

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

RECEIVED

FEB 28 2017

S.C. SUPREME COURT

February , 2017

[The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211]

RE: South Carolina Workers' Compensation Commission , Respondent, v.
Carlos Kinlaw, Appellant, Case No. 2016-CP-00-2182

Dear Mr. Shearouse

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.
- (3) A filing fee of \$100.*
- [(4) This appeal is being filed with the Supreme Court because . . . (see Rule 203(d) for when an appeal can be filed with the Supreme Court).]

Sincerely,
s/ John E. Smith
Carlos Kinlaw
2 Taylor Court
Bluffton, SC 29910
843 384 2675 cell
8430 757 3583 home
Appellant

cc: James Keith Roberts, Esquire
P.O. BOX 1715
Columbia, SC 29202-1715
Attorney for Respondent

* Under Rule 203(d)(1)(B)(iii) and (d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the State of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule

240(d), SCACR.

The South Carolina Court of Appeals

Carlos Kinlaw, Appellant,

v.

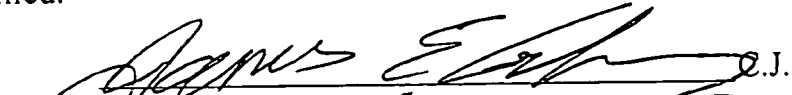

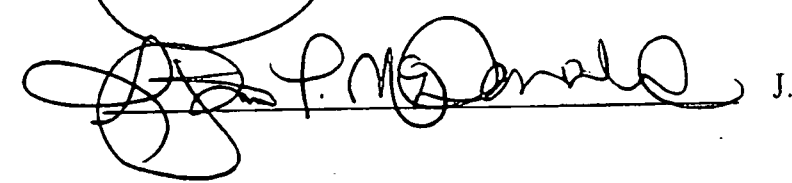
South Carolina Workers' Compensation Commission,
Respondent.

Appellate Case No. 2016-002182

ORDER

This appeal was dismissed due to Appellant's failure to timely serve the notice of appeal on Respondent. Appellant has now filed a motion, which we construe as a petition to rehear the dismissal of this appeal.

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:
Carlos Kinlaw
James Keith Roberts, Esquire
Amy Bracy

FILED

February 3, 2017

I am asking South Carolina Supreme Court to review this case in the interest of justice and constitutional law. Which is the 14th Amendment of the USA Constitution I am asking the court to take a look at what is my argument against state. I am sorry if its a little rough to read. The state workers compensation commission must learn to follow the law because commissioners are supposed to be unbiased and fair. I thank you for your time and for reading this letter. My hope is i will not have to appeal to US Supreme Court based upon this ruling by the US Supreme Court in these cases Goldberg vs Kelly and Matthews vs Eldridge. Goldberg vs Kelly the US Supreme Court said (c) A decision must rest " solely on the legal rules and evidence adduced at the hearing.

I am sending you a part of a defense brief the commissioners order which has the dates of the order and the postponement date the Commissioner disregarded the postponement procedure that says a trial can only be postponed for a month then after that it must be sent to a general file to judicial department

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA

[In The Supreme Court]

APPEAL South Carolina
Court of Appeals

RECEIVED

FEB 28 2017

S.C. SUPREME COURT

Case No.

South Carolina Workers'
Compensation Commission

Respondent,

v.

CARLOS KINLAW,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Erin Hantske by depositing a copy of it in the United States Mail, Erin Hantske postage prepaid, on , 2017, addressed to his attorney of record, , PO Box 650007 Mt. Pleasant, SC 29465.

, 2017

s/ Carlos Kinlaw
Carlos Kinlaw
2 Taylor Court
Bluffton, South Carolina 29910
(843) 384-2675
(843) 757-3583
Attorney for Appellant

clearly says if a case is in doubt cases the climb it should be awarded the claim that is what the state legislature wrote and intended to be follow the by court so what is it cleared due process of violation by the rule of Law. Clare vs champion laboratories and Mims vs neither bottling.

