☒ Electrode Placement
_____ Pain Site
_____ Iontophoresis

Description/Comments: _____

☒ Exercise/Function Activities Flow Sheet: 30 Min _____ HEP

Description/Comments: Completed per log

ASSESSMENT: _____ Progressing ☒ No Significant Change _____ Regressing _____ Compliant with HEP YES NO

Comments: _____

PLAN: ☒ Continue as ordered _____ Continue current Regimen _____ Change in current treatment status _____ Discharge

Comments: Mary A. Ketterman, P.T.

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HUMMEL PHYSICAL THERAPY, INC

12016B Radio Station Road

Seneca, SC 29678

(864) 882-5780 tel (864) 882-5708 fax

Physical Therapy Progress Note

Patient: Kimberly Mahaffey

Date: 1/17/05

Referring Physician: Henry Ramirez, P.A.

Diagnosis: (R) Knee Strain

Progress/Comments:

Ms. Mahaffey has continued 2-3 more visits. Ex Therex, US, Ice & e-stim.

Notes not a lot of pain this morning, but notes when she is pp on her feet more, she has ↑ pain. Saturday states pain close to 7/10 p. Working.

Pain center of (P) patella & medially also ↑ tenderness still fairly n.d.

Tolerates ROM exercises, ankle pumps, SLR, calf raises but a "clicking" noted on knee extension.

Recommendation:

Cont. as needed for symptom relief & ROM/strengthening, if you agree just send new script.

x Also she still has discomfort & meniscal & ligamentous testing - (P) medial knee pain, not significantly 4 from last week.

Thanks.

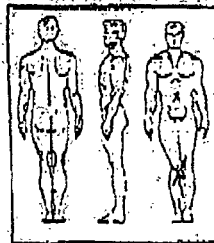
Mary Kottmann, P.T.

Reur miment Pt to take to Dr. 1/17/05 (MD)
lolo

HUMMEL PHYSICAL THERAPY

PATIENT NAME: Kimberly Mahaffey DOCTOR: Hananhan/Ramirez DIAGNOSIS: (R) Knee Strain

DATE: 1/14/05 TIME IN: 8:55 TIME OUT: 9:35
SUBJECTIVE: Pt reports been off her knee a while so this morning not feeling as bad.



PAIN LEVEL: (0-10) _____ PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:
☒ Moist Heat: ✓ Ice _____ Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: PENS - Normal (14% intensity)
☐ Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
☐ Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
☐ Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization

☒ Electrode Placement
Pain Site
Iontophoresis

Description/Comments: _____

☒ Exercise/Function Activities Flow Sheet: 15 Min _____ HEP

Description/Comments: Completed per log

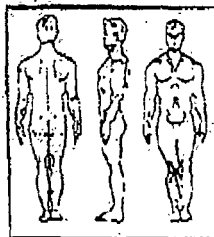
ASSESSMENT: _____ Progressing _____ No Significant Change _____ Regressing _____ Compliant with HEP YES NO

Comments: Withd'd pain since last visit. Popping still occ vrs
& extension, however.

PLAN: ☒ Continue as ordered _____ Continue current regimen _____ Change in current treatment status _____ Discharge

Comments: x 1 visit & follow up & doctor Marya Ketterman, P.T.

DATE: 1/17/05 TIME IN: 8:35 TIME OUT: 9:20
SUBJECTIVE: Pt reports that so far today is not too bad.



PAIN LEVEL: (0-10) 7/10 on Saturday PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:
☒ Moist Heat: ✓ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: BWT
☐ Iontophoresis: 2ml @ _____ Ma X _____ min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical _____ lbs X _____ min. Intermittent _____ Static _____
Lumbar _____ lbs X _____ min. Intermittent _____ Static _____
☐ Whirlpool: (20min) @ 104 degrees F.
Location: _____ Sterile _____ Non-sterile
☐ Manual Therapy: (15 min) _____ Massage _____ Joint Mobilization _____ Soft Tissue Mobilization

☒ Electrode Placement
Pain Site
Iontophoresis

Description/Comments: _____

☒ Exercise/Function Activities Flow Sheet: 15 Min _____ HEP

Description/Comments: Completed per log

ASSESSMENT: _____ Progressing _____ No Significant Change _____ Regressing _____ Compliant with HEP YES NO

Comments: Still overall & pain, but minimal & since last week. See progress notes.

PLAN: ☒ Continue as ordered _____ Continue current regimen _____ Change in current treatment status _____ Discharge

Comments: Marya Ketterman, P.T.