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1. My argument is that the due process was violated in my case because the fundamentals of the law was not followed as it was written. It is clear that the court was biased to Wards me because they allow the defense to postpone and go to General file as the state law 67–613. Postponement or Adjournment of the Scheduled Hearing is written but when it was time for me to postpone they did not follow course of law the postponement procedure therefore robbing me of the general file. Which caused a due process violation which also is a 14th Amendment violation. These two Federal cases apply to my case Goldberg vs Kelly and Matthews vs Eldridge (c) A decision must rest “solely on the legal rules and evidence adduced at the hearing”.[7].....2
2. My other argument is that the 14th Amendment is the supremacy clause and cannot be circumvented by a state law or state bar or a court lack of subject jurisdiction. So in this case why is the US Constitution being circumvented by state law.....2
3. My other Argument to is about the adjudication that occurred on August 29, 2014 made by Virginia Crocker based on the fact that the defense turned in evidence and talk to a doctor without notifying me which violets the state law 67–1308. Communication Between Parties And Health Care Providers.
4. My other argument here is that the state showed clear favoritism to wards the defense by allowing them to postpone and use the general file but but when I needed to postpone they would not allow me too use the general file as the Law requires
5. Argument number the state is allowing the workers comp settlement proceed your to be violated by the defense by allowing them to get resignation as part of the workers compensation settlement. And when a Plaintiff comes into court and says that defense violated the settlement procedure by getting a resignation they say it is a civil court Matter, and when you go to the Court of Common Pleas they say it's a workers comp matter this issue needs to be handled by the appeals court because other court can not handle it
6. There is also a 14th amendment due process problem with in doubt cases it has come to my attention that the state has shift the burden of proof to the claimant when the law

STATEMENT OF ISSUES ON APPEAL

7. Did the trial court fail to answer the question of a 14th Amendment violation

STATEMENT OF THE CASE

On May 25th 2016 Judge Carmen Mullen her dad defense motion to dismiss in 2015 - CP- 07-02946 carlos kinlaw vs South Carolina workers compensation commission for 14th amendment violation where she was given the law of postponement for the workers compensation Commission which clearly show that the Commission had violated the postponement procedures thus creating a due process problem. It is now clear to me that the Commission held rigged trial were the outcome was always going to be in the defense favor where the defence could break laws and not be held accountable. All of this was over because I challenged the resignation that were going on in the state illegally

FACTS

The State of South Carolina Worker Compensation Commission violation my 14 Amendment right in a workers compensation case. Commissioner Gene McCaskill postponed a hearing January 9, 2013 and it was to happen on February 28, 2013 but the attorney Brian O'Keefe postponed it on February 13, 2013 . The commissioner did the hearing on April 23, 2013 which broke this law 67- 613 which is also a clear violation of my 6 and 14 amendment right to a fair trial, improper venue and due process violations because he did not have the judicial authority to hold the hearing and reset the case that power is given to the South Carolina Workers' Compensation Commission Judicial Department . Both Commissioner Gene McCaskill and Brian O'Keefe circumvent law 67-613 by not letting the case go to a general file after 30 days which is required by the law due process. . Appellate panel made up of Commissioners Avery B. Wilkerson, Jr, Melody L James, Aisha Taylor and Erin Hantske Esq did a conspiracy to aid in a 6th and 14 amendment right violation in their decision because they could see in the paper work for the case all the postponements in the file and did not act to give a fair trial or procedural due process.

In Beaufort, South Carolina, In The Court Of Common Pleas Fourteenth Judicial Circuit in the

County of Beaufort South Carolina a civil lawsuit was heard on August 7, 2014 at 2:00pm Carlos Kinlaw and God Sent Transport LLC vs Workers Compensation Commission of South Carolina, Case No 2014CPo701142 before Judge Carmen T Mullen over a 6 Amendment violation by the state, where Keith Robert, Esq. appeared of the defendant in the hearing. I told the Judge Mullen in the hearing and on the paper work that my 6 Amendment right was violated by the state. Mr. Robert said in that hearing that the state had clear up the 6th Amendment problem when they had not did it at all. Mr Robert hide the fact that Workers Compensation Commission of South Carolina had planned a conspiracy with the lawerys and commissioners to violated my 6 and 14 amendments rights through a workers compensation hearing. Judge Carmen T Mullen did not go through bill of right to find out amendment was broke by the state. She had not allow me to proceed in forma pauperis for my case she would move the case forward unless I paid for it. This conspiracy could not have been pull off without the Governor Nikki R Haley knowing about it because of the civil lawsuit in The Court of Common Pleas and Workers Compensation Commission of South Carolina is ran by the Governor office. This is 6th and 14th amendment violation case not conspiracy case yet when show that the amendment were violated I amend it.

Carlos Kinlaw vs. The State of South Carolina Workers' Compensation Commission Case: 2015cp0700651

-----**Time line for case of orders**-----

Hearing held in Walterboro ,SC January 10, 2012 it was postponed.
January 19, 2012 Brian O'Keefe sent proposed decision and order for review by Commissioner Bryan Lyndon.
January 24, 2012 Commissioner Bryan Lyndon wrote his order to postponed case and send to a general file as required under the Act 67-613.
Hearing held in Beaufort, SC January 18, 2013 it was postponed.
January 18, 2013 Commissioner Gene McCaskill wrote a order to postponed the case.
February 13, 2013 Brian O'Keefe Wrote a proposed order to postponed hearing in Myrtle Beach for February 28, 2013.
Hearing was held in Horry County, SC on April 23, 2013 which break South Carolina Workers' Compensation Regulation 67-613.

1
ARGUMENTS

1. My argument is that the due process was violated in my case because the fundamentals of the law was not followed as it was written. It is clear that the court was biased to Wards me because they allow the defense to postpone and go to General file as the state law 67-613. Postponement or Adjournment of the Scheduled Hearing is written but when it was

time for me to postpone they did not follow course of law the postponement procedure therefore robbing me of the general file. Which caused a due process violation which also is a 14th Amendment violation. These two Federal cases apply to my case Goldberg vs Kelly and Matthews vs Eldridge (c) A decision must rest "solely on the legal rules and evidence adduced at the hearing".[7]2

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CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

November 20, 2016
Carlos Kinlaw

Carlos Kinlaw
2 Taylor Court
Bluffton, South Carolina 29910
(843) 384 2675
Appellant

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1105654

CARLOS KINLAW,

Employee,

Claimant,

vs.

LOWE'S HOME CENTERS, INC.,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

L759346

How did he get
Here / where is
the General
File for
1/9/2013

DATE OF HEARING:

Hearing held in Horry County, S.C. on April 23, 2013.

APPEARANCES:

Claimant, Carlos R. Kinlaw, appeared *Pro se*.

Defendants represented by Brian G. O'Keefe, Esquire of
McAngus Goudelock & Courie, L.L.C. of Charleston,
South Carolina.

PURPOSE OF THE HEARING:

To determine issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner Gene McCaskill

FILED:

June 28, 2013

STIPULATIONS

The parties stipulated at the hearing to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
2. The purpose of the hearing is to determine the issues as set forth on Forms 50 and 51.
3. Notice of the Hearing was timely and properly served upon all parties.
4. Venue and jurisdiction are proper in Horry County, South Carolina.
5. Claimant has an average weekly wage of \$319.17 with a corresponding compensation rate of \$212.79 for date of accident March 12, 2011.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records and documents were submitted into evidence:

Defendants' Submissions: The Defendants submitted the following medical evidence:

APA No. 1: Medical records of Jeffrey M. Reuben, M.D., Reuben Spine Specialists dated May 28, 2010 through October 13, 2011, 16 pages.

APA No. 2: Medical records of David E. Dorsner, M.D., Cross Island Medical Center dated March 14, 2011 through May 13, 2011, 16 pages.

APA No. 3: Medical records of Joseph P. Tobin, M.D., Tobin Bone and Joint Surgery, Inc. dated May 10, 2011 through January 12, 2012, 3 pages.

APA No. 4: Medical record of MRI at Belfair dated October 7, 2011, 1 page.

APA No. 5: Medical records of MUSC Radiology dated October 15, 2012 through November 1, 2012, 4 pages.

APA No. 6: Independent Medical Evaluation of Richard J. Friedman, M.D., Charleston Orthopaedic Associates dated January 3, 2013, 2 pages.

APA No. 7: Independent Medical Evaluation of Jon Hyman, M.D., P.C., Orthopaedic Surgery and Sports Medicine dated February 14, 2013, 6 pages.