67

COCHISE COUNTY, ARIZONA
J.R. HANAHAN, JR., M.D.
DEA # AH 7102849 LIC. # 07874
HENRY M. RAMIREZ, P.A.C.
DEA # ME 012358 LIC. # A128
208 NORTH RADIO STATION ROAD
GREENSBORO, NC 27478
(864) 682-7225 OFFICE, (864) 882-3351 PAGE 06

NAME [Signature] AGE 41
ADDRESS [Signature] DATE 11/11/05
RE-ILLEGAL IF NOT SAFETY BLUE BACKGROUND
B

[Signature]

[Signature]

DISPENSE AS WRITTEN SUBSTITUTION PERMITTED
87
Start # 01/12/05
43FP4012996

HUMMEL PHYSICAL THERAPY

PATIENT NAME: Kimberly Maraffey DOCTOR: Hannah Ramirez DIAGNOSIS: (R) Knee Strain

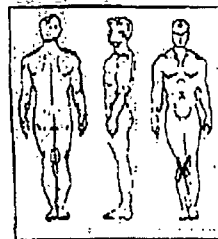
DATE: 1/11/05 TIME IN: 8:30 TIME OUT: 9:15
SUBJECTIVE: Pt reports was up on her feet more yesterday

and knee ached last night. Not too bad & is more

PAIN LEVEL: (0-10) 10 today PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:

Moist Heat ✓ Ice 15 Min.
✓ Ultrasound: (8 min) Intensity: 1.5 W/cm² Frequency: 1MHz Duty Cycle: 100%
✓ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: TENS - Normal
Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization



X Electrode Placement
X Pain Site
Iontophoresis

Description/Comments:

✓ Exercise/Function Activities Flow Sheet: 15 Min HEP

Description/Comments: Completed per leg. Knot r'd yet 2° to some

ASSESSMENT: Progressing No Significant Change Regressing Compliant with HEP YES NO

Comments: With ✓ pain today, but still overall limited with
her regular weight-bearing activity. General medial (R) knee tenderness.

PLAN: ✓ Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments: Returns to doctor for follow up Mary A Ketterman, P.T.

1/12/2005 Pt. called to cancel today's appt. & rescheduled. With (R) Next
appt. 11:30 am. Ketterman, P.T. - noted this was due to a plant meeting
that ran over. M. Ketterman, P.T.

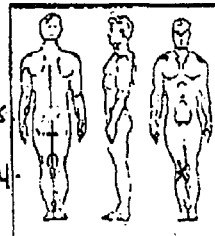
DATE: 1/13/05 TIME IN: 4:50 TIME OUT: 5:30
SUBJECTIVE: Pt reports has had to be up on her feet walking a lot the last

2 days. She notes that at work her job activities are
being considered light duty, & this includes walking the

PAIN LEVEL: (0-10) 10 today PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:

Moist Heat ✓ Ice 15 Min.
✓ Ultrasound: (8 min) Intensity: 1.5 W/cm² Frequency: 1MHz Duty Cycle: 100%
✓ Electrical Stimulation: (20 min) IFC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 100%
Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization



X Electrode Placement
Pain Site
Iontophoresis

Description/Comments:

✓ Exercise/Function Activities Flow Sheet: 15 Min HEP

Description/Comments: Completed per leg; did not complete the standing
SUP/calf raises. I told today 2° to her & walking & r

ASSESSMENT: Progressing No Significant Change Regressing Compliant with HEP YES NO

Comments: Pain has r'd, especially anterior (R) knee, over patella.

PLAN: ✓ Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments: Resume all ex next visit Mary A Ketterman, P.T.

HUMMEL PHYSICAL THERAPY, INC

12016B Radio Station Road

Seneca, SC 29678

(864) 882-5780 tel (864) 882-5708 fax

Physical Therapy Progress Note

Patient: Kimberly Mahaffey

Date: 1/10/05

Referring Physician: H. Ramirez, PT

Diagnosis: (R) Knee Strain

Progress/Comments:

Ms. Mahaffey has completed 3 PT sessions & Rx including ultrasound, gentle ROM / quad sets / SLR / ankle pumps / calf raises & HEP, & ice / estim. Does ~~not~~ demonstrate gradually ↑ tolerance & exercises & some symptom relief & modalities. Her pain is still located anteriorly & medially in ~~the~~ knee going inferior to patella. These are the areas of tenderness - medially & inferiorly to patella & over MCL / medial jt line.

Weight bearing tolerance improving, but still pain noted at end range extension & all through flexion. Quad / IT strength v'd 2+ to pain.