Defendants' Exhibits: The Defendants submitted the following exhibits:

Exhibit A: Deposition transcript of David E. Dorsner, M.D. dated December 6, 2011.

Exhibit B: Settlement Agreement and Release for WCC File No. 0917941 dated March 21, 2011.

Exhibit C: Form 19 filed under WCC File No. 0917941 dated March 8, 2011.

Exhibit D: Resignation and Release signed and dated by Claimant on March 16, 2011.

Exhibit E: Settlement check in the amount of \$24,500.00 representing \$24,000.00 for the Settlement Agreement and Release and \$100.00 for the Resignation and Release.

Exhibit F: Deposition transcript of Jeffrey M. Reuben, M.D. dated December 28, 2011.

Exhibit G: Decision and Order dated January 24, 2012.

Exhibit H: Payroll records compromising the Form 20.

Exhibit I: Deposition transcript of Joseph P. Tobin, M.D. dated November 7, 2012.

Exhibit J: Deposition transcript of Claimant dated June 29, 2012.

Claimant's Submissions: Claimant did not submit formal APA submissions, but the following medical evidence was submitted into the record. Self-serving declarations are not admissible into the evidence of this case:

MRI report dated 10/7/2011

Medical reports of Dr. Jeffrey Reuben dated 9/6/11 -10/13/11, 4 pages.

STATEMENT OF THE CASE

This claim arises out of an admitted injury to Claimant's left calf on March 12, 2011 although the nature and extent of injury is in dispute. Claimant previously suffered a work-related accident on October 13, 2009 in which he injured his lower back, buttocks and lower extremities. Claimant resolved that claim on a Clincher which was filed with the South Carolina Workers' Compensation Commission on March 21, 2011. Claimant also signed a Resignation and Release dated March 16, 2011 providing his last day of work was March 15, 2011. After settlement of the 2009 claim, but before the filing of the 2009 settlement documents with the Commission, Claimant suffered another work-related injury on March 12, 2011.

On October 3, 2012, Claimant filed a Form 50 Request for a Hearing alleging an injury to his back and left leg as a result of an accident on March 12, 2011. Claimant also alleged entitlement to temporary total disability benefits from March 12, 2011 to the present. Claimant subsequently contended he suffered injury to his left calf, left leg, left knee, right knee, left hip and back as a result of the work incident on March 12, 2011. Specifically, Claimant contends he suffered a labral tear in his left hip and should be entitled to additional medical evaluation and treatment for his left hip, as well as other body parts.

Defendants admit Claimant suffered a minor work-related injury on March 12, 2011 which consisted of a calf strain. Claimant was initially evaluated by Dr. Dorsner who described Claimant's injury as left calf pain that was non-radiating. Defendants subsequently provided extensive evaluation and treatment for the left calf strain but no doctor, even Claimant's own IME physician, have related any injury but a minor left calf strain to the March 12, 2011

accident. Therefore, Defendants contend the left calf strain resolved with no impairment and that Claimant is not entitled to any temporary total disability benefits as he was not written out of work by an authorized physician.

EVIDENCE OF THE CASE

A hearing was held on April 23, 2013 before the undersigned Commissioner to determine the issues as set forth in Forms 50 and 51. Claimant testified at the hearing that he was seeking additional medical treatment for his left knee, left hip and back as a result of his March 12, 2011 injury. Claimant contended he had been evaluated by Dr. Reuben and Dr. Tobin but he felt those evaluations were not accurate and had not been "finished" because he did not undergo an MRI. Claimant testified that he believes he suffered an acute labral tear which was not symptomatic at the time of his injury. (Hr. Tr. p. 7).

On cross-examination, Claimant admitted he was evaluated by Dr. Tobin on May 10, 2011 wherein he complained of left calf pain. Although Dr. Tobin's records from that date reflect there was no mention of any hip pain, Claimant testified he complained of hip and knee pain. (Hr. Tr. p. 9, ll. 2-6). Claimant also admitted Dr. Tobin evaluated his left knee and performed a range of motion test on Claimant's left knee and left hip. Claimant also admitted Dr. Tobin noted Claimant was pain free in both his left knee and left hip. (Hr. Tr. p. 9, ll. 10-24; APA p. 33). Claimant acknowledged Dr. Tobin had opined he had a normal heel to toe walk without a limp. (Hr. Tr. p. 10). Claimant agreed the records revealed he had returned to Dr. Tobin after completing an MRI of his left leg and Dr. Tobin again noted he appreciated no problem with Claimant's left knee. (Hr. Tr. p. 10, l. 16 - p. 11, l. 9). Counsel also questioned Claimant regarding his Independent Medical Evaluation with Dr. Friedman. Claimant

acknowledged he underwent an IME with Dr. Friedman in January of 2013 after having procured an MRI of his left knee and left hip. (Hr. Tr. p. 11, l. 25 - p. 12, l. 5). Claimant acknowledged Dr. Friedman's report provides that he observed nothing out of the ordinary with Claimant's left hip or knee and Dr. Friedman opined Claimant had reached maximum medical improvement for his left calf with a 0% impairment rating. (Hr. Tr. p. 12, ll. 6-20). Claimant further admitted Dr. Friedman opined there was no causation between Claimant's hip complaints and his injury at Lowe's. (Hr. Tr. p. 12, l. 25 - p. 13, l. 3).

Claimant testified regarding his selection of Dr. Hyman in Smyrna, Georgia, to perform his own Independent Medical Evaluation. Claimant testified he searched out Dr. Hyman in Georgia because he did not trust doctors in South Carolina. (Hr. Tr. p. 13, ll. 11-18). Claimant further admitted on cross-examination that he refused to provide Defendants Dr. Hyman's name or any information until after his evaluation. (Hr. Tr. p. 13, ll. 19-22). Claimant also admitted that after Dr. Hyman evaluated him, he rendered an opinion that he could not causally connect Claimant's left hip complaints to his work injury, nor could he causally connect any left knee symptoms with Claimant's accident at Lowe's. (Hr. Tr. p. 14, ll. 12-19).

Claimant testified he believes Dr. Hyman works for Sedgwick Insurance. Claimant also contended Dr. Hyman recommended a Cortisone shot for his left hip. Claimant further contended Dr. Hyman had opined that injuries such as an acute labral tear can occur without being initially symptomatic. (Hr. Tr. p. 15-16).

Upon further cross-examination, Claimant agreed Dr. Hyman had opined that his calf sprain/strain had resolved and that Claimant's current hip findings were not related to the work incident at Lowe's or to any immediate after effects of the incident. (Hr. Tr. p. 17, ll. 6-17). Furthermore, Claimant acknowledged Dr. Hyman had opined "not all labral tears are

symptomatic and I am not convinced the MRI findings of a degenerative labral tear is clinically relevant in this case." (Hr. Tr. p. 17, l. 18 – p. 18, l. 1). Furthermore, Claimant admitted Dr. Hyman questioned him regarding his self-limiting exam and behavior, including limping on the wrong leg during evaluation. (Hr. Tr. p. 18, ll. 2-9). Finally, Claimant admitted that Dr. Hyman had opined Claimant was "self-limiting" and his exam suggested "voluntary submaximal effort that was not necessarily related to pain, impairment or disability. The report of pain was out of proportion to what I expect based on the reported injury circumstances." (Hr. Tr. p. 18, ll. 7-16).

Finally, Claimant essentially contended that because he did not have an MRI of his left hip immediately following his work injury, that no doctor will opine that any pathology in his hip is causally-related to his work accident.

FINDINGS OF FACT

The following factual findings are based upon the records contained in the workers' compensation files, stipulations of the parties, the APA submissions, and any other evidentiary submissions:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. Claimant was involved in an admitted work related accident on March 12, 2011.
3. Claimant alleges he sustained injuries to his left calf, left knee, right knee, back and left hip as a result of the admitted work related accident on March 12, 2011.
4. Defendants contend Claimant suffered only a minor injury to his left calf, to wit, a calf strain, which has fully resolved.