Overall & slight ↓ of her pain. today rates $\frac{1-2}{10}$. At most last night $\frac{5}{10}$.

Recommendation:

Expect gradual progress & further Rx. She did have some (+) pain & discomfort & meniscal testing & may want to rule out any problem & that if no A. p couple weeks.

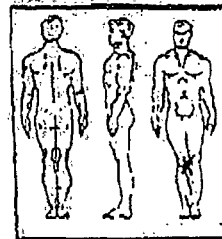
Thanks.

Marya Ketterman, P.T.

UMMEL PHYSICAL THERAPY

PATIENT NAME: Kimberly Mahaffey DOCTOR: Honaban/Ramirez DIAGNOSIS: (R) Knee Strain

DATE: 1/5/05 TIME IN: 4:52 TIME OUT: 5:51
SUBJECTIVE: P reports (R) knee strain feels burning pain
see eval for details.



PAIN LEVEL: (0-10) 9/10 PATIENT POSITION: Prone Supine Sitting Side lying

OBJECTIVE:
☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IPC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 11m
☐ Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
☐ Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
☐ Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization

☒ Electrode Placement
☒ Pain Site
☐ Iontophoresis

Description/Comments:

☒ Exercise/Function Activities Flow Sheet: 15 Min V HEP

Description/Comments: Completed per log & gave 4 ex. for HEP

ASSESSMENT: Progressing No Significant Change Regressing Compliant with HEP YES NO

Comments: (R) Medial Knee Strain.

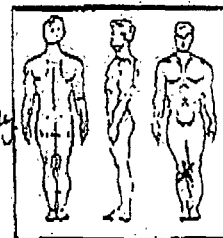
PLAN: ☒ Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments:

Mary Ketterman, P.T.

DATE: 1/7/05 TIME IN: 9:00 TIME OUT: 9:45
SUBJECTIVE: P reports some soreness and pain today

Woke up middle of night (previous night), took pain pill. Knee had trouble giving way & hurt yesterday



PAIN LEVEL: (0-10) 10/10 PATIENT POSITION: Prone Supine Sitting Side lying
OBJECTIVE:
☒ Moist Heat ☒ Ice 15 Min.
☒ Ultrasound: (8 min) Intensity: 1.5 W/cm2 Frequency: 1MHz Duty Cycle: 100%
☒ Electrical Stimulation: (20 min) IPC BIPOLAR PREMOD RUSSIAN BIPHASIC
SETTINGS: 10m Normal
☐ Iontophoresis: 2ml @ Ma X min. (Dexamethasone)
☐ Traction: Position: Supine with knees & hips flexed at a 90 degree angle
Cervical lbs X min. Intermittent Static
Lumbar lbs X min. Intermittent Static
☐ Whirlpool: (20min) @ 104 degrees F.
Location: Sterile Non-sterile
☐ Manual Therapy: (15 min) Massage Joint Mobilization Soft Tissue Mobilization

☒ Electrode Placement
☒ Pain Site
☐ Iontophoresis

Description/Comments:

☒ Exercise/Function Activities Flow Sheet: 15 Min HEP

Description/Comments: Per log: noted pulling in ant. knee
SLR, SAG, ankle pumps.

ASSESSMENT: Progressing V No Significant Change Regressing Compliant with HEP YES NO

Comments: Tolerates ex. & some discomfort as noted, but some pain & modalities.

PLAN: ☒ Continue as ordered Continue current Regimen Change in current treatment status Discharge

Comments:

Mary Ketterman, P.T.

HUMMEL PHYSICAL THERAPY
12016-B N. RADIO STATION ROAD
SENECA, SC 29678

PHONE: (864) 882-5780
FAX: (864) 882-5708

EVALUATION FORM

NAME: KIMBERLY MAHAFFEY

REF DR: JAMES HANAHAN/HENRY RAMIREZ, P.A.

DATE: 01/05/05

DOI: 01/04/05

DX: RIGHT KNEE STRAIN

RTD: 1 WEEK

MECHANISM OF INJURY: REPORTS TWISTING INJURY
TO RIGHT KNEE

DIAGNOSTIC TEST/RESULTS: X-RAYS, (-) FOR FX

CURRENT MEDS: CORTISONE PILL, MOBIC AND
TRAMADOL

WORK STATUS: LIGHT DUTY

PMHx: DENIES ANYTHING SIGNIFICANT AT THIS TIME.

SUBJECTIVE: 34y.o.f. referred to PT with right knee pain following twisting injury yesterday. She states that she has had some burning pain noted in the front and inside of the right knee, and notes that she has a good bit of pain when she stands up after she has been sitting for a while. She states that she has more difficulty going up stairs than when going down stairs. She describes the location of the pain in the front of the right knee below and to the inside of the knee cap. She states that she does have an increase in pain whenever putting weight on the right side, and so has been avoiding putting most of her weight through that leg.

OBJECTIVE:

PAIN (1-10): NOW: 1/10 LEAST: 1-2/10 WORST: 6/10

POSTURE: Slight valgus of both knees noted.

ROM: L LE is WNL actively, and the R LE is WNL actively except for the right knee, which is as follows:

Active

Passive

Flexion: pain throughout and lacks 15 deg.
secondary to the pain

Flexion: WNL, pain throughout

Extension: WNL, pain in last 10 deg.

Extension: WNL, end range pain

STRENGTH: WNL except right quadriceps and hamstrings which are 3+/5 secondary to increased pain and tenderness.

PALPATION: Increased tenderness over the right medial knee, especially over the MCL, and medial to the patella and over the medial joint line. She also has some increased tenderness inferior to the patella in the upper portion of the lower leg on the medial side. She does have an increase in swelling of the right knee, with the girth measurement on the right side being 1 in. greater than on the left when measured at the mid patella region.

SENS/NEURO: Grossly intact to light touch and she denies any numbness or tingling.

FUNCTIONAL STATUS: - Currently limited with weight bearing activities, standing for increased period of time and walking or going up stairs.

SPECIAL TEST: Patellar compression: (+) for increase of pain
Patellar mobilizations: pain greater with medial displacement than lateral.
Anterior drawer test: noted to have pain but no significant anterior to posterior movement when compared to the left.
Valgus stress test: (+) for increased pain in medial knee/MCL and joint line.
Varus stress test: (+) pain, not as greatly as with valgus test, however.
Meniscal testing: (+) increase of pain medially with McMurray's test.

Continued...

Faxed 1/13/05 MHA 72

HUMMEL PHYSICAL THERAPY
12016 N. RADIO STATION ROAD
SENECA, SC 29678

PHONE: (864) 882-5780
FAX: (864) 882-5708

ASSESSMENT: Patient with right knee strain, including possible MCL involvement or meniscal problem as well. She currently has limitations with weight bearing activities of the R LE, increased pain with ROM and decreased strength and endurance for her activities. She may benefit from PT to help address any symptoms of pain, inflammation and swelling, and also to improve strength, motion and endurance for her regular function.

- GOALS:
1. To have a decrease in pain from 6/10 to 4/10 in 2 weeks.
 2. Independence with an appropriate HEP for the right knee in 1-2 weeks.
 3. Reduce overall right knee medial knee tenderness 25% or greater in 2 weeks.
 4. Improve strength $\frac{1}{2}$ - 1 muscle grade in 4 weeks.
 5. Have full active ROM of the right knee w/o significant pain in 4-6 weeks.
 6. Increase endurance to allow her to resume previous level of weight bearing activity with standing, walking and stair climbing in 4-6 weeks.

PLAN: The patient will be followed 3 times a week as ordered, and her treatment may include any appropriate modalities, ROM, stretching, strengthening and stabilization activities for the right knee. Any joint mobilizations may be used as needed. She will be provided with a HEP, and she will be advised to follow up with you as scheduled.

Thank you very much for the referral.

Mary A. Ketterman, P.T.
Mary A. Ketterman, P.T.

Faxed 1/13/05 MAM

73

DE 47102849

DEA # MR0116358

COONEE FAMILY PRACTICE, P.A.
J. R. HANAHAN, JR., M.D.
HENRY M. RAMIREZ, P.A.
12018 N. RADIO STATION ROAD
SENGCA, SC 29878

OFFICE 804-882-7225

PAGING 804-882-3331

NAME

ADDRESS

DATE

R (Please Print)

P. 3x
Aweek

☐ LABEL

POPUL TIMES PRN NR

DEFENSE AS WRITTEN

SUBSTITUTION PERMITTED

08-OCT-04

TX0911008_100109008-46_01_43701_0002

Start 4/15 01/05/05



**MOUNTAINVIEW
MEDICAL IMAGING**

864-885-0551
864-885-1822 - fax

1059 By-Pass 123+ Seneca SC 29678

James Hardy, M.D.
O. Alex Hicklin, III, M.D.
Thomas M. Doud, M.D.

NAME: Mahaffey, Kimberly
DOB: 10/14/1970
Physician: MCCALLUM, SEAN

DATE OF EXAM: 02/16/2006
SSN: 247338969
Chart No: 35188

EXAM: MRI OF THE RIGHT KNEE

HISTORY: 35 year old female with previous ACL repair approximately 10 months prior, with recent fall and medial sided right knee pain.

TECHNIQUE: MRI scan was performed utilizing sagittal T1, gradient echo, and inversion recovery, followed by coronal T2 with gradient echo axial through the patello-femoral joint.

There is a focal contusion of the anterior aspect of the medial femoral condyle which approaches the condyle surface. A subtle osteochondral injury is likely. No other suspicious skeletal lesions are seen.

The ACL repair appears to be intact. The posterior cruciate ligament is normal. Medial collateral and lateral collateral ligaments are normal. No patellar retinacular tear. Quadriceps tendon normal. Patellar tendon is intact. Post-surgical change at the inferior margin of the patellar tendon is observed.

There is grade II linear signal within the posterior horn of the medial meniscus but no definitive meniscal tear. The anterior horn is intact. No lateral meniscal tear is visualized. On the coronal sequence, there is a subtle hypointense focus within the medial aspect of the lateral joint space. Given the potential osteochondral injury of the anterior aspect medial femoral condyle, a small loose body from a chondral defect is certainly possible.

IMPRESSION:

1. PREVIOUS ACL REPAIR, CURRENTLY APPEARS TO BE INTACT. NO OTHER LIGAMENTOUS INJURY. SOFT TISSUE EDEMA ALONG THE MEDIAL AS WELL AS THE LATERAL ASPECT OF THE KNEE IS OBSERVED. FOCAL SITE OF MARROW EDEMA OF THE ANTERIOR ASPECT, MEDIAL FEMORAL CONDYLE. THIS APPROACHES THE CHONDRAL MARGIN, AND IS CONCERNING FOR AN OSTEOCHONDRAL INJURY. THIS MAY BE OLD. POTENTIALLY THERE IS A SMALL CHONDRAL LOOSE BODY WITHIN THE LATERAL COMPARTMENT OF THE RIGHT KNEE.

Thomas M. Doud, M.D.

Thank you for using Mountainview Medical Imaging

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 MOUNTAINVIEW MEDICAL IMAGING		James Hardy, M.D. O. Alex Hicklin, III, M.D. Thomas M. Doud, M.D.
864-885-0551 864-885-1822 - fax	1059 By-Pass 123* Seneca SC 29678	

NAME: Mahaffey, Kimberly
 DOB: 10/14/1970
 Physician: Moss, April

DATE OF EXAM: 1/31/2005
 SSN: 247338969
 Chart No: 35188

MRI RIGHT KNEE:

HISTORY: 34 year old female with recent injury to the right knee with right knee pain, possible internal derangement.

TECHNIQUE: MRI scan was performed utilizing sagittal T1 and inversion recovery, followed by coronal T2. Gradient echo axial was also acquired through the patellofemoral joint. Thin section sagittal gradient echo through the ACL and PCL.

There is a bone contusion of the lateral aspect of the medial femoral condyle. There is also a contusion along the posterior margin of the medial femoral condyle. Trace focus of increased signal along the medial tibial plateau may be also post-traumatic. There is a trace joint effusion. There is increased signal and soft tissue thickening along the course of the anterior cruciate ligament, consistent with a ligament sprain. Partial tear is likely. The posterior cruciate ligament is intact. The medial collateral and lateral collateral ligaments are normal. There is no patellar retinacular tear. The quadriceps tendon and the patellar tendons are normal.

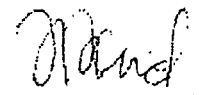
There is trace intrameniscal signal within the posterior horn of both medial and lateral menisci. The signal within the posterior horn of the medial meniscus appears to reach the meniscal margin, thus, a peripheral tear is likely. There is increased signal within the anterior horn of both medial and lateral menisci but no other meniscal tear is suspected.

IMPRESSION:

1. SMALL BONY CONTUSION INVOLVES THE LATERAL ASPECT MEDIAL FEMORAL CONDYLE, POSTERIOR MARGIN MEDIAL FEMORAL CONDYLE, AND SMALL CONTUSION OF THE MEDIAL TIBIAL PLATEAU. TRACE JOINT EFFUSION.

PARTIAL TEAR ANTERIOR CRUCIATE LIGAMENT.

SUBTLE, GRADE III TEAR POSTERIOR HORN MEDIAL MENISCUS.


 Thomas M. Doud, M.D.

Thank you for using Mountainview Medical Imaging

TMD/thr

76