5. Claimant was first evaluated for alleged injury suffered on March 12, 2011 by Dr. David Dorsner. Dr. Dorsner opined Claimant suffered from left calf pain which was "nonradiating" and he subsequently diagnosed Claimant with a muscle spasm of the left calf. (APA p. 31).
6. Claimant was subsequently evaluated by Dr. Joseph Tobin on May 10, 2011. Dr. Tobin opined he did not "see any pathology in his [Claimant's] hip or his knee." (APA p. 33).
7. Dr. Tobin also evaluated Claimant on January 12, 2012 and opined "I am not in a position to explain exactly where his complaints are coming from or what they are which he seems to be trying to find today, but I can assure him that my opinion is that he does not need any knee surgery. I would not recommend that he have any knee surgery." (APA p. 35).
8. Claimant was evaluated by Dr. Jeffrey Reuben regarding his complaints arising out of his March 2011 accident on September 6, 2011. Dr. Reuben noted Claimant's problem began as an "isolated calf problem" (APA p. 7). Dr. Reuben provided no opinion that Claimant's minor calf injury was causally-related to any problems with his left knee, right knee, left hip or back.
9. Dr. Tobin testified extensively in his deposition that Claimant has no pathology in his left hip or left knee to explain his left calf pain (Defendants Ex. I. Deposition of Dr. Tobin dated November 7, 2012).
10. A hearing in this matter was originally set on January 9, 2013 at which time, during the pre-trial conference, Claimant requested the hearing be postponed to allow him time to undergo his own independent medical evaluation.

11. Claimant underwent an independent medical evaluation with Dr. John Hyman of Smyrna, Georgia on February 14, 2013.
12. Dr. Hyman opined Claimant exhibited inconsistencies in his gait pattern "suggestive of a mismatched between the temporal and mechanic findings on exam and the historic findings in the claim" and that Claimant utilized "an odd deliberate type of gait mimicking a right or antalgic gait" and exhibited "conscious overlay/guarding during exam." (APA No. 7)
13. Dr. Hyman, like other evaluating physicians in this claim, was at a loss to explain the Claimant's complaints with regard to his alleged injuries.
14. Dr. Hyman further opined "it does not appear that the current hip findings were related to the incident [calf injury] or to the immediate after affects of the incident." (APA p. 47)
15. With regard to Claimant's alleged injury to his left knee, right knee, left hip and/or back there was no evidence presented at the hearing or contained in the record of this case which in any way causally-relates those complaints to Claimant's work injury of March 12, 2011. This finding is based upon the APA submissions and Claimant's testimony.
16. The evidence in this case is devoid of any medical opinion, to a reasonable degree of medical certainty, that Claimant's work accident of March 12, 2011 could have given rise to Claimant's complaints concerning his left knee, right knee, left hip and back.
17. A compensable injury may not be premised upon a conclusion based on information that exists in the public domain that an accident could have resulted in injuries which are undocumented and have not been causally-related to a work accident.

18. Under the South Carolina Workers' Compensation Act, evidence must be presented in the record that an alleged injury was caused by a specific work-related accident. That standard has not been met in the instant case.
19. Claimant has failed to meet his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that his alleged injuries to his left knee, right knee, left hip and back injuries are causally-related to his work accident.
20. Claimant suffered a compensable injury, specifically a strain of his left calf muscles, on March 12, 2011.
21. Per the opinion of Dr. Richard Friedman, Claimant is at maximum medical improvement and has suffered a 0% impairment to his left lower extremity as a result of his work-related accident on March 12, 2011.
22. Dr. Friedman further rendered an opinion, to a reasonable degree of medical certainty, that Claimant's mechanism of injury was not consistent in any way with tearing of a hip labrum and if Claimant suffers a torn labrum it is in no way related to his work accident of March 12, 2011.
23. Dr. Friedman further opined, to a reasonable degree of medical certainty, that Claimant would be released to full, unrestricted work with no limitations.
24. Based on the APA submissions regarding Claimant's settlement of his prior Workers' Compensation claim, I find Claimant voluntarily resigned his employment with Lowe's as of March 15, 2011.
25. I find Claimant is not entitled to any temporary total disability benefits as he was not written completely out of work for the admitted minor injury to his left calf.

26. Dr. Reuben testified at his deposition that he was under the impression from speaking with the Claimant that he was terminated from his job because he was having difficulty standing on the concrete. Dr. Reuben was never told by Claimant that he had resigned voluntarily from his employment. Dr. Reuben stated that he took the Claimant out of work as of September 6, 2011 because it was easier to write him out of work entirely than to figure out what he could and could not do for a job that he did not have anyway. Dr. Reuben felt that there was no reason to waste time and money getting a functional baseline test. (Defendants Ex. F. Deposition of Dr. Tobin dated December 28, 2011; p. 9-10).
27. I find Claimant is not entitled to compensation for any permanent impairment as any minor strain he suffered to his left calf has completely resolved per the opinions of Dr. Friedman and Claimant's own doctor, Dr. Hyman.
28. Therefore, I find Claimant is not entitled to any additional benefits under the South Carolina Workers' Compensation Act including temporary total disability benefits, temporary partial disability benefits, permanent disability benefits or medical treatment.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Workers' Compensation Act, the undersigned Commissioner makes the following Conclusions of Law: It is concluded under the South Carolina Workers' Compensation Act in §41-1-10 S.C. Code of Laws *et. seq.*, that:

1. S.C. Code Ann. §42-1-40 governs the calculation of average weekly wage and compensation rate.

2. S.C. Code Ann. §42-1-160 governs injuries by accident.
3. Pursuant to S.C. Code Ann. §42-1-40 and other applicable law, Claimant has an average weekly wage of \$319.17 with a corresponding compensation rate of \$212.79.
4. Pursuant to S.C. Code Ann. §42-1-160, Claimant sustained a compensable injury by accident to his left calf; specifically, a muscle strain of the left calf, on or about March 12, 2011.
5. Pursuant to S.C. Code Ann. §42-1-160 and other applicable law, the Claimant has not carried the requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that any condition with his left knee, right knee, left hip or back arose out of and occurred in the course of his employment with Defendants on March 12, 2011. See *Clade v. Champion Laboratories*, 330 SC 8, 496 SE2d 856 (1998) (the Workers' Compensation Claimant has the burden of proving facts that show that injury arose out of employment and an award of benefits must not be based on surmised conjecture or speculation); *Mims v. Nehi Bottling Co.*, 218 SC 513, 63 SE2d 305 (1951) (The burden is upon the Claimant to prove the facts which render the injury compensable).
6. Pursuant to S.C. Code §42-9-200 and other applicable Law, Claimant is not entitled to any temporary disability benefits as a result of his March 12, 2011 work accident.
7. Pursuant to S. C. Code §42-15-60, the Claimant is not entitled to, and the Defendants are not responsible for, any medical treatment or evaluation for Claimant's left knee, right knee, left hip or back.
8. Pursuant to S.C. Code §42-15-60, Defendants have provided all appropriate medical treatment for Claimant's left calf strain.

9. Pursuant to S.C. Code §42-15-60 and other applicable Law, Claimant is not entitled to any future medical treatment for his left calf strain. See *Dodge v. Brucoli*, 334 SC 574, 514 SE2d 593 (Ct App. 1999).
10. Pursuant to S.C. Code §42-9-30(16) Claimant is not entitled to compensation for any permanent disability to his left lower extremity for his resolved calf strain.

ORDER

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Claimant suffered a compensable work injury consisting of a left calf strain on March 12, 2011 arising out of and in the course of his employment with Defendants.

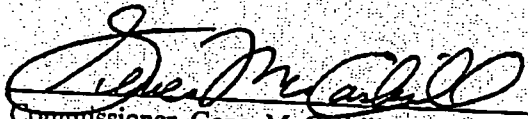
IT IS FURTHER ORDERED that Claimant is not entitled to any temporary disability benefits as a result of his March 12, 2011 work accident.

IT IS FURTHER ORDERED that the greater weight of the evidence does not support a finding that Claimant suffered a compensable work-related injury to his left knee, right knee, left hip or back arising out of and occurring in the course of his employment with Defendants on March 12, 2011 and therefore Claimant is not entitled to any compensation or other benefits under the South Carolina Workers' Compensation Act for such alleged injuries.

IT IS FURTHER ORDERED that the greater weight of the evidence supports a finding that Claimant has suffered no permanent disability as a result of injury to his left calf on March 12, 2011.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.

AND IT IS SO ORDERED.


Commissioner Gene McCaskill

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.

June 28, 2013

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill