

RECEIVED

MAR 23 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5458
(SC Ct. App. heard June 9, 2016;
filed December 7, 2016)

William Lee Turner, Employee, ...Petitioner,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

APPENDIX
VOLUME I OF II

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Petitioner

Helen F. Hiser, Attorney
MCANGUS, GOUDELOCK & COURIE
Post Office Box 650007
Mt. Pleasant, SC 29465
(843) 576-2900

Jason Wendell Lockhart, Esquire
MCANGUS, GOUDELOCK & COURIE
Post Office Box 12519
Columbia, SC 29211
(803) 779-2300
Attorneys for Respondents

INDEX

Final Brief of Appellant	1
Final Brief of Respondents	30
Final Reply Brief of Appellant	74
Record on Appeal	90
Supplemental Record on Appeal	524
Published Opinion No. 5458, filed December 7, 2016	531
Petition for Rehearing	541
Return in Opposition to Petition for Rehearing	563
Reply to Return in Opposition to Petition for Rehearing.....	583
Order, filed February 21, 2017	588

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 29 2015

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

FINAL BRIEF OF APPELLANT

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	iv
Statement of the Case	1
Statement of Facts	4
Arguments	
I. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION AND BY APPLYING THE IDIOPATHIC FALL CONCEPT TO AN UNWITNESSED INJURY.....	10
II. THE COMMISSION ERRED AS A MATTER OF LAW BY SPECIFICALLY AFFIRMING THE HEARING COMMISSIONER'S FINDINGS OF FACT #4, #5, #6, #9, #10 AND #11, AND BY FAILING TO APPLY UNDER CONCLUSIONS OF LAW #9 AND #10 THE UNEXPLAINED INJURY OR DEATH PRESUMPTION AND BY TRYING TO "FACTUALLY" DISTINGUISH THAT LEGAL PRESUMPTION UNDER CONCLUSION OF LAW #10.	16
III. THE COMMISSION ERRED BASED ON THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE IN THE RECORD BY NOT APPLYING THE UNEXPLAINED INJURY PRESUMPTION AND BY FINDING THAT THE CLAIMANT DID NOT ESTABLISH A CAUSE FOR THE ACCIDENTAL (FALL) INJURY.....	18
IV. THE COMMISSION APPELLATE PANEL ERRED IN VIOLATION OF ITS STATUTORY REVIEW/DECISION OBLIGATION BY ALLOWING DEFENSE COUNSEL TO DRAFTS ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW ADDRESSING THE ISSUES RAISED FOR REVIEW AS REQUIRED BY LAW AND BY ISSUING AN ORDER THAT WENT BEYOND ITS DIRECTION.....	20
Conclusion	24

TABLE OF AUTHORITIES

Cases

<u>Baldwin v. James River Corp.</u> , 304 S.C. 485, 405 S.E.2d 421 (S.C. App. 1991)	22
<u>Barnes v. Charter One Realty</u> , Sup. Ct. Op. No. 27479 (1/14/15) 2015 WL 161731	13, 14, 18
<u>Brown v. Peoplease Corp.</u> , 402 S.C. 476, 741 S.E.2d, 761 (S.C. App. 2013)	24
<u>Buff v. Columbia Baking Co.</u> 215 S.C. 41, 53 S.E.2d 879 (1949)	17
<u>Drake v. Raybestos-Manhattan, Inc.</u> , 241 S.C. 116, 127 S.E.2d 288 (1962)	23
<u>Eagles v. Golden Cove, Inc.</u> 260 S.C. 113, 116, 194 S.E.2d 397, 398 (1973)	17
<u>Gilland v. Peter's Dry Cleaning Co.</u> , 195 S.C. 417, 11 S.E.2d 857 (1940)	13
<u>Hadfield v. Gilcrest</u> , 343 S.C. 88, 538 S.E.2d 268 (S.C. App. 2000)	13
<u>Halpern v. DeJay Stores, Inc.</u> , 236 S.C. 587, 115 S.E.2d 297 (1960)	12
<u>Jake v. Jones</u> , 240 S.C. 574, 126 S.E.2d 721 (1962)	12, 17
<u>Jennings v. Chambers Development Co.</u> , 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999)	12, 16
<u>Nicholson v. SC Dept. of Social Services</u> , Sup. Ct. Op. No. 27478 (1/14/15), 2015 WL 161719	14, 16, 18
<u>Owens v. Oceanforest, Inc.</u> , 196 S.C. 97, 12 S.E.2d 839 (1941)	2, 11, 13, 17
<u>Packer v. Corbit Canning Co.</u> , 238 S.C. 431, 120 S.E.2d 398 (1961)	12, 17
<u>Walker v. City of Columbia</u> , 247 S.C. 241, 146 S.E.2d 856 (1966)	22

Statutes and Regulations

S.C. Code Ann. §1-23-340	22
S.C. Code Ann. §1-23-350	22
S.C. Code Ann. §42-17-40	22
S.C. Code Ann. §42-17-50	22
Reg. 67-709(E) (2)	23

Other Authorities

SC Rules of Evidence, SCRPC Rule 301	12
The Guide to Evidence Law in South Carolina, <u>Presumptions</u> , John P. Thames, 2 nd Rev. Ed. of Dreher on Evidence, 1987	13

STATEMENT OF ISSUES ON APPEAL

- I. DID THE COMMISSION ERR AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION AND BY APPLYING THE IDIOPATHIC FALL CONCEPT TO AN UNWITNESSED INJURY?
- II. DID THE COMMISSION ERR AS A MATTER OF LAW BY SPECIFICALLY AFFIRMING THE HEARING COMMISSIONER'S FINDINGS OF FACT #4, #5, #6, #9, #10 AND #11, AND BY FAILING TO APPLY UNDER CONCLUSIONS OF LAW #9 AND #10 THE UNEXPLAINED INJURY OR DEATH PRESUMPTION AND BY TRYING TO "FACTUALLY" DISTINGUISH THAT LEGAL PRESUMPTION UNDER CONCLUSION OF LAW #10?
- III. DID THE COMMISSION ERR BASED ON THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE IN THE RECORD BY NOT APPLYING THE UNEXPLAINED INJURY PRESUMPTION AND BY FINDING THAT THE CLAIMANT DID NOT ESTABLISH A CAUSE FOR THE ACCIDENTAL (FALL) INJURY?
- IV. DID THE COMMISSION APPELLATE PANEL ERR IN VIOLATION OF ITS STATUTORY REVIEW/DECISION OBLIGATION BY ALLOWING DEFENSE COUNSEL TO DRAFTS ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW ADDRESSING THE ISSUES RAISED FOR REVIEW AS REQUIRED BY LAW AND BY ISSUING AN ORDER THAT WENT BEYOND ITS DIRECTION?

STATEMENT OF THE CASE

This case arises out of a workers' compensation claim in which the Claimant filed a SCWCC Form 50 Request for Hearing on November 25, 2013 based on the claim for benefits he had filed alleging that he had sustained injury by accident on April 19, 2012. (ROA, pp. 38-39). A SCWCC Form 51, Employer's Answer to Request for Hearing was filed on December 5, 2013. (ROA, p. 40). A hearing was set on the claim for February 4, 2014 (ROA, p. 425) and the Claimant submitted the Claimant's Pre-Hearing Brief including Administrative Procedures Act submissions and exhibits on January 23, 2014. (ROA, pp. 41-81). The Defendants filed a responsive Pre-Hearing Brief with their Administrative Procedures Act submissions and exhibits on January 24, 2014. (ROA, pp. 82-125). At the hearing held on February 4, 2014, a legal Memorandum supporting the position of the Claimant that since his accident was unwitnessed and since due to his injuries he had no memory of the facts surrounding the accident that the Commission should apply the unexplained death and injury presumption. The depositions of Paul Barnette, David Bolden, James Speegle, and two (2) discovery depositions of the Claimant, William Lee Turner, of August 1, 2012 and January 16, 2014 were also made a part of the Record as Exhibits. The

Commission file with the exception of self-serving declarations and unstipulated medicals was made a part of the Record as well. (ROA, p. 188). Subsequent to the hearing, a request for a proposed Order was submitted by Commissioner Barden (Request for Proposed Order from Commissioner Barden) denying the claim and the Decision and Order of Commissioner Barden was filed on April 14, 2014 denying the claim for benefits in its entirety. Among other conclusions of law, in a case where it is undisputed that the actual accident was unwitnessed, the Hearing Commissioner made specific findings that the Owens v. Oceans Forrest Club Opinion establishing the unexplained death and injury presumption did not apply because the Claimant did not meet his burden of proof by failing to prove the cause of his injury because co-worker, Mr. Barnette, stated that he could only, "speculate as to how the fall occurred"; that "there is no dispute that claimant injured his head in the fall, but the dispute is whether claimant fell from a standing position or from the steps of the cab"; and that, "if Barnette had seen Claimant on the steps of the cab just prior to alleged accident, then the result in this case might be vastly different . . .". (ROA, p. 12). A timely request for review was filed with the Workers' Compensation Commission requesting a review of

all findings of fact, conclusions of law and the Order and Award including all rulings and decisions by the Hearing Commissioner and eleven (11) other specific errors of fact and/or law made by the Hearing Commissioner in her Decision, specifically including the failure of the Hearing Commissioner to apply the unexplained death and injury presumption to this unwitnessed injury where the Claimant's injury admittedly arose out of and in the course of his employment. (ROA, pp. 131-135).

After the filing of the Claimant's/Appellant's and the Defendants/Respondents' Full Commission Briefs, a Full Commission hearing was held on August 11, 2014 (ROA, pp. 136-152; pp. 164-174; pp. 258-278). Subsequent to the Full Commission Hearing on August 11th, on August 29, 2015 the Full Commission issued a Full Commission request for proposed decision form requesting a proposed Order with the only direction being "a Full Affirmation". (ROA, p. 430). The Decision and Order of the Full Commission was filed on October 10, 2014 containing additional findings of fact and conclusions of law (ROA, pp. 20-37) and this appeal to the Court followed with the filing of a timely Notice of Intent to Appeal with Grounds for the appeal as required by the Workers' Compensation Act on November 7, 2014.

STATEMENT OF FACTS

Mr. Lee Turner worked for Saiia Construction Co. for approximately six (6) years prior to the accident. He is a heavy equipment operator but while working for Saiia, he drove dump trucks exclusively. (ROA, p. 203, l. 18 - p. 204, l. 6; p. 207, ll. 9-13).

On Monday before the accident on Thursday, he did see a doctor for minor back problems but he was not having any problems with dizziness, his ability to walk, problems with feeling faint or being unsteady on his feet. There is no evidence in the Record from that doctor visit that he was reporting or was found to have any of those problems at that time. He had already been taking Ultram for his minor back pain which he was again prescribed and was sent home. On Tuesday, he was again seen due to, "vomiting one time" on Monday. (ROA, p. 114). On examination at that visit he was found to have no weakness, full active range of motion, normal ambulation, normal neurological signs and no report of dizziness, feeling faint or weakness. (ROA, pp. 114-115). The doctor recorded that patient had been advised by a pharmacist that vomiting could be a possible side effect of his medications for back pain. (ROA, p. 115).

On Wednesday before the accident on Thursday the undisputed evidence in the Record reflects Mr. Turner

worked, was having no problems and was absolutely fine.

(ROA, p. 211, l. 16 - p. 212, l. 22; p. 205, ll. 5-19; p. 114).

As for Thursday, April 19, 2012, the day of the accident, at the hearing he testified that he had absolutely no memory of the day of or of the accident other than what he had been told and that after the accident he was in a coma for three (3) days and remembered nothing about that period of time. (ROA, p. 209, ll. 3-6). He did remember the Tuesday and Wednesday before the accident happened on Thursday and testified he was having no problems of dizziness, syncope, balance or weakness at that time. (ROA, p. 211, ll. 13-21). He further testified that there is absolutely no history of seizure or any other type of disorder in his family. (ROA, p. 209, ll. 16-22). He has never had high blood pressure, diabetes, or heart problems and/or any other health problems other than the back problems that he had had prior to the date of the accident. (ROA, p. 212, ll. 2-10).

The testimony and evidence concerning the events of the day of the fall came from Mr. Turner's fellow employees and friends, Mr. Paul Barnette and Mr. Bolden. Mr. Barnette testified that he and Mr. Turner were real close; that they discussed personal matters; that he knew about

Mr. Turner's past back problems; that he felt if Mr. Turner was having any problems he would have discussed those with him freely; that he never heard him complain of any type of dizziness or syncope prior to the date of the accident; and that Mr. Turner was a very energetic young man. (ROA, p. 435, l. 11 - p. 283, l. 1; p. 283, ll. 22-23). On the date of the accident, Mr. Turner was feeling real good; he was very energetic; he was cutting up while driving the truck, blowing the horn and giving thumbs up; and in Mr. Barnette's opinion Mr. Turner was, "hundred percent that day". (ROA, p. 284, l. 1-10).

Mr. Barnette testified that he and Mr. Turner had pulled their trucks in to wash them and that he had backed his on one side of Mr. Turner's. Mr. Turner's was on the wash rack and he had actually helped Mr. Turner wash about half of the truck when he suggested that Mr. Turner go and get their time sheets straight and get Mr. Barnette's lunch cooler and his bag while Mr. Barnette washed his truck. (ROA, p. 285, l. 21 - p. 286, l. 15). Mr. Turner pulled his truck over to the parking lot and stopped about 40, and no more than 60, feet away. Approximately 7-8 minutes, and no more than 10 minutes, later, Mr. David Bolden stepped out of the hut (different building from the Office) and walked over to Mr. Barnette and was talking to him on the

side of the truck away from where Mr. Turner was at that time and then as Mr. Barnette moved around to the back of the truck to wash off the tailgate he caught a glimpse and saw Mr. Turner on the ground on his back. (ROA, p. 286, l. 17 - p. 287, l. 8).

Mr. Barnette testified that after Mr. Turner had gone to the Office Trailer to get their time sheets straight and to get their two backpacks and after he was found on the ground, that they found Mr. Barnette's 12 pack lunch sack and his backpack placed neatly on the seat of the truck. Mr. Barnette testified that there was no question that his backpack and his stuff had been, "placed" on the seat and had not been simply thrown in there nor was it lying on the, "floorboard". He testified that to be able to do that that it would require Mr. Turner or whoever was putting something like that on the seat in the truck to climb the first and second steps of the truck. The truck steps were approximately 18 inches and 36 inches off of the ground and Mr. Turner was 5'3" - 5'4" tall. Just prior to the accident, they had been washing Mr. Barnette's truck with soap and water. He also stated that the steps on the truck were perforated steps and that the steps would catch a cleat of a boot or shoe and that he had caught his foot on the steps but had been able to correct and not fall. He

himself had lost his balance on the steps of the truck.

(ROA, p. 290, ll. 4-18; p. 291, l. 21 - p. 292, l. 13; p. 294, l. 2 - p. 295, l. 9).

After the accident he was the first to see Mr. Turner and when they ran over to Mr. Turner, he was laying on his back. He was trying to move but he was not flailing or thrashing about and was basically laying with his arms straight out with his palms up. He had a small amount of blood on the back of his head and in his opinion, Mr. Turner had not been laying there more than 3-4 minutes before they saw him and got to him. (ROA, p. 299, ll. 5-17; p. 301, ll. 15-20). He repeated his testimony that on the date of the accident Mr. Turner had no complaints of headache, no complaints of dizziness, no complaints of feeling ill, and no complaints of feeling unusual. (ROA, p. 295, ll. 15-25).

Very importantly, Mr. Barnette also testified specifically that the door of the truck was still open when Mr. Turner was found lying on the ground; in addition to the cooler and the backpack being neatly arranged on the seat; and that it would require climbing the steps to put those on the seat. (ROA, p. 305, ll. 2-13.)

Mr. David Bolden, the other fellow employee that came to Mr. Turner's side, testified that Mr. Turner was laying

on his back just beside the truck and that his feet were nearer to the truck than his head was. He also stated that he was lying flat on his back with his arms outstretched like he was holding his hands above his head. (ROA, p. 312, ll. 1-20). He testified that he had worked for Saiia for approximately 4 years and that he considered himself to be a friend of Mr. Turner's. He had never known Mr. Turner to complain of any problems with dizziness or passing out or seizures, nor taking any medicine or any of those type problems and that Mr. Turner was in good health as far as he knew the day of the accident from the way he was acting. (ROA, p. 318, l. 24 - p. 319, l. 16). Mr. Bolden actually observed Mr. Turner walking towards the truck after he had gone to the trailer and most importantly he specifically observed him putting the cooler while standing on the ground into the, "floor board" of the truck but he did not see him move the backpack and/or cooler from the floorboard of the truck to the seat of the truck where it was found neatly placed after the accident. While he was observing him and watching him place the cooler inside the truck, the door of the truck was open and the door of the truck was still open when they found him minutes later. (ROA, p. 320, l. 2 - p. 321, l. 13). There is no testimony of any witness actually to the accident and the Claimant has

absolutely no memory of the day of the accident or days that followed it.

The undisputed factual evidence establishes that Mr. Turner was last seen standing on the ground putting a cooler and back pack into the floor board of the truck wherein after the accident those were found placed neatly on the seat. The undisputed evidence is that one would have to climb the steps of the truck to place items on the seat. He was then found lying with his feet towards the truck and his head away from the truck with the door open and lying on his back with the back of his head flat against the ground. (Emphasis added). The medical evidence establishes he sustained a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle and to the front of the brain; not the back of the head or brain on which Mr. Turner was found lying. The occipital lobe is the back of the brain.

ARGUMENTS

- I. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION AND BY APPLYING THE IDIOPATHIC FALL CONCEPT TO AN UNWITNESSED INJURY.

The undisputed, uncontradicted evidence as specifically found by the Commission is that there were no witnesses to the fall and that Mr. Turner had absolutely no

memory of the day prior to the alleged accident; the day of the alleged accident, specifically including, "absolutely no memory of it or what might have precipitated the fall"; or the day after the date of the accident. (ROA, pp. 27-28). The Commission also found and the undisputed evidence establishes that,

"there is no dispute that claimant injured his head in the fall . . .".

However the Commission went on to make the unsupported finding that the dispute was, "whether claimant fell from a standing position or from the steps of the cab". (ROA, pp. 29-30), (Emphasis added).

Where the injury to a worker is unwitnessed and where either due to the death of the worker or where the injury is such that the worker has no memory the Supreme Court has held that this establishes and entitles the worker to a presumption of fact. The presumption as set out in the case of Owens v. Oceanforest, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) is that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, Inc., supra. (Emp. Added).

See also: Halpern v. DeJay Stores, Inc., 236 S.C. 587, 115 S.E.2d 297 (1960), Packer v. Corbit Canning Co., 238 S.C. 431, 120 S.E.2d 398 (1961), Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962), and Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999).

Since in this case the injury was unwitnessed and since Mr. Turner has no memory, this presumption applies and under the SC Rules of Evidence, SCRCP Rule 301:

"A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption . . . ".

A presumption of fact establishes a prima facie case meaning that the presumed fact is so likely to be true in the common experience of humanity that it should be accepted as true until the adversary comes forth with proof that it is not in fact true. Where the basic fact is proven, in this case that Mr. Turner was performing the duties of his employment at a time and place his employment required him to be, then it is a presumed fact that his injury arose out of and in the course of his employment. This prima facie showing requires that the adversary, in this case the Defendants, come forth with proof and evidence contrary or to rebut the presumed fact, meaning evidence that is conflicting or from which a different

inference can reasonably be drawn. The Guide to Evidence Law in South Carolina, Presumptions, John P. Thames, 2nd Rev. Ed. of Dreher on Evidence, 1987. See also: Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1940); Hadfield v. Gilcrest, 343 S.C. 88, 538 S.E.2d 268 (S.C. App. 2000).

In making the decision not to apply the unexplained death or injury presumption in this case, the Commission found that this case was distinguishable from Owens due to the fact that, "the cause of claimant's injury is unknown". At hearing, the Defendants had argued that this was an idiopathic fall that is to say stemming from an unknown cause and as defined in the dictionary, "idiopathic" means either arising from an unknown cause or peculiar to the individual. Recently in the case of Barnes v. Charter One Realty, Sup. Ct. Op. No. 27479 (1/14/15), 2015 WL 161731, the Supreme Court held that idiopathic falls are an exception to the general rule that a work-related injury is compensable and should be strictly construed. In further defining the concept of an idiopathic fall (personal in nature), the Supreme Court per Justice Hearn found that,

"an idiopathic fall is one that is 'brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure' . . . the idiopathic fall doctrine is based on the notion that

an idiopathic injury does not stem from the accident but is brought on by a condition particular to the employee that could have manifested itself anywhere."

The Court went on to reason that,

"an idiopathic fall arises from an internal breakdown personal to the employee, thus negating any causal connection. A finding that a fall is idiopathic is not warranted simply because the claimant is unable to point to a specific cause of her fall." (Emphasis added).

The Court went on to find in the Barnes case that there was no evidence that the claimant's leg gave out or that there was some other type of internal breakdown.

While the Commission is the ultimate fact finder, where there are no disputed facts, the question of whether an accident is compensable is a question of law. Nicholson v. S.C. Dept. of Social Services, Sup. Ct. Op. No. 27478 (1/14/15), 2015 WL 161719. In Nicholson the Court also reiterated a time honored basic principle in a workers' compensation case that the Act must be liberally construed in favor of coverage to serve the beneficial purposes of the Workers' Compensation Act.

As noted above in this case, the undisputed facts are that Mr. Turner was at a time and place and was performing the duties of his employment at the time that the injury occurred and the injury was unwitnessed and he has no

memory of the day or the events surrounding the injury, thus the unexplained death and injury presumption applies establishing a prima facie case of an injury arising out of and in the course of his employment. There is absolutely no evidence that the injury was caused by something personal to Mr. Turner.

The undisputed evidence from the witnesses was that on the day of the injury Mr. Turner was feeling good; he was very energetic; he was cutting up while driving the truck; blowing the horn and giving a thumb up; and in the opinion of the witnesses, Mr. Turner, "was 100% that day". There is no evidence at the time of the injury or at any time that he had ever had any problem with high blood pressure, diabetes, heart problems, seizure, epilepsy or other brain lesion or disorder. Days before the injury when he was evaluated by a physician there is no evidence that he was suffering from dizziness; any problems with ambulation; feeling faint and all witnesses that testified as to the day of the accident testified that he was not having any problems with dizziness; feeling ill; headache; faintness; syncope; balance or any type of weakness or any other type of complaints concerning feeling unusual; or that his accident resulted from a condition peculiar to him such as a personal medical condition. Adapting the holding in

Nicholson v. S.C. Dept. of Social Services, supra:

"Because' . . . (Mr. Turner's) . . . 'fall happened at work and was not caused by a condition peculiar to' . . . (him) . . . 'it was causally related to' . . . 'his employment'".

Therefore, the Commission erred as a matter of law based on the undisputed evidence by failing to apply the unexplained death and injury presumption where there is no conflicting or contradictory evidence even having a tendency to rebut the presumption that the accident and injury did not arise out of and in the course of the Claimant's employment. His injury resulted from a fall and there is no evidence that that fall was caused by anything personal to his nature.¹

II. THE COMMISSION ERRED AS A MATTER OF LAW BY SPECIFICALLY AFFIRMING THE HEARING COMMISSIONER'S FINDINGS OF FACT #4, #5, #6, #9, #10 AND #11, AND BY FAILING TO APPLY UNDER CONCLUSIONS OF LAW #9 AND #10 THE UNEXPLAINED INJURY OR DEATH PRESUMPTION AND BY TRYING TO "FACTUALLY" DISTINGUISH THAT LEGAL PRESUMPTION UNDER CONCLUSION OF LAW #10.

In every unwitnessed death or injury case where the unexplained death or injury presumption must be applied where the injury resulted from a physical injury type cause, our Appellate Courts have applied the presumption

¹ In past decisions applying the unexplained injury and death presumption, in all cases where the cause was accidental in nature such as a fall or drowning, our Courts and the Commission have applied the presumption without a showing of causal connection. The Courts have required an additional requirement of a causal relationship in cases where the death or injury is occasioned by a, "natural condition". For an excellent discussion between the application of the presumption where death or injury is caused by accidental means, (i.e., either clearly or inferentially not natural) versus injuries or death caused by natural causes such as aneurysms, heart attack or stroke, see Jennings v. Chambers Dev. Co., supra.

without any additional work related causal relationship, i.e. that the injury was caused by the work. Examples without all citations: Owens v. Ocean Forrest Club, supra, (gunshot wound); Jake v. Jones, supra, (drowning); Eagles v. Golden Cove, Inc. 260 S.C. 113, 116, 194 S.E.2d 397, 398 (1973) (bee sting).

Only in cases where the injury and death is caused by a medical condition such as heart attack or thrombosis, have our Courts required a causal relationship to the work activities. For example: Packer v. Corbit Canning Co., supra, (heart attack but no proof of electrical shock, not compensable) versus Buff v. Columbia Baking Co. 215 S.C. 41, 53 S.E.2d 879 (1949) (heart attack but proof of electrical shock, compensable).

In this case the undisputed evidence is that his injury stemmed from an accidental physical type injury; i.e., his fall, and there is no evidence that this fall was caused by a medical condition. The Commission tried to distinguish and refused to apply the presumption because Mr. Turner did not prove the cause of his fall. The requirement of proof of the cause has never been required and would eviscerate the presumption.

III. THE COMMISSION ERRED BASED ON THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE IN THE RECORD BY NOT APPLYING THE UNEXPLAINED INJURY PRESUMPTION AND BY FINDING THAT THE CLAIMANT DID NOT ESTABLISH A CAUSE FOR THE ACCIDENTAL (FALL) INJURY.

The Commission is the fact-finding body but its findings of fact and decision on the facts must not be based upon surmise, conjecture or speculation but must be based upon the reliable, probative, substantial evidence in the Record; that is to say evidence of sufficient substance to afford a reasonable basis for the decision. Where there is no dispute as to the material facts, the issue becomes one of law for decision by the Court. Barnes v. Charter One Realty, supra. Where the undisputed facts establish that Mr. Turner was performing a work task and fell, those facts alone clearly establish a causal connection between his employment and the injuries he sustained unless there is evidence that it was, "caused by a condition peculiar to" Mr. Turner. Nicholson v. S.C. Dept. of Social Services, supra. In this case, there is simply no evidence in the Record that his fall was caused by a medical condition or a condition particular to Mr. Turner.

The undisputed evidence is that Mr. Turner has no history of any problems with seizures, epilepsy or any other type of neurological or physical disorder in his family or in his past medical history. The medical

evidence establishes that two (2) days prior to the date of the injury when he attended medical care for unrelated reasons, on examination he was found to have no weakness, full active range of motion, normal ambulation, normal neurological signs, and no report of dizziness, feeling faint or weakness. (ROA, pp. 114-115). On Wednesday the day before the accident and on Thursday, the date of the accident, the testimony of his co-workers which is undisputed was that he was doing fine and neither before those days nor on those days had he ever or was he on those days complaining of any problems with dizziness, syncope, balance or weakness, or any other type of health problem. In fact on the day of the accident, he was feeling very good, he was very energetic, he was cutting up and in the opinion of his co-workers was, "100% that day". (ROA, p. 284, l. 1-10).

The undisputed evidence from his co-workers is that immediately prior to his fall he was observed with the door open to his dump truck placing backpacks and a lunch sack on the floorboard and immediately after the accident, those items were found not on the floorboard, but, "placed neatly" on the seat. (ROA, p. 290, ll. 4-18; p. 320, l. 2 - p. 321, l. 13). Mr. Barnette's, also uncontested, testimony was that one would have to climb up the steps of the truck

to place those items onto the seat of the truck. The undisputed factual evidence establishes further that after the fall Mr. Turner was found lying on his back with the back of his head flat against the ground. (Emphasis added). The objective medical evidence after the accident establishes that he sustained a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle to the front of the brain; not the back of the head or the occipital lobe on which Mr. Turner was found lying. The occipital lobe is the back of the head.

Therefore, there is not only no substantial evidence but there is no evidence that the fall was caused by anything personal to Mr. Turner such as a medical condition. Based on the undisputed evidence, the Commission should have found a compensable injury under law and Mr. Turner would ask this Court to so find as a matter of law based on the undisputed evidence.

IV. THE COMMISSION APPELLATE PANEL ERRED IN VIOLATION OF ITS STATUTORY REVIEW/DECISION OBLIGATION BY ALLOWING DEFENSE COUNSEL TO DRAFTS ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW ADDRESSING THE ISSUES RAISED FOR REVIEW AS REQUIRED BY LAW AND BY ISSUING AN ORDER THAT WENT BEYOND ITS DIRECTION.

Appellant's Counsel knows of and would submit there is no federal, state or local administrative or judicial

appellate review tribunal, such as this Court, where the consensus decision of a multiple member panel charged with reviewing legal and factual decisions affecting the rights of parties is drafted by a party for the panel/tribunal; and especially where no specific findings of facts and conclusions of law on each issue raised for review is made by the panel.

The Claimant/Appellant has no problem with nor questions the time-honored tradition of a singular judge or commissioner requesting that the prevailing party present a proposed Order for the Judge's or Commissioner's consideration and if the Court or Commissioner feels that the Order is in accordance with his or her decision in the case to adopt that Order as written. However, the issue that was presented in this case and with which Claimant's Counsel has great concern is that numerous legal issues were appealed to the Full Commission and the three-member panel of the Full Commission asked a party to write its consensus decision addressing all of those legal and factual issues that had been presented to the Commission for decision.

The law requires that the Full Commission write its Order and it abdicated that responsibility and gave it to the prevailing party to write its consensus, again consensus, order. A review of that Order and a review of the Form 30,

Request for Commission Review, will clearly establish that the Order of the Full Commission not only did not address all of the legal and factual issues that were presented for review by the Full Commission but went beyond the direction of the Full Commission.

The Commission asked Defense Counsel to draft the Appellate Panel Order but made no specific factual or legal conclusions in that form request and requested only a "FULL AFFIRMATION of the Single Commissioner's Decision and Order". (ROA, pp. 426-429).

S.C. Code §1-23-340, 350 and §42-17-40 and 50, all require the Commission to make their own, "Findings of Fact and Conclusions of Law separately stated", on each issue before it for decision. S.C. Code §1-23-340 provides specifically that, the proposal for Decision, "shall contain a statement of the reasons therefore and of each issue of fact or law necessary to the proposed Decision, prepared by the person who conducted the hearing or one who has read the Record." (Emphasis added). The Commission is the fact-finding body and its decisions, if supported, are binding on appeal. Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (S.C. App. 1991).

In addition to the statutory requirements, the Commission's own Regulations, Reg. 67-709(E)(2) require the Commission Appellate Panel to record its findings on appeal on vote sheets:

"The Commissioners together shall agree upon a modification if any and **record their Findings of Fact and Conclusions of Law on a vote sheet.**" (Emphasis added).

In addition to the requirements set out in the statutes and the Commission's own Regulations, the Supreme Court held in Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962) (as reaffirmed on numerous occasions in its subsequent decisions) that the,

"Duty to determine factual issues is solely on the Commission and the Courts have no authority to determine such issues except in jurisdictional matters, and such duty requires that not only must Findings of Fact be made upon essential factual issues but they must be sufficiently definite and detailed to enable the Appellate Court properly to determine whether the Findings of Fact are supported by the evidence and that the law has been properly applied to them." (Emphasis added).

Here again, the Supreme Court has specifically held that it is the responsibility of the Commission to make its Findings of Fact and Conclusions of Law and to set those out in the Record in its Orders.

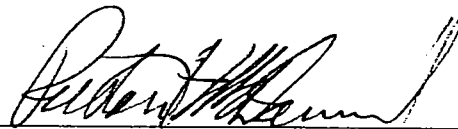
In this case, the Single Commissioner's Order

contained eleven (11) Conclusions of Law whereas the Full Commission Order contained sixteen (16) Conclusions of Law. Who made those five (5) additional findings; the Commission or the Defense Attorney to bolster his case on appeal? This is a denial of the Claimant's right to substantive and procedural due process and this process cannot be affirmed. (To the extent that this Court's decision in Brown v. Peoplelease Corp., 402 S.C. 476, 741 S.E.2d, 761 (S.C. App. 2013) allows for this procedure, the Appellant would seek to argue against precedent at hearing.)

CONCLUSION

For all the foregoing reasons, the Court should reverse the Decision of the Commission and find that the Claimant sustained an injury by accident under the law as a matter of law based on the undisputed facts in the Record and the Court should remand this matter to the Commission for a hearing on the Claimant's entitlement to benefits stemming from that accident.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for the Appellant

June 25, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.G.C. File No. 1204039

William Lee Turner, Employee

Appellant

v.

SAILA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc., Carrier

Respondents

FINAL BRIEF OF RESPONDENTS

MCANGUS-GOUDELOCK & COURIE
Jason Lockhart
Meridian 10th Floor
1320 Main Street
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Helen F. Hiser
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents SAILA Construction and
Old Republic General Insurance Corporation c/o
Gallagher Bassett Services, Inc.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	vi
STATEMENT OF THE CASE.....	1
FACTUAL BACKGROUND.....	3
Standard of Review.....	9
ARGUMENTS	
I. Claimant failed to appeal and/or preserve certain Commission findings and holdings, which are now binding on him.....	12
A. Claimant failed to appeal certain Findings of Fact and Conclusions of Law by the Single Commissioner which are now the law of the case.....	12
B. Issues not addressed in Claimant's Brief are abandoned.....	14
II. Claimant is not entitled to a presumption that he suffered an accident that arose out of and in the course of his employment.....	15
A. The so-called unexplained death presumption does not and should not apply to unexplained fall cases	15
B. Case law relied on by Claimant does not compel the result he seeks	20
C. The testimony and evidence relied on by Claimant does not warrant overturning the Commission Decision	23
III. Even if such a presumption were to apply to unremembered events, there is sufficient and substantial evidence in this case to rebut any such presumption	26
IV. Claimant failed to meet his burden of proving his injuries were the result of an accident that arose out of his employment.....	30
V. The Commission committed no error in the manner in which its Decision and Order was drafted.....	31
CONCLUSION	37

TABLE OF AUTHORITIES
CASES

<u>Adams v. H.R. Allen, Inc.,</u> 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012).....	36
<u>Anderson v. Baptist Med. Ctr.,</u> 343 S.C. 47, 541 S.E.2d 526 (2001)	11
<u>Baldwin v. James River Corp.,</u> 304 S.C. 485, 405 S.E.2d 421 (Ct. App. 1991).....	32
<u>Barnes v. Charter 1 Realty,</u> 411 S.C. 391, 768 S.E.2d 651 (2015)	20, 21, 22, 29
<u>Bass v. Isochem,</u> 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005).....	18
<u>Bright v. Orr-Lyons Mill,</u> 285 S.C. 58, 328 S.E.2d 68 (1985)	26
<u>Brown v. Peoplelease Corp.,</u> 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013).....	31
<u>Brunson v. American Koyo Bearings,</u> 395 S.C. 450, 718 S.E.2d 755 (Ct. App. 2011).....	11
<u>Buff v. Columbia Baking Co.,</u> 215 S.C. 41, 53 S.E.2d 879 (1949)	16
<u>Clark v. Aiken County,</u> 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005).....	12
<u>Collins v. City of Harker Heights,</u> 503 U.S. 115 (1992).....	36
<u>Crosby v. Wal-Mart Store, Inc.,</u> 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998).....	22
<u>Cross v. Concrete Materials,</u> 236 S.C. 440, 114 S.E.2d 828 (1960)	11, 22
<u>Doe v. South Carolina State Hosp.,</u> 285 S.C. 183, 328 S.E.2d 652 (Ct. App. 1985).....	15, 16

<u>Drake v. Raybestos-Manhattan, Inc.,</u> 241 S.C. 116, 127 S.E.2d 288 (1962)	32
<u>Dukes v. Rural Metro Corp.,</u> 356 S.C. 107, 587 S.E.2d 687 (2003)	26
<u>Eagles v. Golden Cove, Inc.,</u> 260 S.C. 113, 194 S.E.2d 397 (1973)	17
<u>Emerson Elec. Co. v. South Carolina Dept. of Rev.,</u> 395 S.C. 481, 719 S.E.2d 650 (2011)	14
<u>Futch v. McAllister Towing of Georgetown, Inc.,</u> 335 S.C. 598, 518 S.E.2d 591 (1999)	13-14
<u>Glenn v. Dunean Mills,</u> 242 S.C. 535, 131 S.E.2d 696 (1963)	29
<u>Grant v. Grant Textiles,</u> 372 S.C. 196, 641 S.E.2d 869 (2007)	16
<u>Green v. City of Columbia,</u> 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993)	12, 13
<u>Halpern v. De Jay Stores, Inc.,</u> 236 S.C. 587, 115 S.E.2d 297 (1960)	17
<u>Ham v. Mullins Lumber Co.,</u> 193 S.C. 66, 7 S.E.2d 712 (1940)	12, 13
<u>Hill v. Skinner,</u> 195 S.C. 330, 11 S.E.2d 386 (1940)	11, 22
<u>Holloway v. Tyson Foods, Inc.,</u> 193 N.C. App. 542, 668 S.E.2d 72 (N.C. App. 2008)	18-19
<u>Husvar v. Engineered Prods, Inc.,</u> 2000 ME 132, 755 A.2d 498 (Me. 2000)	19
<u>Jake v. Jones,</u> 240 S.C. 574, 126 S.E.2d 721 (1962)	17
<u>Janney v. J.W. Jones Lumber Co., Inc.,</u> 145 N.C. App. 402, 550 S.E.2d 543 (N.C. Ct. App. 2001)	18

<u>Jennings v. Chambers Dev. Co.,</u> 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999).....	15, 23, 28, 29
<u>Lark v. Bi-Lo,</u> 276 S.C. 130, 276 S.E.2d 304 (1981)	9
<u>Lister v. NationsBank of Delaware, N.A.,</u> 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997).....	14
<u>McGuffin v. Schlumberger-Sangamo,</u> 307 S.C. 184, 414 S.E.2d 162 (1992)	10
<u>Nicholson v. South Carolina Dept. of Soc. Services,</u> 411 S.C. 381, 769 S.E.2d 1 (2015)	20, 21, 29
<u>Owens v. Ocean Forest Club, Inc.,</u> 196 S.C. 97, 12 S.E.2d 839 (1941)	1, 13, 17
<u>Pack v. South Carolina Dept. of Transp.,</u> 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009).....	11
<u>Packer v. Corbett Canning Co.,</u> 238 S.C. 431, 120 S.E.2d 398 (1961)	<i>passim</i>
<u>Pickrell v. Motor Convoy, Inc.,</u> 322 N.C. 363, 368 S.E.2d 582 (N.C. 1988)	18
<u>Pierre v. Seaside Farms, Inc.,</u> 386 S.C. 534, 689 S.E.2d 615 (2010)	10
<u>Pinkerton's Inc. v. Helmes,</u> 242 Va. 378, 410 S.E.2d 646 (Va. 1991).....	19
<u>Rogers v. Kunja Knitting Mills, Inc.,</u> 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994).....	10
<u>Sharpe v. Case Prod., Inc.,</u> 336 S.C. 154, 519 S.E.2d 102 (1999)	10, 15
<u>Simmons v. SC Strong,</u> 402 S.C. 166, 739 S.E.2d 631 (Ct. App. 2013).....	14
<u>Steed v. Mount Pleasant Seafood Co.,</u> 236 S.C. 253, 113 S.E.2d 827 (1960)	16

<u>Sylvia Dev. Corp. v. Calvert County</u> , 48 F.3d 810 (4 th Cir. 1995)	36
<u>Walker v. City of Columbia</u> , 247 S.C. 241, 146 S.E.2d 856 (1966)	10, 32
<u>White v. Medical Univ. of South Carolina</u> , 355 S.C. 560, 586 S.E.2d 157 (Ct. App. 2003)	12
<u>Wright v. Bi-Lo, Inc.</u> , 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994)	13

STATUTES, REGULATIONS & COURT RULES

S.C. Code Ann. § 1-23-340	32
S.C. Code Ann. § 1-23-350	32
S.C. Code Ann. § 1-23-380(5) (Supp. 2007)	9
S.C. Code Ann. § 42-1-160	15
S.C. Code Ann. § 42-17-40	32
S.C. Code Ann. § 42-17-50	32, 33, 34
S.C. Code Ann. § 42-17-60	12
S.C. Reg. 67-709(E)(2)	33
Rule 208(b)(1)(C), SCACR	1
Rule 220(c), SCACR	13

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER CLAIMANT FAILED TO APPEAL AND/OR PRESERVE CERTAIN COMMISSION FINDINGS AND HOLDINGS, WHICH ARE NOW BINDING ON HIM?
- II. WHETHER CLAIMANT IS NOT ENTITLED TO A PRESUMPTION THAT HE SUFFERED AN ACCIDENT THAT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?
- III. WHETHER, EVEN IF SUCH A PRESUMPTION WERE TO APPLY TO UNREMEMBERED EVENTS, THERE IS SUFFICIENT AND SUBSTANTIAL EVIDENCE IN THIS CASE TO REBUT ANY SUCH PRESUMPTION?
- IV. WHETHER CLAIMANT FAILED TO MEET HIS BURDEN OF PROVING HIS INJURIES WERE THE RESULT OF AN ACCIDENT THAT AROSE OUT OF HIS EMPLOYMENT?
- V. WHETHER THE COMMISSION COMMITTED ANY ERROR IN THE MANNER IN WHICH ITS DECISION AND ORDER WAS DRAFTED?

STATEMENT OF THE CASE¹

Appellant William Lee Turner (“Claimant”) filed a Form 50 alleging that, on April 19, 2012, he suffered a compensable injury to his back head and thoracic spine. Claimant requested temporary total disability benefits from that date until January 2, 2013, and sought ongoing medical care. (Cl. Form 50, dated Nov. 25, 2013, R. 38). His employer, SAIIA Construction and their insurer, Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc., Respondents herein, filed a Form 51 denying that Claimant’s alleged injuries were the result of an accident that arose out of and in the course and scope of Claimant’s employment. In addition, Respondents asserted that any ongoing need for medical care was not causally related to Claimant’s alleged April 19, 2012 accident. (Resp. Form 51, dated Dec. 5, 2103, R. 40).

The parties were heard by Single Commissioner Susan S. Barden on February 4, 2014, who subsequently filed her Decision and Order on April 14, 2014. (Decision and Order of the Single Commissioner, filed April 14, 2014, R. 1-19 (“Single Commissioner Decision”)). Among other things, the Single Commissioner found that “Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within

¹ In his Statement of the Case, Claimant presents argumentative and contested matters in violation of Rule 208(b)(1)(C), SCACR, which instructs that the statement of the case “shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters ...” For example, Claimant misconstrues the Single Commissioner’s Conclusion of Law with respect to the applicability of Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) (App. Br. p. 2). In addition, Claimant misleadingly asserts that it is admitted that his injury both arose out of and in the course of his employment. (App. Br. p. 3). The inquiry in this case centers precisely on the questions of whether his injuries were the result of an accident, as that term is used in the Act, and whether they arose out of his employment. Claimant’s contentions on both points have been consistently denied by Respondents. This Court should disregard such argumentative and contested statements in Claimant’s Statement of the Case.

the course and scope of his employment with the [Respondents] on April 19, 2012.” (Single Commissioner Decision, R. 9, 15). The Single Commissioner also found that Claimant’s alleged accident was unwitnessed and that he did not remember anything that happened on April 19, 2012 or the day after, (R. 10-13), and that co-workers found Claimant laying on his back next to his truck. (R. 10). The Single Commissioner also held that Claimant was impeached at least twice: 1) at a 2012 deposition, Claimant testified that he had been told by witnesses that he had been climbing up in the truck, that they had seen him up on the truck, and then they had seen him lying on the ground, (R. 362, lines 18-24) (R. 369, lines 7 – 370, line 3), whereas the referenced co-workers denied ever seeing Claimant on the truck, (R. 305, lines 9-11) (R. 311, lines 22-24); and 2) at the hearing, he testified that his fall off the horse in [2013] “didn’t hurt or anything like that,” which statement was contradicted by medical records showing he sought medical treatment for a fall from a horse that caused “pain in the same T3/4 area and [he] has muscle spasm,” (R. 235, line 24 – 237, line 24) (R. 97-99, 101, 103). The Single Commissioner concluded that Claimant had failed to meet his burden of proving a compensable injury and that, as a result, he was not entitled to temporary total disability benefits or medical treatment associated with his alleged accident. (Single Commissioner Decision, R. 16-19).

Claimant filed a timely Form 30 raising 11 separate points of appeal. (Form 30 with Attachment, dated April 28, 2014, R. 131-135). An Appellate Panel of the Full Commission heard oral argument on August 11, 2014 and issued its Decision on October 10, 2014, affirming the Single Commissioner Decision in its entirety. (Appellate Panel Decision and Order of the South Carolina Workers’ Compensation Commission, filed

Oct. 10, 2014, R. 20-37 (“Commission Decision”). In addition to reciting the Findings of Fact and Conclusions of Law reached by the Single Commissioner, the Commission Decision set forth its standard of review (Conclusion of Law Nos. 3 and 4), responded to Claimant’s reliance on prior case law (Conclusion of Law Nos. 9 and 10), and affirmed the Decision and Order of the Single Commissioner in its entirety (Conclusion of Law No. 16). (Commission Decision, R. 33-36).

Claimant timely appealed to this Court.

FACTUAL BACKGROUND

Claimant began working for SAIIA Construction in 2007, at age 21, as a heavy equipment operator, which involved “bulldozers, trackhoes and dump trucks and backhoes.” (R. 203, line 18 – 204, line 6) (R. 232, lines 12-25) (R. 346, lines 9-11).² Claimant testified that he is between 5’6” and 5’7” in height. (R. 433, lines 18-22).

On March 27, 2012, a few weeks before his alleged work-place injury, Claimant sought medical care for his lower back, which he had injured lifting logs while working on a house he was building. (R. 349, lines 16-22). Dr. Meha Minhas prescribed Ultram 50MG two times daily and Flexeril, 5MG two times daily. (R. 109-110).

On April 16, 2012, three days before his alleged work-place injury, Claimant saw Dr. Minhas again with complaints of both lower and upper back pain. Dr. Minhas changed Claimant’s medicine to Ultram ER 100MG two times daily and Neurontin 300MG three times daily. (R. 111-113).

On April 17, 2012, two days before his alleged work-place injury, Claimant was seen at the Palmetto Health Baptist Emergency Department with complaints of vomiting

² Claimant’s Brief asserts that “he drove dump trucks exclusively,” (App. Br. p. 4), which is not supported by the testimony in this case and is plainly incorrect.

and diarrhea and suspicion of dehydration. (R. 114-116) (R. 210, line 18 – 211, line 2) (R. 351, lines 5-13).

Claimant testified repeatedly that he had no memory of the day he fell, April 19, 2012. (R. 217, lines 10-12) (R. 220, lines 14-16) (R. 227, lines 2-12). It is undisputed that no one saw Claimant fall. (R. 369, line 3 – 370, line 11) (R. 305, lines 9-11) (R. 311, lines 22-24) (R. 327, lines 21-22) (R. 333, lines 13-15). Although Claimant testified under oath at a deposition that his co-workers saw him “up in the truck” before he fell, (R. 362, lines 18-24) (R. 369, line 7 – 370, line 3), both Paul Barnette and David Bolden testified that they never saw Claimant in or on the truck prior to his fall. (R. 285, line 15 – 287, line 8) (R. 320, line 2 – 321, line 7).

Mr. Barnette testified that, at the end of the work day, Claimant had washed his truck, which typically was done with a high pressure washer. (R. 291, lines 12-25). Claimant then went into what they call “the hut” to do some paperwork and retrieve his lunch backpack and Mr. Barnette’s 12-pack cooler. (R. 289, lines 9-12). Mr. Bolden testified that he saw Claimant walking from the trailer toward his truck, carrying the backpack and the cooler. Claimant acknowledged that, by the end of the day, his backpack “more than likely” would be emptier and lighter than it would have been at the beginning of the day, because he would have eaten and drunk the food and water or Gatorade he brought with him to work. (R. 229, line 4 – 230, line 17).

Mr. Bolden saw Claimant put items in the truck. He specifically testified, “I never saw [Claimant] on the steps of the truck,” but only “standing on the ground, placing [the cooler] in the truck. I did not see him on the steps.” (R. 320, line 2 – 321, line 7) (*see also* R. 86).

Q: If that cooler had been on the seat when he fell, you didn't see him move it from the floorboard to the seat?

A: No, sir.

(R. 321, lines 11-13).

Mr. Barnette finished washing his truck and walked around to the tailgate and saw Claimant on the ground, on his back with arms outstretched and his palms up. Mr. Barnette said Claimant appeared to want to vomit. (R. 298, line 4 – 300, line 2) (*see also* (R. 334, lines 2-6). Mr. Bolden confirmed that Claimant was lying on the ground. (R. 311, line 22 – 312, line 7). Although Mr. Barnette thought the door to Claimant's truck was open, (R. 305, lines 2-6), Mr. Bolden was not sure. (R. 312, lines 10-17). Claimant had an abrasion on the back of his head that did not require stitches. (R. 64-65) (R. 378, lines 11-15). Although Mr. Barnette could not say for certain how long Claimant had been lying on the ground before he saw him, he estimated it would not have been more than three or four minutes. (R. 301, lines 21-25). Mr. Bolden testified that he did not go over immediately to where Claimant was lying on the ground. (R. 313, lines 14-18).

Mr. Barnette testified that, although the truck Claimant had been driving had been washed, the truck step would not be soapy because the cleaning was done by a high pressure hose, and the steps were perforated with "little things sticking up like that ... for traction." (R. 291, lines 12-25). Mr. Barnette engaged in what he termed "speculation," using that term no fewer than eight times in his explanation of what he believed might have happened, suggesting that Claimant may have been on the top step when he fell backwards, based on the amount of injury on the back of Claimant's head and the way he fell on the ground. (R. 292, line 17 – 293, line 23) (R. 302, lines 12-15). Mr. Barnette testified that he did not know of anyone falling off the steps of the trucks. (R. 294, line

24 – 295, line 2) (*see also* R. 317, line 12 – 318, line 3 (testifying that he never fell from the steps of the truck)).

Although Mr. Barnette indicated that he believed Claimant would “freely discuss if he was having a problem,” (R. 435, lines 16-17), when asked about Claimant’s two medical visits prior to his fall, Mr. Barnette only could say, “I knew he had went to the emergency room and got some medications or something like that. I don’t know all the details. You know, your records show that. But he worked a few days and he was off checking with the doctors in the two or three weeks before that.” (R. 283, lines 11-18). In fact, the only lower back problem Mr. Barnette was aware of was that Claimant had “discussed he had a back problem when he was a teenager, younger, a teenager, you know, and I knew that.” (R. 283, lines 19-23).³

Mr. Barnette testified that Claimant was only 5’3” or 5’4” in height, (R. 294, lines 22-23),⁴ whereas in reality, Claimant is 3”- 4” taller than that. (R. 433, lines 18-22). Mr. Barnette also admitted that his memory of what transpired on April 19, 2012 was not as clear at the time of his deposition as it was when he wrote a statement for his supervisor a few days after Claimant’s injury. (R. 303, line 4 – 304, line 23 (first testifying that the fall could not have been as late as 4:15 or 4:30, but then conceding that that might have been the case based on the statement he wrote a few days after April 19, 2012)).

³ Thus, Claimant’s assertion that Mr. Barnette “knew about Mr. Turner’s past back problems,” (App. Br. p. 6), is misleading at best. There is no evidence that Mr. Barnette knew that Claimant had been to the doctor twice recently complaining of low back pain, or that he had been prescribed Ultram (50MG) and Flexeril (5MG) on March 27, 2012, (R. 109-110), and/or that he had been prescribed Ultram ER (100MG) and Neurontin (300MG) on April 16, 2012. (R. 111-112).

⁴ It is perplexing that Claimant asserts he is “5’3” to 5’4” tall” in his Brief, (App. Br. p. 8), in light of the fact that, at the hearing before the Single Commissioner, he testified that he is around 5’6½” tall. (R. 433, lines 18-22).

Mr. James Speegle, Claimant's supervisor at the time of the injury, testified that just days before Claimant fell, "[h]e was complaining he wasn't feeling well, I want to say like on a Monday and the Tuesday of that – I think it was Thursday that this accident took place." He said Claimant said "just didn't feel well, stomach messed up, couldn't eat. He had ... said he was wanting to drink all the time. I had recommended to him like on Tuesday or Monday or one of those days, I can't remember which one exactly, that, you know, he's probably dehydrated. He needed to drink plenty of fluids. He just ... looked like he was dry-mouthed and just seemed like to me signs of dehydration. I told him that I thought he was dehydrating He had had little sicknesses here and there prior to this incident, but the week of the incident is what I'm referring to, is that he was not feeling well, sick." (R. 328, line 17 – 329, line 11). Mr. Speegle said Claimant seemed to be okay and that he was unaware of any particular signs that anything was wrong with Claimant on the day he fell. (R. 330, lines 3-10). He described Claimant as "a very agile individual." (R. 330, line 17).

After Claimant fell, he was taken to Palmetto Health Richland, where he was provided emergency treatment and admitted. He was diagnosed with a "small subdural hemorrhage," "intraparenchymal contusion left lobe," and "endplate compression deformity of T3 and T4." (R. 45-50).⁵ Claimant was treated and released, not to a rehabilitation facility, but to home, given his rapid improvement. (R. 51-53, 66-67). His discharge diagnosis included "small subdural hemorrhage, traumatic," and "T3 to T4 endplate fractures." Medical notes indicate that the April 19 CT of Claimant's head "showed small hemorrhagic contusion left temporal lobe anteriorly in the middle cranial

⁵ Although the medical notes from his initial care indicate variously that Claimant fell from a ladder or from on top of a truck, Claimant testified that those assumptions were inaccurate. (R. 227, line 17 – 228, line 5).

fossa with a tiny amount of acute appearing extra axial blood in this location Mild to moderate size subdural hematoma left occipital region. No mass effect. There is no midline shift or any herniation. No skull fracture.” A CT of his thoracic region showed “minimal superior endplate compression deformities of T3 and T4 ...” (R. 67).

At a follow-up appointment, Dr. James Selph noted that claimant “has a history of back pain and in fact was taking Ultram prior to his fall.” (R. 69). All of Claimant’s remaining follow-up treatment was with Dr. Peterson, his family doctor. (R. 375, lines 14-25) (R. 87-90, 92-95). Included in the exhibits Claimant filed with the Commission is a statement by Dr. Peterson indicating that Claimant’s head injuries were caused by the fall on April 19, 2012, and that the fall caused Claimant to have seizures, not the other way around. (R. 81). The first page of the questionnaire presented by Claimant’s counsel to Dr. Peterson (omitted from Claimant’s exhibits filed with the Commission) stated, as though it were an established fact, that Claimant “fell from the cab of his employer’s truck on April 19, 2012.” (R. 91). The letter does not request and the questionnaire does not express any verification by Dr. Peterson that his opinions are to a reasonable degree of medical certainty.

During the time Claimant was out of work as a result of his injuries, he engaged in farming activities, including bailing hay, driving his tractor, and “bush hogging.” He also worked on a house he was building with his father, went hunting, and drove a four-wheeler. (R. 241, line 23 – 245, line 12) (R. 422, line 10 – 423, line 19).

On December 27, 2012, Dr. Peterson released Claimant to go back to work without any restrictions. On January 2, 2013, Claimant resumed his same position with SAIIA Construction, working the same number hours and at the same rate of pay. (R.

234, line 18 – 235, line 18) (R. 402, line 25 – 403, line 20). Claimant testified that he is fully capable of performing his job as a heavy equipment operator and that he has missed no time from work due to the injuries he received in his April 19, 2012 fall. (R. 231, line 19 – 234, line 17). His current supervisor, Mr. Robert Bennett, confirmed. (R. 252, line 23 – 254, line 23).

On September 18, 2013, and again on October 17, 2013, Claimant sought medical treatment from Dr. Giséle Girault for a fall from a horse. Her medical notes indicate Claimant “was doing well until he fell off a horse a few weeks ago and he has pain in the same T3-4 area and has severe muscle spasm.” (R. 96-104). Although Dr. Girault recommended injections and a back brace, Claimant “declined the injections” and “didn’t accept the back brace.” (R. 434, lines 7-25; R. 238, lines 1-3). His visit to Dr. Girault in October 2013 was the last time he sought any treatment for his alleged work-related injuries. (R. 246, lines 9-18) (R. 412, line 1 – 414, line 1).

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2012). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5). The claimant has the burden of proving facts that will bring the injury within the workers’ compensation law, and such

award must not be based on surmise, conjecture or speculation. Packer v. Corbett Canning Co., 238 S.C. 431, 435, 120 S.E.2d 398, 400 (1961). The Administrative Procedures Act “mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case.” Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). “The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence.” Sharpe v. Case Prod., Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Instead, the findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

“It is axiomatic that in a Workmen’s Compensation case the [Commission] is the fact-finding body, and that in their review of a factual finding by the Commission the courts may not weigh the evidence, their function being limited to determination of whether or not such finding is supported by [substantial] evidence.” Walker v. City of Columbia, 247 S.C. 241, 247, 146 S.E.2d 856, 859 (1966). “The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full

Commission.” Brunson v. American Koyo Bearings, 395 S.C. 450, 455, 718 S.E.2d 755, 758 (Ct. App. 2011). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 526, 528 (2001). Furthermore, it is the Commission’s prerogative to believe or disbelieve expert testimony. See Pack v. South Carolina Dept. of Transp., 381 S.C. 526, 536, 673 S.E.2d 461, 466-67 (Ct. App. 2009) (observing that the “Commission need not accept or believe medical or other expert testimony, even when it is unanimous, uncontroverted, or uncontradicted”).

Although the Act must be construed liberally in favor of coverage, it “must not be construed so as to work a hardship on the employer and/or the carrier by the interpolation of words or conditions not found in the act The act must be construed in justice to both parties and must not impose a burden on either.” Hill v. Skinner, 195 S.C. 330, 340, 11 S.E.2d 386, 390 (1940). Furthermore, although “compensation law will be construed liberally in order to effect its beneficent purpose the rule of liberal construction has been held not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are.” Cross v. Concrete Materials, 236 S.C. 440, 446, 114 S.E.2d 828, 831-32 (1960). In other words, “our rule which is applicable to the finding of facts is that a claimant must establish by the preponderance of the evidence the facts which will entitle him to an award; the burden of proof is upon him. He cannot prevail by the resolution of doubts.” 236 S.C. at 446, 114 S.E.2d at 832.

ARGUMENTS

I. Claimant failed to appeal and/or preserve certain Commission findings and holdings, which are now binding on him.

A. Claimant failed to appeal certain Findings of Fact and Conclusions of Law by the Single Commissioner which are now the law of the case.

Although Claimant prefaced his Form 30 appeal to the Full Commission with a broad, sweeping request for review of the entire Single Commissioner Decision, he failed to challenge certain Findings of Fact and Conclusions of Law, which are now the law of the case. *E.g.*, Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct. App. 1993) (unappealed findings by the Single Commissioner are and become the law of the case), *citing* Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940). Section 42-17-60 requires that the “Notice of appeal must state the grounds of the appeal or the alleged errors of law.” S.C. Code Ann. § 42-17-60. An issue not raised in the application for review to the Full Commission is not preserved for further appellate review. Clark v. Aiken County, 366 S.C. 102, 108, 620 S.E.2d 99, 102 (Ct. App. 2005). “General exceptions that fail to specifically assign the grounds for error are insufficient to preserve an issue.” *Id.*; *cf.* White v. Medical Univ. of South Carolina, 355 S.C. 560, 564-65, 586 S.E.2d 157, 160 (Ct. App. 2003) (general challenge to the only ruling in the case “was sufficient to direct the circuit court to the error complained of ...”). Here, the attempt at a catchall appeal of an entire order with multiple findings and conclusions is particularly objectionable where Claimant raised 11 detailed and specifically-targeted appeal points.

In particular, Claimant did not appeal Conclusion of Law Nos. 6 & 11, which held that, “Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants,”

No. 7, that Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total ...", No. 8, that "Defendants are not responsible for the provision of treatment nor the payment of medical bills arising out of the Claimant's alleged work-related accident," or Nos. 9 & 10 that Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) does not render his claim compensable and is distinguishable from this case. (Single Commissioner Decision, R. 17-18). Claimant also failed to challenge Finding of Fact No. 22, which held that "Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident." (Single Commissioner Decision, R. 14). By failing to appeal these findings and conclusions, they are the law of the case and cannot be disputed now. *E.g.*, Green, 311 S.C. at 80, 427 S.E.2d at 687; Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940). This Court should hold that Claimant's failure to appeal Conclusion of Law Nos. 6, 7, 8, 9, 10 & 11, and Finding of Fact No. 22 means that they are the law of this case and cannot be challenged on appeal.

An appellate court may affirm on any ground appearing in the record. Wright v. Bi-Lo, Inc., 314 S.C. 152, 150, 442 S.E.2d 186, 191 (Ct. App. 1994); Rule 220(c), SCACR (same). This Court can and should dispose of this appeal by ruling that Claimant failed to challenge the Single Commissioner's ruling that Claimant failed to meet his burden of proving he suffered a compensable injury and, as a result, that decision is the law of this case, and that Defendants are not responsible for paying him compensation benefits or for his medical care. Such a ruling would completely resolve this appeal. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598

(1999) (an “appellate court need not address remaining issues when disposition of prior issue is dispositive”).

B. Issues not addressed in Claimant’s Brief are abandoned.

In the event this Court considers other issues in this appeal, issues raised by Claimant in his Form 30 and/or Notice of Appeal but not addressed in his Brief are deemed abandoned on appeal. Emerson Elec. Co. v. South Carolina Dept. of Rev., 395 S.C. 481, 489 n.6, 719 S.E.2d 650, 654 n.6 (2011) (declining to consider argument raised for the first time in a reply brief); Simmons v. SC Strong, 402 S.C. 166, 173 n.2, 739 S.E.2d 631, 634 n.2 (Ct. App. 2013) (argument not preserved for appellate review where it was raised for the first time in a reply brief); Lister v. NationsBank of Delaware, N.A., 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997) (“an appellant may not use the reply brief to argue issues not argued in the appellant’s initial brief”). These include, among other issues, whether the Single Commissioner or the Commission erred by not considering itself bound by the Circuit Court’s unpublished decision in Windham v. Sears Roebuck & Co., Docket No. 2007-CP-21-1391, or “erred as a matter of law by failing to apply the concept of circumstantial evidence to the facts of this case,” or “by applying in fact the wrong burden of proof.” (Cl. Form 30, R. 132, 135). These also include whether the “Commission is duty bound to apply the law as dictated by a higher Court until it is changed,” and “by failing to make detailed Conclusions of Law on the issues presented to it for review.” (Cl. Notice of Appeal, R. 177, 181). In his reply brief, Claimant cannot address these and other issues not addressed in his Brief as they are deemed abandoned. Emerson Elec., 395 S.C. at 489 n.6, 719 S.E.2d at 654 n.6; Simmons, 402 S.C. at 173 n.2, 739 S.E.2d at 634 n.2.

In addition, it appears that Claimant does not dispute the actual findings in the Commission's Findings of Fact No. 4 (finding that Claimant "alleges that he injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012"), No. 5 (finding that "Claimant is 28 years of age"), No. 6 (finding that "Claimant is a high school graduate"), No. 9 (finding that "claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including '*absolutely no memory of it or what might have precipitated the fall*,' or (c) the day after the date of the alleged accident"), No. 10 (finding that "the alleged accident was unwitnessed"), and No. 11 (finding that "no witness claims to have seen the Claimant's alleged accident"), as he recites most of these same facts in his Brief. Instead, Claimant appears to take the position that the above-referenced findings conclusively and viewed in isolation from the other evidence in this case, establish conclusively that he is entitled to the presumption that may apply in certain unwitnessed death cases. (App. Br. pp. 17-18). This is not the law in South Carolina, and his conclusory argument on this basis should be rejected.

II. Claimant is not entitled to a presumption that he suffered an accident that arose out of and in the course of his employment.

A. The so-called unexplained death presumption does not and should not apply to unexplained fall cases.

Whether there is any causal connection between employment and an injury is a question of fact for the Commission. Sharpe, 336 S.C. at 159, 519 S.E.2d at 105; Jennings v. Chambers Dev. Co., 335 S.C. 249, 258-59, 516 S.E.2d 453, 458 (Ct. App. 1999). Section 42-1-160 defines "injury" to "mean only injury by accident arising out of and in the course of employment ..." S.C. Code Ann. § 42-1-160; Doe v. South Carolina

State Hosp., 285 S.C. 183, 187, 328 S.E.2d 652, 654 (Ct. App. 1985). Although various courts have stated the analysis in different terms, all three elements must exist simultaneously: 1) that an accident occurred, which both 2) arises out of, and 3) in the course of employment. Doe, 285 S.C. at 187-88, 328 S.E.2d at 654-55; Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007) (in order “to be compensable, an injury by accident must be one ‘arising out of and in the course of employment’”). “‘Arising out of’ refers to the injury’s origin and cause, whereas ‘in the course of’ refers to the injury’s time, place, and circumstances ... For an injury to ‘arise out of’ employment, the injury must be proximately caused by the employment.” Id.

“Unwitnessed deaths have posed grave problems for many learned judges. The distinction between reasonable inferences (which are compensable) and speculation, conjecture and surmise (non compensable) often baffle the wisest. The courts however, usually abide by the decision of the fact-finding body unless it can be said that taking all the factors into account it drew an inference that no reasonable man could draw.” Steed v. Mount Pleasant Seafood Co., 236 S.C. 253, 256, 113 S.E.2d 827, 828-29 (1960); *see also* Buff v. Columbia Baking Co., 215 S.C. 41, 51, 53 S.E.2d 879, 883-84 (1949) (upholding inferences drawn by Commission that were both reasonable and sufficient to affirm the Commission’s determination). In the instant case, as was the case in both Steed and Buff, the Commission’s resolution of the facts⁶ and the inferences it drew from

⁶ In Steed, there was some evidence that the claimant, who either fell or dove off of a dock and drowned, could not swim, was afraid of the water, did not intend to swim and was wearing swimming trunks on the day he drowned only because he was planning to wash the dock and packing shed. The Court noted “some testimony contrary to some of that referred to above,” and upheld the Commission’s resolution of the factual disputes. 236 S.C. at 255-56, 113 S.E.2d at 828. In Buff, there was conflicting testimony between experts as to whether the wire the claimant may have touched could have shorted out and electrocuted him. 215 S.C. at 46-47, 53 S.E.2d at 881.

those facts are entirely reasonable. That Claimant, or even this Court might draw different inferences, is of no consequence given the applicable standard of review.

In addition, this Court should reject Claimant's attempt to create new law by extending the presumption, heretofore applied only in death cases, to cases where the claimant claims to have no memory of the event giving rise to his or her injuries. Every single published case relied on by Claimant to establish the presumption involved a claimant who was deceased. Owens, 196 S.C. 97, 12 S.E.2d 839 (Claimant found in woods he was patrolling, deceased from a gunshot wound); Halpern v. De Jay Stores, Inc., 236 S.C. 587, 592, 115 S.E.2d 297, 300 (1960) (presumption applied where the claimant was involved in a fatal car accident and it was determined the claimant had not deviated from his course of employment); Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962) (employee found deceased where his job required him to be); Eagles v. Golden Cove, Inc., 260 S.C. 113, 194 S.E.2d 397 (1973) (claimant died from bee sting).⁷

Claimant wrongly suggests that, "where the injury is such that the worker has no memory the Supreme Court has held that this establishes and entitles the worker to a presumption of fact." (App. Br. p. 12). Claimant provides no Supreme Court or even published South Carolina authority for such a proposition – because there is none. This Court should reject Claimant's efforts to infer or imply precedent that does not exist. Such slight-of-hand does not constitute authority and does not justify the outcome Claimant seeks. As is discussed below, what Claimant is suggesting would drastically alter the balance struck by the Legislature in the Act.

⁷ The key issue in Eagles was not whether the claimant's fatal injury was witnessed or not but, rather, whether the bee sting, which was clearly connected with his employment (as he was stung while cutting grass with a swing blade), was capable of causing death. Finding sufficient evidence supported the Commission decision, the Court upheld the Commission's award of benefits. 260 S.C. at 116, 194 S.E.2d at 398.

Other states,⁸ including North Carolina, have limited the presumption to cases where the worker is deceased and have specifically refused to apply it where the worker is alive but has no memory of the events leading up to the injury. Janney v. J.W. Jones Lumber Co., Inc., 145 N.C. App. 402, 550 S.E.2d 543 (N.C. Ct. App. 2001), involved a claimant who had no memory of falling and hitting the floor. The North Carolina Industrial Commission applied the so-called unexplained death presumption and awarded benefits. The Appellate Court reversed the Industrial Commission, specifically declining to apply the presumption in cases where the claimant's injuries did not result in death. In Pickrell v. Motor Convoy, Inc., 322 N.C. 363, 368 S.E.2d 582 (N.C. 1988), the North Carolina Supreme Court adopted the presumption, explaining that the "theoretical justification" underlying the presumption in death cases is that "those in the best position to speak to this question are the employee, whom death has silenced, and the employer. Under such circumstances, a presumption of compensability is theoretically and practically justified." 322 N.C. at 369, 368 S.E.2d at 585. However, "[t]he same cannot be said for an employee who has survived his injury, even an employee who cannot remember the details of his accident. In the present case, there is no reason to believe that defendant employer could have known any more about the circumstances of plaintiff's fall than did plaintiff himself. Because we see no potential inequality of information, we decline to adopt the Pickrell presumption in this workers' compensation case not resulting in death." Janney, 145 N.C. App. at 406, 550 S.E.2d at 546; *see also* Holloway v. Tyson Foods, Inc., 193 N.C. App. 542, 549, 668 S.E.2d 72, 77 (N.C. App.

⁸ "When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority." Bass v. Isochem, 365 S.C. 454, 477, 617 S.E.2d 369, 381 (Ct. App. 2005).

2008) (refusing to apply the presumption in case where worker fell for no known reason and who survived but could not remember the fall that caused his brain injury).

Other states are in accord. In Pinkerton's Inc. v. Helmes, 242 Va. 378, 410 S.E.2d 646 (Va. 1991), the Virginia Supreme Court pointedly refused to extend the application of the presumption to non-death cases. There, the claimant was injured in her vehicle which had run off the roadway. The claimant suffered permanent brain damage, was confined to a nursing home, and could recall no facts regarding the accident. The Commission found that, although her injuries occurred in the course of her employment, the claim was not compensable because she failed to prove that her injuries arose out her employment. In upholding the Commission, the Virginia Supreme Court rejected arguments that the claimant's situation was no different than an employee who dies as the result of an accident:

Every unexplained accident, by definition, means that no one can relate how the accident happened. The reason for the inability to recall may be based on a preexisting or resulting, temporary or permanent, physical condition of the claimant, as well as mere inattention at the moment of the accident. If mere inability to recall the events is the rationale for application of the presumption, then it would also be logical that the claimant should be entitled to the benefit of the presumption in any of these circumstances, or whenever there is an unexplained accident.

242 Va. at 381, 410 S.E.2d at 648. However, such an expansion of the presumption "significantly alters the jurisprudence of workers' compensation law," which the Virginia Supreme Court correctly recognized is the prerogative of the legislature, not the courts.

Id.

In Husvar v. Engineered Prods, Inc., 2000 ME 132, 755 A.2d 498 (Me. 2000), the Maine Supreme Court refused to extend the presumption to cases where the claimant had no memory of the incident leading to his injuries, despite statutory language embodying

the presumption that indicated it applied where “the employee has been killed or is *physically or mentally unable to testify ...*” 755 A.2d at 501. The Court noted that, although the claimant had no memory of the incident, he was both physically and mentally able to testify. The Maine Court also declined to usurp what is a legislative prerogative, refusing to equate the inability to recall the circumstances of an injury with the physical or mental inability to testify. Id.

This Court also should refuse to expand workers’ compensation jurisprudence as Claimant suggests, as that is an issue reserved to the Legislature.

B. Case law relied on by Claimant does not compel the result he seeks.

Claimant relies heavily upon the Supreme Court’s recent decisions in Barnes v. Charter 1 Realty, 411 S.C. 391, 768 S.E.2d 651 (2015) and Nicholson v. South Carolina Dept. of Soc. Services, 411 S.C. 381, 769 S.E.2d 1 (2015), even though neither case dealt with an unwitnessed or unremembered fall.⁹ Both Barnes and Nicholson are factually distinguishable from the case at hand because, in both of those cases, the claimant testified that she was performing some task for the employer when she fell. Barnes, 411 S.C. at 393-394, 398, 768 S.E.2d at 652, 654 (the claimant was performing a work-related task to check a realtor’s email when she tripped and fell, which “clearly established that she was performing her job when she sustained an accidental injury”); Nicholson, 411 S.C. at 383, 390, 769 S.E.2d at 2, 5 (the claimant was walking down a hallway to a work-related meeting when she scuffed her foot on the carpet and fell). Here, there simply is no evidence that Claimant was performing any work-related function or activity when he fell. Furthermore, in neither Barnes nor Nicholson was there

⁹ Respondents also note that, at the time of the filing of this Brief, the decisions in both Barnes and Nicholson were under reconsideration by the Supreme Court.

any evidence that the claimant was taking medication that had side effects, such as seizures, dizziness, fainting, loss of balance, etc., that could cause a fall, whereas here, it is undisputed that Claimant had been taking Ultram (50MG) and Flexeril (5MG) weeks prior to his fall and, was taking Ultram ER (100MG) and Neurontin (300MG), at the time of his fall. (R. 109-112).

In the case at hand, despite Claimant's unsupported assertion that he "was performing the duties of his employment at the time that the injury occurred," (App. Br. p. 15), unlike the claimants in both Barnes and Nicholson, there is no evidence of what Claimant was doing at the time of his injury. Instead, the evidence leads to the reasonable inference that he was simply standing beside the truck and became dizzy, nauseous, fainted or had a seizure connected with the medications he was taking for his lower back pain. Again, Claimant's mistaken assertion that, "[t]here is absolutely no evidence that the injury was caused by something personal to the Claimant," (App. Br. pp. 15-16, *see also* pp. 17, 18, 19, 21), overlooks this key information regarding the medications he was taking, a fact that was emphasized twice by the Commission. (Commission Decision, R. 28, 31).

Furthermore, neither Barnes nor Nicholson purport to eliminate a claimant's burden "to prove a causal connection between the conditions under which the work is required to be performed and the resulting injury." Nicholson, 411 S.C. at 389, 769 S.E.2d at 5. And, although Claimant notes statements in Nicholson to the effect that "[w]orkers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act," 411 S.C. at 385, 769 S.E.2d at 3, that rule does not absolve a claimant of the burden of proving he is entitled to

benefits.” Hill, 195 S.C. at 340, 11 S.E.2d at 390 (the rule of liberal construction does not apply to the evidence required to prove entitlement to benefits); Cross, 236 S.C. at 446, 114 S.E.2d at 831-32 (a claimant must prove he is entitled to benefits by a preponderance of the evidence and cannot prevail by the resolution of doubts).

In Cross, the Supreme Court addressed what it saw as “an inadvertent confusion with the rule that the compensation law will be construed liberally in order to effect its beneficent purpose. [citations omitted] However, our rule which is applicable to the findings of facts is that a claimant must establish by the preponderance of the evidence the facts which will entitle him to an award; the burden of proof is upon him. He cannot prevail by the resolution of doubts A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim; and the preponderance of evidence rule has been held not to require, as a matter of law, that doubts arising from the evidence be resolved in favor of one party or the other.” 236 S.C. at 446-47, 114 S.E.2d at 831-32.

In Barnes, the Supreme Court distinguished this Court’s ruling in Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998), by pointing out that there, a co-worker stated that the claimant had indicated that her leg “gave out” on her as evidence that the fall was idiopathic. Barnes, 411 S.C. at 396, 768 S.E.2d at 653. In the case before the Court, there is evidence that the Claimant was taking Ultram and Neurontin, medications that have serious side effects, including seizures, dizziness, loss of balance, etc., which constitutes evidence that his fall was idiopathic as opposed to work-related.

Finally, some of the cases on which Claimant relies denied benefits despite application of what this Court has referred to as the “unexplained death” presumption. See Jennings, 335 S.C. 249, 258-59, 516 S.E.2d 453, 458 (upholding Commission’s denial of benefits despite application of “unexplained death” presumption because substantial evidence supported the Commission’s determination that the cause of death was not work related); Packer, 238 S.C. at 438, 120 S.E.2d at 401 (presumption insufficient to prove fact of accident even though claimant was found deceased at his place of employment).

C. The testimony and evidence relied on by Claimant does not warrant overturning the Commission Decision.

Although Claimant argues that, had he been suffering from any ailment or dizziness or any condition at all, he would have told his co-workers, Mr. Barnette and/or Mr. Bolden, there are a number of places where their testimony did not accurately reflect key information about Claimant. The testimony of Claimant’s co-workers regarding what they observed on the day of his injury simply supports the conclusion that they did not **notice** anything unusual. However, his co-workers were inconsistent in their memory of the events of April 19, 2012 and, in addition, were not as aware of Claimant’s physical condition as they might have implied or even believed.

- *Compare* Barnette Dep., R. 303, line 4 – 304, line 23 (first testifying that the fall could not have been as late as 4:15 or 4:30, but then conceding that might have been the case based on the statement he wrote a few days after April 19, 2012);
- *With* Bolden Dep., R. 313, lines 4-13 (Mr. Bolden insisting the injury occurred “before three” in the afternoon).
- *Compare* Barnette Dep., R. 290, lines 17-19 (insisting both the backpack and cooler were placed on the seat of the truck);
- *With* Bolden Dep., R. 320, lines 8-25 (testifying he only saw a cooler, and not a backpack, placed on the floorboard of the truck).

- *Compare* Barnette Dep., R. 283, lines 19-23 (the only lower back problem Mr. Barnette was aware of was when Claimant “discussed he had a back problem when he was a teenager, younger, a teenager, you know, and I knew that”);
- *With* R. 109-112 (medical notes chronicling Claimant’s lower back problems in the weeks leading to his fall).
- *Compare* Barnette Dep., R. 294, lines 22-23 (Mr. Barnette testified that Claimant was only 5’3” or 5’4” in height);
- *With* R. 433, lines 18-22 (Claimant testifying that his height is approximately 5’6½”).

Finally, Claimant’s co-workers admittedly are not medical professionals. Because he has no memory of the event, Claimant cannot remember if he felt dizzy or lightheaded or nauseous or was having any problems with balance or had a seizure immediately before he fell.

Claimant places great emphasis on the position of his body when he was found. (App. Br. pp. 8-9, 11, 20-21). Contrary to claimant’s intimation otherwise, the fact that he was laying on his back with the back of his head flat against the ground does not indicate that he fell from the steps of the truck, or that he experienced a work-related accident. Respondents note that Mr. Barnette’s speculation as to how Claimant might have fallen from the steps of the truck is based on the injury to the back of Claimant’s head. (R. 292, lines 17-25). However, there was only a small abrasion on the back of Claimant’s head¹⁰ which did not require stitches. (R. 378, lines 11-15). None of the medical reports from his initial medical treatment even mention an abrasion on the back of Claimant’s head. (R. 45-55). In fact, the Emergency Department report from April 19, 2012 specifically notes, “SKIN: Void of all rashes, bruises, lesions.” (R. 46). A consultation report, printed on June 14, 2012, notes only “[s]everal abrasions.” (R. 64-65).

¹⁰ Claimant’s Brief acknowledges there was only “a small amount of blood on the back of his head ...” (App. Br. p. 8).

Claimant opines that it is significant that he was diagnosed with a “subdural hematoma of the anterior lateral (front left) temporal lobe.” (App. Br. pp. 11, 21). Not only does Claimant not explain how this diagnosis advances his claim but, more importantly, he can point to no medical evidence in the record of this case that would support any conclusion that this diagnosis indicates he suffered a work-related accident.

Claimant frames many of his arguments based on the ultimate, but unproven, conclusion he wishes this Court to reach, *i.e.*, that his injuries were the result of an accident as that term is used in the Act. For example, he relies on cases “where the cause was accidental in nature,” (App. Br. p. 17 n.1), asserts that there is “undisputed evidence ... that his injury stemmed from an accidental physical type injury,” (App. Br. p. 18), and describes the injury at issue here as one that “resulted from a physical injury type cause.” (App. Br. p. 17). In reality, this is one of the core factual issues that the Commission decided against him. The Commission held that the evidence produced was insufficient to show Claimant had suffered a compensable injury by accident that arose out of his employment. (Commission Decision, R. 26-37).

Clearly, Claimant’s injuries resulted from his fall; however, the question at issue here is what caused Claimant’s fall? If, in fact, he fell from the steps of the truck, as the Commission recognized, this may well have been a very different case. Here, however, the evidence is just as likely, if not more likely, that he was standing on the ground and fell due to something internal to himself.¹¹ Given the fact that he was taking medications with serious side effects, some of which he appears to have suffered just days before his

¹¹ For example, although Claimant emphasizes that the door to the truck was open when Claimant was found on the ground, (App. Br. pp. 9, 10, 11, 20), that does not prove anything, least of all that he was on the truck steps when he fell. It is equally likely that the door to the truck would have been left open if Claimant had just placed items on the floor of the truck cab or tossed them onto the seat, as it would have been if he had climbed the steps to the truck to place items in it.

fall, (R. 328, line 17 – 329, line 11), then it is more likely than not that the cause was internal to Claimant himself.

This Court should hold that the so-called unexplained death presumption does not apply in this case, and uphold the Commission's finding that Claimant is not entitled to workers' compensation benefits.

III. Even if such a presumption were to apply to unremembered events, there is sufficient and substantial evidence in this case to rebut any such presumption.

Claimant would apply the presumption in all cases where an injury is unwitnessed or not remembered, except "where the injury and death is caused by a medical condition such as heart attack or thrombosis." (App. Br. pp. 18, 21). Claimant's statement of the law is unreasonably narrow and must be rejected. Instead, the rule that compensation is denied where the cause of injury was something personal to the claimant, as opposed to arising out of the employment, is not limited to heart attacks or thrombosis. *See, e.g., Dukes v. Rural Metro Corp.*, 356 S.C. 107, 110, 587 S.E.2d 687, 689 (2003) (holding that the gun that caused the claimant's injuries during a smoking break was in no way related to his job and, therefore, the claimant's injuries did not arise out of his employment); *Bright v. Orr-Lyons Mill*, 285 S.C. 58, 62, 328 S.E.2d 68, 71 (1985) (employee's injuries, incurred when he was shot while walking to his car parked on the employer's parking lot after his shift, not compensable because assailant was a nonemployee looking for someone else for personal reasons unrelated to job). Likewise, Claimant's assumption that he has proven his fall "was not caused by a condition peculiar to him," (App. Br. p. 16), presumes the precise outcome he has failed to prove.

Claimant would phrase the inquiry narrowly as whether he had a personal medical condition that might have caused dizziness, imbalance, fainting, etc. He studiously ignores the facts that he was taking strong pain medication – Ultram and Neurontin – at the time of his fall and that he sought treatment from the Emergency Room two days before the accident for stomach/dehydration issues, facts highlighted by the Commission. (Commission Decision, R. 28, 31).

Specifically, on March 27, 2012, a few weeks before his fall, Claimant had been prescribed Ultram (50MG) and Flexeril (5MG). (R. 109-110). Ultram is a narcotic pain reliever. Side effects include, among other things:

- seizure (convulsions);
- weak or shallow breathing;
- high levels of serotonin in the body--agitation, hallucinations, fever, fast heart rate, overactive reflexes, nausea, vomiting, diarrhea, loss of coordination, fainting;
- headache, dizziness, drowsiness, tired feeling; and
- constipation, diarrhea, nausea, vomiting, stomach pain.

According to Drugs.com, “Ultram can slow or stop your breathing ... Seizures (convulsions) have occurred in some people taking this medicine.” <http://www.drugs.com/ultram.html>.¹² In fact, seizures “may be more likely” if a patient is also “taking certain medicines such as ... muscle relaxers ... or medicine for nausea and vomiting.” *Id.* Flexeril, which Claimant had been prescribed on March 27, 2012, (R. 109-110), is a muscle relaxer. <http://www.drugs.com/flexeril.html>.

On April 16, 2012, three days before his fall, Dr. Menhas changed Claimant’s prescription from Ultram 50MG to Ultram ER 100MG. (R. 111-112). Possible side effects of Ultram ER, an opioid analgesic, include, among other things:

¹² See also <http://www.janssenpharmaceuticalsinc.com/assets/ultram.pdf> from the manufacturer of Ultram, Janssen Pharmaceuticals, Inc., pp. 7-8.

- change in walking and balance;
- abdominal pain;
- nausea;
- convulsions (seizures);
- lightheadedness; and
- loss of consciousness.

<http://www.drugs.com/cons/ultram-er.html>.¹³ Dr. Menhas also dropped the Flexeril and added Neurontin (300MG). Neurontin is “is an anti-epileptic medication, also called an anticonvulsant. It affects chemicals and nerves in the body that are involved in the cause of seizures and some types of pain.” Side effects of Neurontin include “dizziness, drowsiness, and diarrhea.” <http://www.drugs.com/neurontin.html>.

On April 17, 2012, two days before his fall, Claimant sought emergency medical treatment for vomiting and diarrhea and concerns about dehydration. (R. 114-115) (R. 328, line 17 – 329, line 11). Thus, even if Claimant had the benefit of the so-called explained death presumption, there is substantial evidence in this case, highlighted by the Commission, that Claimant was taking medication that can cause dizziness, drowsiness, diarrhea, abdominal pain, nausea, seizures, loss of consciousness, change in walking and balance, etc., and that he sought emergency medical care two days before his fall for some of those symptoms.

Even if the presumption applied in cases where a claimant was injured but not deceased, which Respondents do not concede, the presumption still “may not be availed of to establish the incident of accident,” as opposed to some internal cause of the injury. Packer, 238 S.C. at 438, 120 S.E.2d at 401. In fact, in both Packer and Jennings, the decedents were found where their work required them to be. However, in both cases, the

¹³ See also <http://www.janssenpharmaceuticalsinc.com/assets/ultramer.pdf> from the manufacturer or Ultram ER, Janssen Pharmaceuticals, Inc., p. 9.

Court determined that the decedents were not entitled to benefits because, despite the presumption, there was no evidence that an accident had caused the fatal injuries. Packer, 238 S.C. at 437, 120 S.E.2d at 401; Jennings, 335 S.C. at 256, 516 S.E.2d at 457.

In the case before the Court, there is no evidence (only speculation) that Claimant suffered an accident, as opposed to something internal to himself. There is, on the other hand, undisputed evidence that Claimant was taking medications that have multiple and serious side effects, including seizures, dizziness, fainting, loss of balance, diarrhea, nausea, vomiting, etc., as is discussed in more detail above.

Dr. Peterson's statements, on which Claimant relies, do not address what precipitated Claimant's fall. (R. 81). Furthermore, the statements lack any probative value because they assumed a key fact in dispute, which is whether Claimant "fell from the cab of his employer's truck ..." (R. 91).¹⁴ See Glenn v. Dunean Mills, 242 S.C. 535, 542, 131 S.E.2d 696, 699 (1963) (probative value of an expert's opinion "stands or falls with the existence or non-existence of the facts upon which it is predicated").

Thus, even if the presumption applied in this case, which Respondents do not concede, Respondents presented evidence of a cause internal to Claimant to explain his fall. (R. 109-112). As a result, this Court should uphold the Commission's denial of benefits.

¹⁴ Claimant's reliance on Barnes and Nicholson for the proposition that, where there is no dispute as to material facts, the case becomes one for the reviewing court to decide is inapplicable in this instance. There are a number of key facts in dispute including whether Claimant fell from the truck or from a standing position and whether his fall was due to something personal and internal to himself. The Commission noted twice and with emphasis the fact that Claimant was taking both Ultram and Neurontin at the time of his fall. (Commission Decision, R. 27-32).

IV. Claimant failed to meet his burden of proving his injuries were the result of an accident that arose out of his employment.

The Commission properly held that Claimant failed to meet his burden of proving his injuries are compensable.¹⁵ Beyond admitted speculation on the part of his co-workers, Claimant has identified no causal link between his employment and his fall. The last action witnessed by a co-worker was Claimant walking back to his truck and placing a cooler on the floorboard of the truck. (R. 320, line 2 – 321, line 13). Although Mr. Barnette felt sure that both the cooler and Claimant's backpack had been placed (rather than tossed) on the seat of the truck prior to Claimant's fall, (R. 290, lines 17-25), Mr. Bolden could only remember seeing a cooler. (R. 320, lines 17-25). Even if Claimant had climbed the steps to the truck to "place" the cooler and/or back pack on the seat, there still is no evidence whatsoever that Claimant fell from the steps of his truck. It is just as likely that, even assuming Claimant climbed the steps to place the items on the truck seat, he climbed back down before he fell to the ground. As Mr. Barnette testified:

On the record now, I don't know. I know **speculation** is not really a thing, but my **speculation** is that he got on the first step, got on the second step, put the lunch box up there and my **speculation** is he was on the second – you make sure this is **speculation**, but my **speculation** is he was on the top step when he fell backwards because of the amount of injury on the back of his head and the way he fell on the ground.

(R. 292, lines 17-25) (emphasis added). An award cannot be based on surmise, conjecture or speculation. *E.g.*, Packer, 238 S.C. 435, 120 S.E.2d at 400.¹⁶

Claimant places much weight on the fact that "in the opinion of his co-workers [Claimant] was 100%" the day of his injury. However, Claimant has not even attempted

¹⁵ Claimant's failure to appeal this Conclusion of Law by the Single Commissioner is addressed above in Section I.

¹⁶ Claimant's attempt to turn this rule on its head, (App. Br. pp. 18-19), should be rejected. Where a claimant fails to meet his burden of proving an accidental injury that arises out of and in the course of employment, benefits should be denied.

to assert that his co-workers have any medical training or background. They could report only what they saw and perceived as lay persons. Although Claimant asserts he was experiencing no dizziness or weakness or balance problems on the day of his fall, he also acknowledges taking medications for his lower back pain. Those medications have recognized side effects that include seizures, dizziness, fainting, loss of balance, diarrhea, nausea, vomiting, etc.

Furthermore, Mr. Barnette's deposition testimony reveals that he was not as familiar with Claimant's recent medical issues as Claimant would have this Court believe. For example, when asked about Claimant's recent trips to the emergency room, Mr. Barnette could only say, "Yeah, you know, I knew he had went to the emergency room and got some medications or something like that. I don't know all the details. You know, your records show that. But he worked a few days and he was off checking with the doctors in the two or three weeks before that." (R. 283, lines 14-18). When asked specifically whether Claimant had complained about any back problems, Mr. Barnette could only point to problems Claimant had had when he was a teenager. (R. 283, lines 19-23).

This Court should hold that Claimant failed to prove he suffered a compensable injury by accident that arose out of and in the course of his employment.

V. The Commission committed no error in the manner in which its Decision and Order was drafted.

Claimant's counsel has raised this exact same argument to this Court before, which this Court has rejected. Brown v. Peoplease Corp., 402 S.C. 476, 485-86, 741 S.E.2d 761, 766 (Ct. App. 2013). Tellingly, Claimant cites absolutely no authority whatsoever for his assertion that the Full Commission is required by law "to write its

Order ...” (App. Br. p. 22). That is because there is none and Claimant’s entire argument should be rejected.

The various cases cited by Claimant do not support his assertions. Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct. App. 1991), Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962), and Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966), merely state that the Commission is the fact finder and that, where there is a dispute in the facts, the Commission’s resolution is binding on reviewing courts so long as it is supported by substantial evidence in the record before the Commission.

Likewise, the various statutory sections listed by Claimant do not support his assertions. To begin with, Claimant’s reliance on S.C. Code Ann. § 1-23-340 is perplexing, as there is no evidence, or even an assertion by Claimant, that a “majority of the officials” of the Appellate Panel, who rendered the final decision, did not also hear the case. (Transcript of Full Commission Hearing before Commissioners Wilkerson, McCaskill and James, on August 11, 2014, R. 258-278). Section 1-23-350 requires that a final decision “shall be in writing or stated in the record.” S.C. Code Ann. § 1-23-350. It does not specify who should write the first draft of the decision. S.C. Code Ann. § 42-17-40 addresses the conduct of the hearing before the Single Commissioner, and Claimant admittedly has no problem with a prevailing party drafting a proposed order in that instance. (App. Br. p. 22). Section 42-17-50 simply requires the Commission to “review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend

the award.” S.C. Code Ann. § 42-17-50. There is no evidence that the Commission failed to comply with this provision.

Claimant correctly notes that the Full Commission requested that counsel for Respondents draft a proposed Appellate Panel Order finding “a FULL AFFIRMATION of the Single Commissioner Decision and Order.” However, what Claimant fails to note is that the Commission also, “reserve[d] the right to modify and/or delete any or all portions of the submitted Decision and Order.” (Request for a Proposed Decision and Order, dated August 29, 2014, R. 430 (“Request”)). Thus, the Commission plainly reserved the right to correct any errors or omissions in the proposed order submitted to it.

In addition, the Commission’s request directed counsel to “make sure the Appellate Panel Decision and Order recites the specific Findings of Fact and Rulings of Law of the Single Commissioner’s Decision and Order,” (Request, R. 430), which counsel did. Even if, solely for the sake of argument, counsel had misstated the Single Commissioner’s factual findings or legal conclusions, the Full Commission clearly reserved its “right to modify and/or delete any or all portions of the submitted Decision and Order.” (Request, R. 430). Therefore, there simply is no basis for Claimant’s allegations that the Commission somehow abdicated its duty to make its own findings of fact and conclusions of law.

Although Claimant cites S.C. Reg. 67-709(E)(2), mandating that the reviewing “Commissioners together, shall agree on a modification if any and record their findings of fact and conclusion of law on a vote sheet,” there is no evidence whatsoever in this record that the Commission did not do precisely that.¹⁷ In addition, that regulation does

¹⁷ Claimant’s counsel has requested and been provided a copy of the “vote sheet” in other cases decided by the Commission. The fact that he may not have requested the vote sheet in this case

not prohibit the Commission from requesting a party to draft a proposed order which it then reviews before issuing.

The Commission Decision recites the history of the proceeding, the evidence presented below, and notes that its Decision is “[b]ased upon the testimony and exhibits submitted before the Single Commissioner.” (Commission Decision, R. 26). Not only did the Commission fully affirm the Single Commissioner Decision but, as noted above, its Decision restates the Single Commissioner’s Findings of Fact and Conclusions of Law almost verbatim. (Commission Decision, R. 26-36). There is no evidence that the Commission did not completely fulfill its duty to determine the factual and legal issues in this case, and to set them out in its Decision.

Claimant’s assertion that the proposed order, “went beyond the direction of the Full Commission,” (App. Br. p. 23), is baseless.¹⁸ As can be seen by a simple comparison of the Single Commissioner Order and the Commission Decision, the discussion of the evidence, the findings of fact and conclusions of law are practically identical. (Single Commissioner Order, R. 1-19) (Commission Decision, R. 20-37). The additional Conclusions of Law that Claimant appears to find problematic include Conclusions of Law Nos. 3 and 4, which simply set forth the standard of review at the Full Commission level, (Commission Decision, R. 33), Conclusions of Law Nos. 9 and 10, which respond to Claimant’s reliance on Packer v. Corbett Canning Co., 238 S.C. 431, 120 S.E.2d 398 (1961), (Commission Decision, R. 34-35), and Conclusion of Law

does not mean the reviewing Commissioners did not comply with their own regulations, as Claimant surreptitiously suggests.

¹⁸ At the same time, Claimant complains that the Commission Decision failed to address all of the legal and factual issues raised in his Form 30. The Commission is under no obligation to specifically address in writing each argument raised by a party in its Form 30. Instead, as noted above, Section 42-17-50 requires the Commission to “review the award.” S.C. Code Ann. § 42-17-50.

No. 16, which simply affirms the Single Commissioners Decision. At the end of the day, by preserving its right to “review and modify and/or delete any of all portions of the submitted Decision and Order,” the Appellate Panel had the final word on the content of the Commission Decision, which was individually signed by the members of the Appellate Panel.

Claimant asserts that, because the Commission Decision is a “consensus” decision, it is improper for it to request a party to draft a proposed decision. According to Claimant, such a process abdicates the Commission’s responsibility and denies Claimant due process. Although Claimant apparently attempts to distinguish the “time-honored tradition of a singular judge or commissioner requesting that the prevailing party present a proposed Order for the Judge’s or Commissioner’s consideration, (App. Br. p. 22), from a request for counsel to draft a Full Commission consensus decision, it is a distinction without any meaningful difference. A decision by a judicial decision maker – whether a single commissioner, a single judge or a panel of the same – must comport with appropriate statutory and legal standards, which the Commission Decision in this case does. As noted above, the Commission reserved the right to review, modify or completely disregard the proposed order as drafted by Respondents’ Counsel. The fact that each reviewing Commissioner signed the order indicates clearly and unequivocally each Commissioner’s approval of the Commission Decision as issued. (Commission Decision, R. 37).

Finally, Claimant appears confused about the distinction between procedural due process and substantive due process. On one hand, procedural due process simply entitles him to the right to adequate notice, adequate opportunity for a hearing, the right

to introduce evidence and the right to confront and cross-examine witnesses. Adams v. H.R. Allen, Inc., 397 S.C. 652, 657, 726 S.E.2d 9, 13 (Ct. App. 2012). Substantive due process, on the other hand, “enquires into the conceivable outer limits of legitimate government power.” Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 829 n.7 (4th Cir. 1995). Substantive due process essentially protects against the uncommon situation of truly egregious government conduct as opposed to failure to comply with state law. *See* Collins v. City of Harker Heights, 503 U.S. 115, 126 (1992) (stating that the Due Process Clause is designed “to prevent government from abusing its power, or employing it as an instrument of oppression”). The Commission committed no error in requesting a party to submit a proposed order, which the reviewing Commissioners reviewed prior to issuance. Claimant’s substantive or procedural due process rights have not been violated, and this Court should so hold.

CONCLUSION

For all the reasons stated herein, this Court should affirm the Commission Decision that Claimant failed to meet his burden of proving his injuries were the result of an accident that arose out of and occurred in the scope of his employment.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE

June 18, 2015



Jason W. Lockhart
S.C. Bar No.: 68612
Meridian 10th Floor
1320 Main Street
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents SAILA
Construction and Old Republic General
Insurance Corporation c/o Gallagher
Bassett Services, Inc.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Standard of Review	1
Arguments	
I. <u>CLAIMANT FAILED TO APPEAL AND/OR PRESERVE</u> <u>CERTAIN COMMISSION FINDINGS AND HOLDINGS,</u> <u>WHICH ARE NOW BINDING ON HIM.</u>	
A. <u>CLAIMANT FAILED TO APPEAL CERTAIN FINDINGS</u> <u>OF FACT AND CONCLUSIONS OF LAW BY THE</u> <u>SINGLE COMMISSIONER WHICH ARE NOW THE LAW</u> <u>OF THE CASE.</u>	3
B. <u>ISSUES NOT ADDRESSED IN CLAIMANT'S BRIEF ARE</u> <u>ABANDONED.</u>	3
II. <u>CLAIMANT IS NOT ENTITLED TO A PRESUMPTION THAT HE</u> <u>SUFFERED AN ACCIDENT THAT AROSE OUT OF AND IN THE</u> <u>COURSE OF HIS EMPLOYMENT.</u>	
A. <u>THE SO-CALLED UNEXPLAINED DEATH PRESUMPTION</u> <u>DOES NOT AND SHOULD NOT APPLY TO UNEXPLAINED</u> <u>FALL CASES.</u>	7
C. <u>THE TESTIMONY AND EVIDENCE RELIED ON BY THE</u> <u>CLAIMANT DOES NOT WARRANT OVERTURNING THE</u> <u>COMMISSION DECISION.</u>	9
III. <u>EVEN IF SUCH A PRESUMPTION WERE TO APPLY TO</u> <u>UNREMEMBERED EVENTS, THERE IS SUFFICIENT AND</u> <u>SUBSTANTIAL EVIDENCE IN THIS CASE TO REBUT ANY</u> <u>SUCH PRESUMPTION.</u>	12
V. <u>THE COMMISSION COMMITTED NO ERROR IN THE MANNER</u> <u>IN WHICH ITS DECISION AND ORDER WAS DRAFTED.</u>	12
Conclusion	13

TABLE OF AUTHORITIES

Cases

<u>Barnes v. Charter 1 Realty,</u> — S.C. —, 768 S.E.2d 651 (2015)	7, 10
<u>Brown v. Peoplelease Corp.,</u> 402 S.C. 476, 485 S.E.2d 761 (SC App. 2013)	10, 12
<u>Buff v. Columbia Baking Co.,</u> 215 S.C. 41, 53 S.E.2d 879 (1949)	9
<u>Clark v. Aiken County Gov.,</u> 366 S.C. 102, 620 S.E.2 nd 99 (SC App. 2005)	5
<u>Cokely v. Robert Lee, Inc.,</u> 197 S.C. 157, 14 S.E.2d 889 (1941)	2
<u>Cox v. BellSouth Communications,</u> 356 S.C. 468, 589 S.E.2d 766 (SC App. 2003, reh. den., cert. den.)	2
<u>Green v. City of Columbia,</u> 311 S.C. 78, 427 S.E.2 nd , 685 (SC App. 1993)	3, 4, 6
<u>Hiers v. Brunson Constr. Co.,</u> 221 S.C. 212, 70 S.E.2d. 211 (1952)	11
<u>Layton v. Hammonds, Brown, Jennings,</u> 190 S.C. 425, 3 S.E.2d 492 (1939)	10, 11
<u>Owens v. Ocean Forest, Inc.,</u> 196 S.C. 979, 12 S.E.2d 839 (1941)	8
<u>Sloan v. SC Board of Physical Therapy Examiners,</u> 370 S.C. 452, 636 S.E.2d 598 (2006)	13
<u>Steed v. Mount Pleasant Seafood Co.,</u> 236 S.C. 253, 113 S.E.2d 827 (1960)	8, 9
<u>White v. Medical Univ. of South Carolina,</u> 355 S.C. 560, 586 S.E.2d 157 (Ct. App. 2003)	6

Statutes and Regulations

S.C. Code Ann. §1-23-380	1
S.C. Code Ann. §42-17-50	4
S.C. Code Ann. §42-17-60	1

Other Authorities

SCACR, Rule 203(b) or (c)	3
---------------------------------	---

STANDARD OF REVIEW

By way of Reply to the Standard of Review set out by the Defendants as part of their Respondents' Brief, this appeal involves an appeal from the SC Workers' Compensation Commission and therefore is not only an appeal filed under the SC Administrative Procedures Act, SC Code §1-23-380, but is also an appeal filed under the Workers' Compensation Act under SC Code §42-17-60. The Workers' Compensation Act is a statutorily created scheme of benefits in derogation of the common law which takes away the right to trial by jury and replaces it with an appointed Commissioner system for which our Appellate Courts have set out specific fundamental review principles that apply to appeals from the Commission. In that regard, the Respondents do not set out the entire Standard of Review applicable in a workers' compensation case, which principles must be added to any recitation of the Standard of Review recited by any party or by the Court. Those fundamental principles of law that apply specifically in workers' compensation cases as part of the Standard of Review are:

First, it is the established law of this State that the Act must be liberally construed and that any reasonable doubts as to the construction of the Workers' Compensation Act must be resolved in favor of the injured worker and,

"its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage rather than non-coverage
..."

"Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents and to prevent the burden of injured employees and their dependents from becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws shall be liberally construed in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted and to avoid any incongruous or harsh results." Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). (Emphasis added).

Second, since the workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, the reviewing Court must strictly construe such statutes, leaving it to the Legislature to amend and define any ambiguities. Cox v. BellSouth Communications, 356 S.C. 468, 589 S.E.2d 766 (SC App. 2003, reh. den., cert. den.).

ARGUMENTS

BY WAY OF REPLY TO ARGUMENT #1 RAISED BY THE
RESPONDENTS:

- I. CLAIMANT FAILED TO APPEAL AND/OR PRESERVE CERTAIN COMMISSION FINDINGS AND HOLDINGS, WHICH ARE NOW BINDING ON HIM.
- A. CLAIMANT FAILED TO APPEAL CERTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE SINGLE COMMISSIONER WHICH ARE NOW THE LAW OF THE CASE.

B. ISSUES NOT ADDRESSED IN CLAIMANT'S BRIEF ARE ABANDONED.

This argument and the arguments made are not responsible to the issues raised on appeal and should be stricken from the Brief. Further, the Respondents have not appealed these issues and have thus abandoned these issues. Finally, the arguments are in error in that the Appellant has preserved for argument all of the issues presented to the Court for consideration.

The Respondents have not filed an appeal pursuant to SCACR, Rule 203(b) nor have they filed a cross appeal under subsection (c). The Respondents in making this argument allege that the Appellant did not specifically challenge certain findings and conclusions in his arguments to the Full Commission. However, the Appellant would submit that this Court will find from a review of the Record absolutely no argument made on that basis to the Full Commission, either in brief or in oral argument, by the Defendants/Respondents. Therefore, in the first instance this issue having not been appealed from the Full Commission Decision to this Court for review; this argument should be stricken as not being an issue properly preserved and submitted to the Court for review.

The very case cited by the Respondents, that being Green v. City of Columbia, 311 S.C. 78, 427 S.E.2nd, 685 (SC App. 1993), supports this Reply argument being made by the

Appellant. In Green the Full Commission went outside of the issues raised for review and the Findings of Fact and Conclusions of Law that had been made by the Hearing Commissioner and made a decision based on an issue that had not been appealed and remanded to the Hearing Commissioner. The Respondents before the Full Commission in Green appealed and were the Appellants before this Court and alleged in part that the Full Commission had gone outside of the Record and outside of the issues that had been presented to them for review and specifically alleged that those issues had become the law of the case. In other words, those issues were specifically presented to this Court by an appeal by the Respondents in Green as Appellants whereas there has been no such appeal in this case.

Next, not only did the Respondents not raise this as an issue for decision before the Full Commission nor did they appeal, but also they misstate and comingle the law as to appeals from the Hearing Commissioner to the Full Commission versus from the Commission to our Appellate Courts.

SC Code §42-17-50 applies to appeals to the Full Commission and simply requires that a request for review of the Decision be made. While it is true that the parties must be given notice of the issues to be addressed by the Full Commission, Green, supra, there is simply no requirement that each individual Finding of Fact or Conclusion of Law be appealed to the Full Commission but only that the issue that

the party wants addressed can readily be determined and is clear from the exceptions and arguments of the party and that the this issue was ruled upon by the Hearing Commissioner.

Holston v. Allied Corp, 300 S.C. 174, 386 S.E.2d 793 (SC App. 1989). In this case not only did the Claimant file a request for review, but specifically listed in his request a request for review of all of the Findings of Fact and Conclusions of Law and decisions made by the Hearing Commissioner. He then addressed the issues of law and fact and the Decision of the Hearing Commissioner in his Brief and at oral argument before the Full Commission to which a responsive Brief was filed by the Respondents concerning the specific legal and factual issues that the appellant wanted to have reviewed under which and to which all of the Findings of Fact and Conclusions of Law were made.

Again, the Respondents in reality mix apples and oranges as there is the distinct difference between a request for review by the Full Commission and the requirements as to that review versus an appeal to this Court on specific issues. It is completely sufficient, and there is no case law to the contrary, in requesting a review by the Full Commission to allege, not a vague general exception but a specific general exception asking the Commission to review all Findings of Fact and Conclusions of Law and decisions made by the Hearing Commissioner. In fact in the case of Clark v. Aiken County Gov., 366 S.C. 102, 620 S.E.2nd 99 (SC

App. 2005) which is also cited by the Respondents, the Court in its decision refers to several cases including White v. Medical Univ. of South Carolina, 355 S.C. 560, 586 S.E.2d 157 (Ct. App. 2003) holding that even very general, vague exceptions, not specific general exceptions as is contained here, are sufficient to provide for review before an Appellate Court, much less before the Full Commission. Those cases also cite back to the Green decision and chastise parties for not raising that type of issue (issue preservation) at the Full Commission and then raising it at the Appellate Court noting that, "all parties should raise all necessary issues and arguments to the lower Court and attempt to obtain a ruling." They also note that the Appellate Court Rules of Procedure should not be, "interpreted to create a trap for the unwary." The Respondents chose not to raise this issue before the Full Commission; did not appeal this issue but now attempt to raise it as a separate argument to this Court.

Next, as to the assertion of the Respondents that issues not addressed in the Claimant's Brief are abandoned, first all of the cases cited by the Respondents refer to cases where an Appellant has not addressed the issues the Appellant wants addressed in their Appellate Brief and then tries to bootstrap those into consideration in a Reply Brief. A review of the issues that are alleged not to have been addressed by the Appellant in his Initial Brief will show to

the Court that all of these are incorporated into the arguments as to the legal issues that the Appellant wants addressed by the Court, including whether or not the Claimant is entitled to the application of unexplained injury presumption; whether or not the Commission erred as a matter of law in its application of that presumption; and whether or not there is any evidence in the Record that is disputed concerning the facts surrounding the injury, which if there are none, would make the decision an issue of law for decision by this Court as a matter of law based on those undisputed facts.

BY WAY OF REPLY TO ARGUMENT #II RAISED BY THE
RESPONDENTS:

II. CLAIMANT IS NOT ENTITLED TO A PRESUMPTION THAT HE SUFFERED AN ACCIDENT THAT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

A. THE SO-CALLED UNEXPLAINED DEATH PRESUMPTION DOES NOT AND SHOULD NOT APPLY TO UNEXPLAINED FALL CASES.

The Respondents in the caption of this Argument II. A. confuse the holding in the line of cases applying the unexplained injury presumption with the line of cases applicable to unexplained (idiopathic) fall cases. Not only is that an improper citation but our Supreme Court in the recent decision of Barnes v. Charter 1 Realty, _____ S.C. _____, 768 S.E.2d 651 (2015) soundly rejected the concept of an idiopathic fall meaning a fall for which the Claimant

did not know the cause.

In reference to the further argument that the presumption only applies to death situations, this Court has only to review the presumption as cited in Owens v. Ocean Forest, Inc., 196 S.C. 979, 12 S.E.2d 839 (1941) and refer to Larson's on workers' compensation and the cases cited in Larson's wherein the presumption has been applied across the United States to find that the presumption applies to all situations where the injury is unwitnessed and the injured worker is, "found injured at a place where his duty may have required him to be". (Owens). In those situations the worker is presumed to be, "injured" as a result of an accident arising out of and in the course of his employment. The Court will find no variance or deviation in our Appellate Court decisions, citations or recitations of the principle set out in Owens than that it applies to all unwitnessed injury situations. Also, a review of Larson's as cited by the Court repeatedly will show that it has been applied across the United States to all unwitnessed injury situations such as we have here. It is simply error for the Respondents to allege that the Appellant is trying to create some new presumption.

Finally since, Steed v. Mount Pleasant Seafood Co., 236 S.C. 253, 113 S.E.2d 827 (1960) was not cited by the Appellant in his Brief other than by reference to it as being one of the decisions under the unexplained injury

presumption, the Appellant will address it here. The Appellant has absolutely no earthly idea why the Respondents are citing the Steed case or Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879 (1949) because both the Steed case and the Buff case involve conflicting evidence situations and the Commission made a decision based on that conflicting evidence. In this case, there is absolutely no evidence and there is no conflict in the evidence as to what occurred. Also, and the Appellant will not belabor this point as it is well cited in Appellant's Initial Brief, where the evidence is not conflicting or in other words is uncontradicted as it is in this case, the Decision as to whether or not the injured worker sustained injury by accident becomes a decision as a matter of law for the Court.

BY WAY OF REPLY TO:

C. THE TESTIMONY AND EVIDENCE RELIED ON BY THE CLAIMANT DOES NOT WARRANT OVERTURNING THE COMMISSION DECISION.

The Appellant would simply point out again as he does in his Brief that there is simply no evidence that the Claimant was not in tip-top shape and in fine physical condition with absolutely no problems on the date of the accident. There is simply no contrary evidence.

In addition, in making this argument the Respondents make the argument that the, "Claimant's co-workers admittedly are not "medical professionals" and also make the argument that because, "he has no memory, he doesn't know if he was

light-headed or not". However they do not cite to any medical evidence in the Record nor did they put in any medical evidence at the hearing stating any medical opinion contrary to that submitted by the Claimant/Appellant. In reference to the co-workers not being "medical professionals", it is Black Letter law that any witness may testify to observed facts and you don't have to be a medical expert to testify to that. The argument is without support from the evidence in the Record or under law. Finally, the Defendants try to make some kind of argument in reference to the Appellant's recitation of the undisputed evidence and then make blanket statements that are unsupported by the evidence that for example, "it was just as likely that he was standing on the ground and something internal happened to him". They submit no factual evidence nor do they submit any medical opinion evidence to support that proposition.

Also in making this factual argument they ignore the Brown decision and mistake the very definition of injury by accident by inferring that proof of "cause" is required under our definition. In 1939 in the case Layton v. Hammonds, Brown, Jennings, Inc., 190 S.C. 425, 3 S.E.2d 492 (1939) our Supreme Court chose between the two competing concepts of the definition of injury by accident rejecting the concept that requires an looked for, untoward event in the, "cause" of the injury to be compensable, and chose instead the definition of injury by accident that it is the "unexpected result" from

the work-activity that constitutes injury by accident.

Quoting from Layton:

"An effect which does not ordinarily follow and cannot be reasonably be anticipated from the use of those means, an effect which the actor did not intend to produce and cannot be charged with the design of producing is produced by accidental means."
(Emphasis added).

Then, after quoting from Layton, in the precedential case defining injury by accident, Hiers v. Brunson Constr. Co., 221 S.C. 212, 70 S.E.2d. 211 (1952), the Court held in pertinent part:

"no slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury is itself considered the compensable accident." (Emphasis added)

The Respondents as the insurance industry has done for years try to change the definition of injury by accident and switch to the definition that our Courts have rejected for over 75 years. Our definition of injury by accident is diametrically opposed to and contrary to the position that the Respondents take in their Brief, that be, "question at issue here is what caused the Claimant's fall?". Cause is not the issue and never has been.

BY WAY OF REPLY TO ARGUMENT #III RAISED BY THE
RESPONDENTS:

III. EVEN IF SUCH A PRESUMPTION WERE TO APPLY TO UNREMEMBERED EVENTS, THERE IS SUFFICIENT AND SUBSTANTIAL EVIDENCE IN THIS CASE TO REBUT ANY SUCH PRESUMPTION.

In simply reply to this argument, the Respondents cite to absolutely no factual or medical opinion evidence related to the day of the accident.

BY WAY OF REPLY TO ARGUMENT #V RAISED BY THE
RESPONDENTS:

V. THE COMMISSION COMMITTED NO ERROR IN THE MANNER IN
WHICH ITS DECISION AND ORDER WAS DRAFTED.

In reference to that part of this argument, that this case and issue is controlled by this Court's decision, in the Brown v. Peoplease Corp., 402 S.C. 476, 485 S.E.2d 761 (SC App. 2013) the Decision written by the Respondents for the Full Commission in this case is totally different from the Decision written in Brown, in that the Decision in this case made additional Findings of Fact and Conclusions of Law not contained in the Hearing Commissioner's decision or anywhere in the Commission Record. This Court must deal with the requirements of the Administrative Procedures Act, the Workers' Compensation Act, and the Commission's own Regulations and the responsibility of every appellate body to write its own Decisions, and particularly in reference to the mandate that the Commission must make detailed Findings of Fact and Conclusions of Law. Finally in reference to this part of the argument, Counsel for Appellant is incensed and takes great exception to footnote 17 which goes outside of the Record. Counsel for the Appellant would respectfully request that the Court direct Counsel for the Respondents to

cite to any reference in the Record that justifies or factually supports that footnote.

In reference to due process, Appellant's Counsel is not confused. Quoting the Supreme Court from Sloan v. SC Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006):

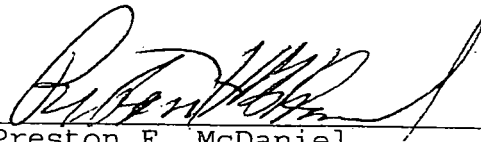
"the requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally includes adequate notice, the opportunity to be heard and at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts and the right to meaningful judicial review."

The Appellant would submit that this process denies the Appellant meaningful judicial review.

CONCLUSION

Having fully replied to the Arguments, the Decision should be reversed and this worker provided benefits.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

July 25TH, 2015

Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 24 2015

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and Old Republic
General Insurance Corp., c/o Gallagher
Bassett Services, Inc., Carrier, ... Respondents.

RECORD ON APPEAL

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211
Attorney for Appellant

Jason W. Lockhart, Esquire
McAngus Goudelock & Courie
P.O. Box 12519
Columbia, SC 29211
(803) 779-2300

Helen F. Hiser, Attorney
McAngus, Goudelock & Courie
Post Office Box 650007
Mt. Pleasant, SC 29211
(843) 576-2900
Attorneys for Respondents

INDEX

I. ORDERS

Decision and Order of the Single Commissioner, filed April 14, 2014	1
SCWCC Appellant Panel Decision and Order, filed October 10, 2014	20

II. PLEADINGS/FORMS

Form 50, dated November 25, 2013	38
Form 51, dated December 5, 2013	40
Claimant's Pre-Hearing Brief with APA Submissions, dated January 23, 2014	41
Defendants' Pre-Hearing Brief with APA Submissions, dated January 24, 2014	82
Claimant's Brief on Legal Issues, submitted at February 4, 2014 Hearing	126
Claimant's Form 30 with Attachment, dated April 28, 2014	131
Claimant/Appellant's Full Commission Brief, dated June 26, 2014	136
Defendants'/Respondents' Full Commission Brief, dated July 21, 2014	164
Claimant's Notice of Intent to Appeal with Grounds, dated November 7, 2014	175

III. TRANSCRIPTS

Transcript of Hearing before the Single Commissioner, dated February 4, 2014	184
---	-----

Transcript of Hearing before the Full Commission, dated August 11, 2014	258
Transcript of Deposition of Paul Barnette, dated August 20, 2012	279
Transcript of Deposition of David Bolden, dated August 20, 2012	308
Transcript of Deposition of James Speegle, dated August 20, 2012	323
Transcript of Deposition of William Lee Turner, dated August 1, 2012	337
Transcript of Deposition of William Lee Turner, dated January 16, 2014	390

IV. DOCUMENTS

Notice of Hearing, dated December 16, 2013	425
Request for Proposed Order from Commissioner Barden, dated February 10, 2014	426
Request for Proposed Decision and Order from Full Commission, dated August 29, 2014	430
Certificate of Counsel	431

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1204039

WILLIAM LEE TURNER,

Employee,

Claimant,

vs.

SAIIA CONSTRUCTION,

Employer,

AND

OLD REPUBLIC GENERAL INSURANCE
CORPORATION c/o GALLAGHER
BASSETT SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on February 4, 2014.

APPEARANCES:

Claimant appeared and represented by John K. Koon, Esquire and Stephen H. Cook, Esquire of Koon and Cook, P.A. of Columbia, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER: Commissioner Susan S. Barden

FILED: April 14, 2014

STIPULATIONS

1. Jurisdiction is proper with the South Carolina Workers' Compensation Commission.
2. Venue is proper in Richland County, South Carolina.
3. Claimant's average weekly wage is Six Hundred Eighty Four Dollars (\$684.18) and 18/100 with a corresponding compensation rate of Four Hundred Fifty Six Dollars (\$456.14) and 14/100.

APA SUBMISSIONS

Defendants submitted the following:

1. Written Statement of David Bolden and James Speegle, dated 04/19/12, page 1;
2. Peterson and Plante Internal Medicine Associates, P.A., dated 07/23/12-09/18/13, pages 2-10;
3. The Pain Center of First Choice Healthcare, dated 09/18/13-10/17/13, pages 11-19;
4. USC Department of Neurosurgery, dated 05/29/12, page 20;
5. The Moore Orthopaedic Clinic, P.A., dated 10/19/12, pages 21-22;
6. South Carolina Diagnostic Imaging, dated 10/01/13, page 23;
7. ImageCare, LLC, dated 07/17/12, page 24;
8. Sandhills Medical Foundation – Lugoff, dated 03/27/12-04/16/12, pages 25-29;
9. Palmetto Health Baptist, dated 04/17/12, pages 30-32;
10. Palmetto Health Richland, dated 04/19/12-05/22/12, pages 33-40.
11. Deposition of Claimant

Claimant submitted the following:

1. Palmetto Health Richland, dated 04/19/12-04/25/12, pages 1-24;
2. University Specialty Clinics, dated 05/16/12, pages 25-26;

3. Peterson and Plante Internal Medicine Associates, dated 04/30/12-04/15/13, pages 27-37.
4. Deposition of Paul Barnette
5. Deposition of David Bolden
6. Deposition of James Speegle

STATEMENT OF THE CASE

The hearing was scheduled pursuant to a Form 50 filed by the Claimant's attorney, in the above-referenced case, on November 25, 2013. The Claimant maintained that he sustained a compensable injury to the head and thoracic spine while in the course and scope of the Claimant's employment with the Defendants on April 19, 2012. The Claimant maintained that he was entitled to additional medical treatment with Dr. Peterson as well as temporary total disability benefits from April 20, 2012 until January 1, 2013. In response, the Defendants maintained that the Claimant could not satisfy his burden of proof, pursuant to §42-1-160 of the Act, on the basis that the Claimant had no memory or recollection of the facts or circumstances surrounding his alleged April 19, 2012 work related accident. In addition, the Defendants maintained that the Claimant's fall on April 19, 2012 was idiopathic in nature and, therefore, not compensable pursuant to the South Carolina Workers' Compensation Act. Furthermore, the Defendants took the position that the Claimant had reached maximum medical improvement and was not in need of additional medical treatment. The Defendants also maintained that the Claimant was physically capable of working, during the period of time that he was requesting payment of temporary total disability benefits and, therefore, the Claimant was not entitled to temporary total disability benefits.

EVIDENCE OF THE CASE

Testimony

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 28 years of age and resides in Lugoff, South Carolina with his wife. With regard to the Claimant's alleged April 19, 2012 work related accident, the Claimant stated that he has no memory of the facts and circumstances surrounding his alleged work related accident. (Hr'g Tr. 44:2-16) The Claimant indicated that, based on his normal work routine, he would have cleaned the dump truck, which he was operating on April 19, 2012, and likely was injured as the result of a fall that occurred while he was attempting to climb up into the cab of the dump truck in order to place his personal belongings in the cab of the dump truck. The Claimant indicated that not only did he have no memory of the alleged date of accident, but that he also had no memory of the Wednesday prior to his work related accident and the Friday following his work related accident. (Hr'g Tr. 44:7-12) The Claimant testified that, prior to his work related accident, he had not experienced any previous problems with dizziness, seizures, or other instability that could have explained the basis for his alleged fall on April 19, 2012. (Hr'g Tr. 29:16-20) The Claimant testified that his initial memory, following his alleged work related accident, was being hospitalized in Columbia, South Carolina. (Hr'g Tr. 44:13-16) The Claimant stated that he sought and received medical treatment for his work related injuries from a variety of physicians, including Dr. Peterson, who is the Claimant's family physician. The Claimant indicated that Dr. Peterson has provided the Claimant with treatment in the form of anti-seizure medication, and that he was most recently examined by Dr. Peterson in January 2014.

The Claimant testified that he was unable to work with the Defendants for approximately eight months due to the injuries sustained in his alleged April 2012 work related accident. More specifically, the Claimant stated that he has been placed out of work by Dr. Peterson due to seizures, which the Claimant developed following his work-related accident. The Claimant

indicated that he was eventually released to return to work by Dr. Peterson in December 2012, and that he returned to work with the Defendants in January 2013. (Hr'g Tr. 49:19-50:2) The Claimant testified that he returned to work with the Defendants in January 2013 as a heavy equipment operator, and is currently working with the Defendants as a heavy equipment operator, the same position that the Claimant held with the Defendants prior to the date of his April 2012 work related accident. On cross-examination, the Claimant stated that he is currently earning the same wages and essentially working the same hours that he was working prior to his alleged work related accident. (Hr'g Tr. 50:3-11) Most notably, the Claimant testified that he is of the opinion that he is both mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 50:12-52:7)

On cross-examination, the Claimant testified that he has no memory of his alleged work-related accident. (Hr'g Tr. 44:2-6) The Claimant stated that he was not climbing a ladder or standing on top of a truck, on the date of his work related accident, despite medical records indicating that he either fell from a ladder or from the top of a truck. (Hr'g Tr. 44:17-45:5) The Claimant indicated that he was also aware that there were no witnesses to his alleged work related accident, and that both Paul Barnette and David Bolden, whose depositions were submitted to Commissioner Barden for her consideration, did not witness the Claimant's alleged fall. The Claimant indicated that his current job as a heavy equipment operator requires the Claimant to engage in both mental and physical activity, but that the Claimant is capable of performing his job duties and responsibilities as a heavy equipment operator. (Hr'g Tr. 52:1-7) With regard to the Claimant's current back problems, the Claimant initially denied that he sustained a recent injury to the back in September 2013 when he fell from a horse. (Hr'g Tr. 53:24-54:9) Subsequently, the Claimant was presented with a diagnostic report of Dr. Girault,

dated September 18, 2013, in which Dr. Girault noted that the Claimant provided her with a history of reinjuring his thoracic spine after falling from a horse. Despite the above-referenced medical record, the Claimant attempted to downplay the significance of the fall from the horse, in that he did not experience a worsening of his back pain as a result of the above-referenced incident. (Hr'g Tr. 55:5-24) The Claimant stated that during the eight-month period of time that he was out of work, following his alleged work-related accident, he did engage in both farming activities on his property, including baling of hay and operating tractors, and that he also engaged in activities relating to the construction of his home during the above-referenced period of time. (Hr'g Tr. 60:23-63:23)

Robert Bennett testified on behalf of the Defendants. Mr. Bennett stated that he is currently employed with the Defendants as a superintendent, and has been the Claimant's direct supervisor since July 2013. (Hr'g Tr. 71:23-72:19) Mr. Bennett indicated that the Claimant is currently employed with the Defendants as a heavy equipment operator, and appears to be mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 73:11-16) Mr. Bennett testified that, since becoming the Claimant's direct supervisor in July 2013, the Claimant has not missed any time from work due to the injuries sustained in his alleged April 2012 work related accident. (Hr'g Tr. 73:17-22)

The depositions of Paul Barnette, David Bolden, and James Speegle were submitted by the Claimant without objection from the Defendants. Mr. Barnette admitted that he could only "speculate" as to how the Claimant's fall occurred, as Mr. Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Mr. Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap. Mr. Bolden testified that he did not witness the accident, and Mr. Bolden specifically

admitted that he “never saw [Claimant] on the steps of the truck.” Mr. Bolden did, however, see Claimant “standing on the ground” and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pgs. 4-7, 9, and 14). Mr. Speegle testified that he did not witness the Claimant’s alleged accident either, and knows of no one who did witness the Claimant’s alleged accident. (Depo. of Speegle, pgs. 5 and 11).

Medical Evidence

Based on a review of the medical records, three days prior to the date of the alleged accident, Claimant sought treatment with Sandhills Medical Foundation-Lugoff, and provided complaints of low back pain that was “sudden and has been occurring in a persistent pattern for 3 days.” Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). (See Defendants’ APA, pgs. 27-28; Defendants’ APA, pg. 30; Claimant’s APA, pg. 25). Based on a review of the medical records, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room at Palmetto Health Baptist. At the Emergency Room, Claimant provided complaints of low back pain, reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants’ APA, pgs. 30-32).

The Claimant underwent an examination with Dr. Scott of The Moore Orthopedic Clinic on October 29, 2012 for his alleged work-related injuries. The Claimant provided Dr. Scott with complaints of high thoracic and low cervical pain. The Claimant informed Dr. Scott that, despite not working with the Defendants at the time of his examination, “he has been doing a lot of work around the house including a lot of farming and building a house and he has not been limited by his back pain.” (See Defendants APA., p. 20). Dr. Scott diagnosed the Claimant with “some myofascial pain related to his fall,” recommended physical therapy and a trigger point injection,

but the Claimant declined the trigger point injection. Dr. Scott stated that he was "comfortable with [the Claimant] returning to work but [the Claimant] is going to be held out according to his other doctor's recommendations for his seizures which is very appropriate." (See Defendants APA., p. 20).

The Claimant has continued to seek and receive medical treatment from his family physician, Dr. Peterson, for his alleged work-related injuries. The Claimant has been examined by Dr. Peterson on multiple occasions, since the date of his work-related accident, and has provided Dr. Peterson with complaints of thoracic back pain primarily. (See Defendants APA., p. 2-10). Most notably, the Claimant has not provided complaints to Dr. Peterson regarding seizure activity, and the Claimant's last seizure occurred approximately six to seven months prior to his returning to work with the Defendants in January 2013. (See Defendants APA., p. 2-3). The Claimant was most recently examined by Dr. Peterson approximately four months ago, and did provide Dr. Peterson with complaints regarding back pain and problems. (See Defendants APA., p. 9-10). Claimant received treatment from Dr. Peterson in the form of prescription medication, but testified in his deposition that he is not currently utilizing prescription medication for his back pain and problems, and last utilized prescription medication approximately three months ago. (Claimant's 2012 Depo. pg. 18:21-19:14)

The Claimant was provided with a referral by Dr. Peterson by Dr. Girault for additional medical treatment in light of the Claimant's complaints of back pain and problems. The Claimant was initially examined by Dr. Girault in September 2013, and provided Dr. Girault with a history of his alleged April 2012 work-related accident as well as complaints of pain in the thoracic spine. (See Defendants APA., p. 11). Most notably, the Claimant also informed Dr. Girault that he injured his back, prior to September 2013, when he jumped off of a moving horse.

(See Defendants APA., p. 12, 14). Dr. Girault recommended that the Claimant undergo injections into the thoracic spine, but that the Claimant chose not to undergo the injections that were recommended by Dr. Girault. (See Defendants APA., p. 13; Claimant's 2012 Deposition, pg. 24:6-17). Claimant has not returned to Dr. Girault for additional medical treatment since being examined in October 2013. (See Defendants APA., p. 16-18).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of facts:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is Six Hundred Eighty Four Dollars (\$684.18) and 18/100 with a corresponding compensation rate of Four Hundred Fifty Six Dollars (\$456.14) and 14/100.
3. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants on April 19, 2012.
4. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant alleges that he injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012.
5. Based on the entirety of the evidence including the medical records submitted, the

testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant is 28 years of age (medical evidence establishing Claimant's date of birth as 11/29/85; Claimant's 2012 Depo. p. 5).

6. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant is a high school graduate (Defendants' APA #2, p. 9; Claimant's 2012 Deposition, page 9).
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant's job with Employer was heavy equipment operator (testimony of Claimant; Claimant's 2012 Depo. pp. 10 & 21).
8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, in the alleged accident in issue, Claimant was found injured and lying next to Employer's truck. I base this Finding of Fact on the testimony of Barnette and Bolden. (Defendants APA, p. 1)
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including "*absolutely no memory of it or what might have precipitated the fall;*" or (c) the day after the date of the alleged accident (Hr'g Tr. 44:2-16; Claimant's APA #2, p. 25; Claimant's 2012 Deposition, pp. 25-26, 29, & 31-32).

10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find the alleged accident was unwitnessed.
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that no witness claims to have seen the Claimant's alleged accident.
12. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). I base this Finding of Fact on Defendants' APA #8, pp. 27-28; Defendants' APA #9, p. 30; & Claimant's APA #2, p. 25).
13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room. At the Emergency Room, Claimant reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA #9, pp. 30-32).
14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the temporal medical records are of no real utility: (a) one record from the date of the alleged accident erroneously states that Claimant fell off a *ladder*, and Claimant does not contend that he fell off a ladder (Claimant's APA #1, p. 1; Defendants' APA #10, p.

33; Claimant's 2012 Deposition, pp. 28-29); and (b) another record from the date of the accident states that Claimant fell of the back of a truck, when Claimant in fact contends that he must have fallen from the steps of the cab (Claimant's APA #1, p. 20; Defendants' APA #10, p. 35).

15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that co-worker Barnette admits he can only "speculate" as to how the fall occurred, as Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that if Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different (evidence in its entirety, including but not limited to Depo. of Barnette, pp. 8, 13-17, 21-22, 24-25, & 28).
17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that co-worker/friend Bolden did not witness the accident, and Bolden specifically admits he "never saw [Claimant] on the steps of the truck." Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pp. 4-7, 9, & 14).
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find

that Supervisor Speegle did not witness the accident either, and knows of no one who did (Depo. of Speegle, pp. 5 & 11).

19. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, the undersigned does not find persuasive the opinion of Dr. Peterson (Claimant's family doctor): the portion of Claimant's counsel's letter prefacing the request for the causation opinion assumes that Claimant "fell from the cab of" Employer's truck. Further, Dr. Peterson's opinion only states that Claimant's head injuries were "caused by the fall on April 19, 2012." There is no dispute that Claimant injured his head in the fall, but the dispute is whether Claimant fell from a standing position or from the steps of the cab (Defendants' APA #2, p. 6; Claimant's APA #3, p. 37; Claimant's 2012 Deposition, pp. 12-13 & 39).
20. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, six months after the date of the alleged accident, Claimant was not limited by back pain, such that he was able to engage in "a lot of farming and building a [log] house" (Defendants' APA #5, page 21; Hr'g Tr. 60:23-63:23; *see also* Claimant's 2014 Deposition, pages 6-7 and 33-34).
21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that Claimant sustained an intervening accident in August 2013 (1 year and 4 months after the date of the alleged accident), for which Claimant sought medical treatment. Medical evidence from Claimant's treating physician at this visit states that Claimant was

doing well after the alleged fall at work until Claimant "fell off a horse." (Defendants' APA #3, page 12)

22. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident. Claimant's explanation of the horse incident ("it didn't hurt or anything like that") is not persuasive given the fact that Claimant sought treatment for the after the fall off the horse (53:24-55:24; Defendants' APA #3, pp. 12-14, 16, & 18; Claimant's 2014 Depo., pp. 18 & 21).

23. In his theory of the case, Claimant contends that circumstantial evidence (the fact that Claimant was on Employer's premises; the presence of Claimant's book bag in the cab; Claimant's testimony that he always climbed the steps to place his book bag in the cab; the fact that Claimant must have fallen from a position higher than the floor to sustain the injuries he sustained, and the fact that Claimant's truck had recently been washed--or that Claimant's shoe caught on the step(s) of the cab) is sufficient to prove that Claimant fell from the steps of the cab of the truck and suffered work-related injuries.

24. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, even if the undersigned presumes that Claimant was in fact injured through his employment, I am confronted with the following: (a) there is no known cause of the fall in the instant case, (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident,

(c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant's family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; (e) although not dispositive, Claimant's friend and co-worker said the steps were not cleaned with soap; only a pressure washer; and (f) very importantly, Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden. Claimant's sworn testimony in this regard (as cited in this finding) greatly damages his credibility (e.g., Claimant's 2012 Deposition, pp. 26 & 29-34: *"I was told...I was climbing up in the truck to put something in there or do something... And then they said that they seen me up—they seen me up on the truck. Then they said after they turned around, they seen me laying on the ground"* is not supported by the testimony of any witness; nor is Claimant's testimony—*"they told me, they—they turned around and they seen me climb up in the truck, and they said they turned back around, and as soon as they turned back around again, they said they seen me laying on the ground"*—supported by the testimony of any other witness (Claimant's 2012 Depo., p. 26:18-24; Depo. of Barnette in its entirety; Depo. of Bolden in its entirety).

25. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in 42-1-10 S.C. Code of Laws, et. seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation; but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App.1997) *rev'd on other grounds*.
4. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of' the employment and simultaneously co-exist 'in the course of' the employment." Kinsey v. Champion Am. Serv. Center, 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).
5. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of

law.” Doe v. South Carolina State Hospital, 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).

6. Pursuant to South Carolina Code Ann. §42-1-160, and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, the Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants.
7. Pursuant to South Carolina Code Ann. §42-9-10 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant’s incapacity for work was total due the Claimant’s alleged work-related accident.
8. Pursuant to South Carolina Code Ann. §42-15-60 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, Defendants are not responsible for the provision of treatment nor the payment of medical bills arising out of the Claimant’s alleged work-related accident.
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, I find that Owens v. Oceans Forest Club does not serve to render the claim at issue compensable. In Owens, the claimant (a game warden hired to patrol Employer’s premises to prevent poaching and trespassers generally) was found dead on the ground of Employer’s premises, but the specific cause of death in Owens was a bullet wound

through the head (*i.e.*, the bullet clearly caused the death and obvious fall to the ground).

The Owens court found the claim compensable based upon circumstantial evidence because (a) the claimant was on Employer's property during the claimant's hours of employment, (b) the cause of death was a known gunshot wound, and (c) of the nature of the work duties. The question before the court was whether the death in Owens was the result of a suicide or a trespasser.

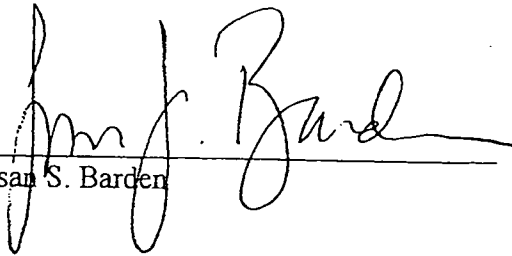
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the present case is distinguishable from Owens due to the fact that, in the present case and unlike in Owens, the cause of the Claimant's injury (*i.e.* his alleged fall) is unknown. (See Testimony of Claimant; Claimant's APA #2, page 25; Claimant's 2012 Deposition, pages 25-26, 29, and 31-32).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

ORDER

IT IS HEREBY ORDERED that Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

IT IS FURTHER ORDERED that Claimant's claim for all benefits available under the Act is **DENIED**.

AND IT IS SO ORDERED.



Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
April 14, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1204039

William Lee Turner

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

SAIIA Construction

EMPLOYER,

AND

Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South Carolina
on August 11, 2014 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

October 10, 2014

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire
Defendants/Respondents represented by Jason W. Lockhart, Esquire

44:2-16) The Claimant indicated that, based on his normal work routine, he would have cleaned the dump truck, which he was operating on April 19, 2012, and likely was injured as the result of a fall that occurred while he was attempting to climb up into the cab of the dump truck in order to place his personal belongings in the cab of the dump truck. The Claimant indicated that not only did he have no memory of the alleged date of accident, but that he also had no memory of the Wednesday prior to his work related accident and the Friday following his work related accident. (Hr'g Tr. 44:7-12) The Claimant testified that, prior to his work related accident, he had not experienced any previous problems with dizziness, seizures, or other instability that could have explained the basis for his alleged fall on April 19, 2012. (Hr'g Tr. 29:16-20) The Claimant testified that his initial memory, following his alleged work related accident, was being hospitalized in Columbia, South Carolina. (Hr'g Tr. 44:13-16) The Claimant stated that he sought and received medical treatment for his work related injuries from a variety of physicians, including Dr. Peterson, who is the Claimant's family physician. The Claimant indicated that Dr. Peterson has provided the Claimant with treatment in the form of anti-seizure medication, and that he was most recently examined by Dr. Peterson in January 2014.

The Claimant testified that he was unable to work with the Defendants for approximately eight months due to the injuries sustained in his alleged April 2012 work related accident. More specifically, the Claimant stated that he has been placed out of work by Dr. Peterson due to seizures, which the Claimant developed following his work related accident. The Claimant indicated that he was eventually released to return to work by Dr. Peterson in December 2012, and that he returned to work with the Defendants in January 2013. (Hr'g Tr. 49:19-50:2) The Claimant testified that he returned to work with the Defendants in January 2013 as a heavy equipment operator, and is currently working with the Defendants as a heavy equipment

operator, which is the same position that the Claimant held with the Defendants prior to the date of his April 2012 work related accident. On cross-examination, the Claimant stated that he is currently earning the same wages and essentially working the same hours that he was working prior to his alleged work related accident. (Hr'g Tr. 50:3-11) Most notably, the Claimant testified that he is of the opinion that he is both mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 50:12-52:7)

On cross-examination, the Claimant testified that he has no memory of his alleged work-related accident. (Hr'g Tr. 44:2-6) The Claimant stated that he was not climbing a ladder or standing on top of a truck, on the date of his work related accident, despite medical records indicating that he either fell from a ladder or from the top of a truck. (Hr'g Tr. 44:17-45:5) The Claimant indicated that he was also aware that there were no witnesses to his alleged work related accident, and that both Paul Barnette and David Bolden, whose depositions were submitted to Commissioner Barden for her consideration, did not witness the Claimant's alleged fall. The Claimant indicated that his current job as a heavy equipment operator requires the Claimant to engage in both mental and physical activity, but that the Claimant is capable of performing his job duties and responsibilities as a heavy equipment operator. (Hr'g Tr. 52:1-7) With regards to the Claimant's current back problems, the Claimant initially denied that he sustained a recent injury to the back in September 2013 when he fell from a horse. (Hr'g Tr. 53:24-54:9) Subsequently, the Claimant was presented with a diagnostic report of Dr. Girault, dated September 18, 2013, in which Dr. Girault noted that the Claimant provided her with a history of reinjuring his thoracic spine after falling from a horse. Despite the above-referenced medical record, the Claimant attempted to downplay the significance of the fall from the horse, in that he did not experience a worsening of his back pain as a result of the above-referenced

incident. (Hr'g Tr. 55:5-24) The Claimant stated that during the eight month period of time that he was out of work, following his alleged work related accident, he did engage in both farming activities on his property, including bailing of hay and operating tractors, and that he also engaged in activities relating to the construction of his home during the above-referenced period of time. (Hr'g Tr. 60:23-63:23)

Robert Bennett testified on behalf of the Defendants. Mr. Bennett stated that he is currently employed with the Defendants as a superintendent, and has been the Claimant's direct supervisor since July 2013. (Hr'g Tr. 71:23-72:19) Mr. Bennett indicated that the Claimant is currently employed with the Defendants as a heavy equipment operator, and appears to be mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 73:11-16) Mr. Bennett testified that, since becoming the Claimant's direct supervisor in July 2013, the Claimant has not missed any time from work due to the injuries sustained in his alleged April 2012 work related accident. (Hr'g Tr. 73:17-22)

The depositions of Paul Barnette, David Bolden, and James Speegle were submitted by the Claimant without objection from the Defendants. Mr. Barnette admitted that he could only "speculate" as to how the Claimant's fall occurred, as Mr. Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Mr. Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap. Mr. Bolden testified that he did not witness the accident, and Mr. Bolden specifically admitted that he "never saw [Claimant] on the steps of the truck." Mr. Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pgs. 4-7, 9, and 14). Mr. Speegle testified that he did not witness the Claimant's alleged accident either, and knows of no one who did witness the

Claimant's alleged accident. (Depo. of Speegle, pgs. 5 and 11).

Medical Evidence

Based on a review of the medical records, three days prior to the date of the alleged accident, Claimant sought treatment with Sandhills Medical Foundation-Lugoff, and provided complaints of low back pain that was "sudden and has been occurring in a persistent pattern for 3 days." Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). (See Defendants' APA, pgs. 27-28; Defendants' APA, pg. 30; Claimant's APA, pg. 25). Based on a review of the medical records, Two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room at Palmetto Health Baptist. At the Emergency Room, Claimant provided complaints of low back pain, reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA, pgs. 30-32).

The Claimant underwent an examination with Dr. Scott of The Moore Orthopedic Clinic on October 29, 2012 for his alleged work-related injuries. The Claimant provided Dr. Scott with complaints of high thoracic and low cervical pain. The Claimant informed Dr. Scott that, despite not working with the Defendants at the time of his examination, "he has been doing a lot of work around the house including a lot of farming and building a house and he has not been limited by his back pain." (See Defendants APA., p. 20). Dr. Scott diagnosed the Claimant with "some myofascial pain related to his fall," recommended physical therapy and a trigger point injection, but the Claimant declined the trigger point injection. Dr. Scott stated that he was "comfortable with [the Claimant] returning to work but [the Claimant] is going to be held out according to his other doctor's recommendations for his seizures which is very appropriate." (See Defendants APA., p. 20).

The Claimant has continued to seek and receive medical treatment from his family physician, Dr. Peterson, for his alleged work-related injuries. The Claimant has been examined by Dr. Peterson on multiple occasions, since the date of his work-related accident, and has provided Dr. Peterson with complaints of thoracic back pain primarily. (See Defendants APA., p. 2-10). Most notably, the Claimant has not provided complaints to Dr. Peterson regarding seizure activity, and the Claimant's last seizure occurred approximately six to seven months prior to his returning to work with the Defendants in January 2013. (See Defendants APA., p. 2-3). The Claimant was most recently examined by Dr. Peterson approximately four months ago, and did provide Dr. Peterson with complaints regarding back pain and problems. (See Defendants APA., p. 9-10). Claimant received treatment from Dr. Peterson in the form of prescription medication, but testified, in his deposition, that he is not currently utilizing prescription medication for his back pain and problems and last utilized prescription medication approximately three months ago. (Claimant's 2012 Depo. pg. 18:21-19:14)

The Claimant was provided with a referral by Dr. Peterson by Dr. Girault for additional medical treatment in light of the Claimant's complaints of back pain and problems. The Claimant was initially examined by Dr. Girault in September 2013, and provided Dr. Girault with a history of his alleged April 2012 work-related accident as well as complaints of pain in the thoracic spine. (See Defendants APA., p. 11). Most notably, the Claimant also informed Dr. Girault that he injured his back, prior to September 2013, when he jumped off of a moving horse. (See Defendants APA., p. 12, 14). Dr. Girault recommended that the Claimant undergo injections into the thoracic spine, but that the Claimant chose not to undergo the injections that were recommended by Dr. Girault. (See Defendants APA., p. 13; Claimant's 2012 Deposition, pg. 24:6-17). Claimant has not returned to Dr. Girault for additional medical treatment since

being examined in October 2013. (See Defendants APA., p. 16-18).

FINDINGS OF FACTS AND RULINGS OF LAW

FINDINGS OF FACT

Based upon the testimony and exhibits submitted before the Single Commissioner, the undersigned Appellate Panel adopts the findings of fact as made by the Single Commissioner in their entirety. They are as follows:

1. The parties are subject to and bound by the South Carolina Workers' Compensation Act.
2. Claimant's average weekly wage is Six Hundred Eighty Four Dollars (\$684.18) and 18/100 with a corresponding compensation rate of Four Hundred Fifty Six Dollars (\$456.14) and 14/100.
3. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants on April 19, 2012.
4. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant alleges that he injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012.
5. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant is 28 years of age (medical evidence establishing Claimant's date of birth as 11/29/85; Claimant's 2012 Depo. p. 5).

6. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant is a high school graduate (Defendants' APA #2, p. 9; Claimant's 2012 Deposition, page 9).
7. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant's job with Employer was heavy equipment operator (testimony of Claimant; Claimant's 2012 Depo. pp. 10 & 21).
8. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, in the alleged accident in issue, Claimant was found injured and lying next to Employer's truck. We base this Finding of Fact on the testimony of Barnette and Bolden. (Defendants APA, p. 1)
9. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including "*absolutely no memory of it or what might have precipitated the fall;*" or (c) the day after the date of the alleged accident (Hr'g Tr. 44:2-16; Claimant's APA #2, p. 25; Claimant's 2012 Deposition, pp. 25-26, 29, & 31-32).
10. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the alleged accident was unwitnessed.

11. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that no witness claims to have seen the Claimant's alleged accident.
12. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). We base this Finding of Fact on Defendants' APA #8, pp. 27-28; Defendants' APA #9, p. 30; & Claimant's APA #2, p. 25).
13. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room. At the Emergency Room, Claimant reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA #9, pp. 30-32).
14. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the temporal medical records are of no real utility: (a) one record from the date of the alleged accident erroneously states that Claimant fell off a *ladder*, and Claimant does not contend that he fell off a ladder (Claimant's APA #1, p. 1; Defendants' APA #10, p. 33; Claimant's 2012 Deposition, pp. 28-29); and (b) another record from the date of the accident states that Claimant fell of the back of a truck, when Claimant in fact contends that he must have fallen from the steps of the cab (Claimant's APA #1, p. 20;

Defendants' APA #10, p. 35).

15. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that co-worker Barnette admits he can only "speculate" as to how the fall occurred, as Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap.
16. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that if Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different (evidence in its entirety, including but not limited to Depo. of Barnette, pp. 8, 13-17, 21-22, 24-25, & 28).
17. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that co-worker/friend Bolden did not witness the accident, and Bolden specifically admits he "never saw [Claimant] on the steps of the truck." Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pp. 4-7, 9, & 14).
18. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Supervisor Speegle did not witness the accident either, and knows of no one who did (Depo. of Speegle, pp. 5 & 11).
19. Based on the substantial evidence including the medical records submitted, the testimony

of the representatives of the Defendants, and the Claimant's testimony, we do not find persuasive the opinion of Dr. Peterson (Claimant's family doctor): the portion of Claimant's counsel's letter prefacing the request for the causation opinion assumes that Claimant "fell from the cab of" Employer's truck. Further, Dr. Peterson's opinion only states that Claimant's head injuries were "caused by the fall on April 19, 2012." There is no dispute that Claimant injured his head in the fall, but the dispute is whether Claimant fell from a standing position or from the steps of the cab (Defendants' APA #2, p. 6; Claimant's APA #3, p. 37; Claimant's 2012 Deposition, pp. 12-13 & 39).

20. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, six months after the date of the alleged accident, Claimant was not limited by back pain, such that he was able to engage in "a lot of farming and building a [log] house" (Defendants' APA #5, page 21; Hr'g Tr. 60:23-63:23; *see also* Claimant's 2014 Deposition, pages 6-7 and 33-34).
21. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Claimant sustained an intervening accident in August 2013 (1 year and 4 months after the date of the alleged accident), for which Claimant sought medical treatment. Medical evidence from Claimant's treating physician at this visit states that Claimant was doing well after the alleged fall at work until Claimant "fell off a horse." (Defendants' APA #3, page 12)
22. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that

Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident. Claimant's explanation of the horse incident ("it didn't hurt or anything like that") is not persuasive given the fact that Claimant sought treatment for the after the fall off the horse (53:24-55:24; Defendants' APA #3, pp. 12-14, 16, & 18; Claimant's 2014 Depo., pp. 18 & 21).

23. In his theory of the case, Claimant contends that circumstantial evidence (the fact that Claimant was on Employer's premises; the presence of Claimant's book bag in the cab; Claimant's testimony that he always climbed the steps to place his book bag in the cab; the fact that Claimant must have fallen from a position higher than the floor to sustain the injuries he sustained, and the fact that Claimant's truck had recently been washed—or that Claimant's shoe caught on the step(s) of the cab) is sufficient to prove that Claimant fell from the steps of the cab of the truck and suffered work-related injuries.
24. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, even if the undersigned presumes that Claimant was in fact injured through his employment, I am confronted with the following: (a) there is no known cause of the fall in the instant case, (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident, (c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant's family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; (e) although not dispositive, Claimant's friend and

co-worker said the steps were not cleaned with soap; only a pressure washer; and (f) very importantly, Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden. Claimant's sworn testimony in this regard (as cited in this finding) greatly damages his credibility (e.g., Claimant's 2012 Deposition, pp. 26 & 29-34: "*I was told...I was climbing up in the truck to put something in there or do something... And then they said that they seen me up—they seen me up on the truck. Then they said after they turned around, they seen me laying on the ground*" is not supported by the testimony of any witness; nor is Claimant's testimony—"they told me, they—they turned around und they seen me climb up in the truck, and they said they turned back around, and as soon as they turned back around again, they said they seen me laying on the ground"—supported by the testimony of any other witness (Claimant's 2012 Depo., p. 26:18-24; Depo. of Barnette in its entirety; Depo. of Bolden in its entirety).

25. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.

2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
4. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
5. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) *rev'd on other grounds*.
6. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of' the employment and simultaneously co-exist 'in the course of' the employment." Kinsey v. Champion Am. Serv. Center, 268

S.C. 177, 182, 232 S.E.2d 720, 722 (1977).

7. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law." Doe v. South Carolina State Hospital, 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).
8. Pursuant to South Carolina Code Ann. §42-1-160, and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, the Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants.
9. The Appellant relies on the Supreme Court's opinion in Packer v. Corbett Canning Co., 238 S.C. 431, 120 S.E.2d 398 to establish that the Claimant suffered from a compensable work related accident due to the unexplained death or injury presumption. Respondents maintain that the Appellant's reliance on Packer is misplaced. In Packer, the decedent was found on a wet concrete floor alongside an electrical cord after an electrical storm. Expert testimony revealed that the decedent was not electrocuted and further showed that had scars from a recent heart attack. Though the Court cited the natural presumption as found in Owens to indicate that the decedent was found where the performance of his duties required him to be, the Court also stated that the presumption may not be availed to establish the incident of accident. Id. at 438. The Court found that even though the decedent was found on the job, there was no accident which caused his death.
10. Much like the Packer case, the Claimant, in the present case, was found on the ground

and there were no witnesses to the accident. However, a presumption cannot be applied to establish that an accident arose out of his employment. The Appellant has the burden of proving facts that will bring his injury within the workers' compensation law and such an award must not be based on surmise, conjecture or speculation. Jennings v. Chambers Dev. Co., 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999). Therefore, without satisfying his burden of proving that both an injury that arose out of his employment and an injury occurred in the course of his employment, the Appellant did not sustain a compensable injury pursuant to South Carolina Code Ann. §42-1-160.

11. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total due the Claimant's alleged work-related accident.
12. Pursuant to South Carolina Code Ann. §42-15-60 and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Defendants are not responsible for the provision of treatment nor the payment of medical bills arising out of the Claimant's alleged work-related accident.
13. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Owens v. Oceans Forest Club does not serve to render the claim at issue compensable. In Owens, the claimant (a game warden hired to patrol Employer's premises to prevent poaching and trespassers generally) was found dead on the ground of Employer's

premises, but the specific cause of death in Owens was a bullet wound through the head (i.e., the bullet clearly caused the death and obvious fall to the ground). The Owens court found the claim compensable based upon circumstantial evidence because (a) the claimant was on Employer's property during the claimant's hours of employment, (b) the cause of death was a known gunshot wound, and (c) of the nature of the work duties. The question before the court was whether the death in Owens was the result of a suicide or a trespasser.

14. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the present case is distinguishable from Owens due to the fact that, in the present case and unlike in Owens, the cause of the Claimant's injury (i.e. his alleged fall) is unknown. (See Testimony of Claimant; Claimant's APA #2, page 25; Claimant's 2012 Deposition, pages 25-26, 29, and 31-32).
15. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.
16. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

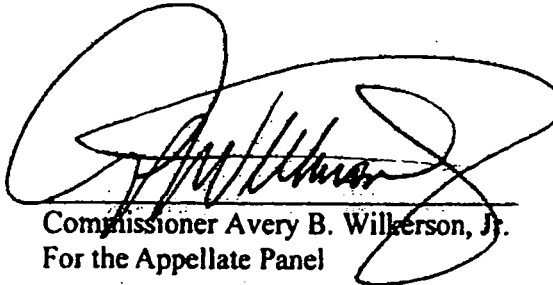
ORDER

IT IS HEREBY ORDERED, that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED** in its entirety.

IT IS HEREBY ORDERED that Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

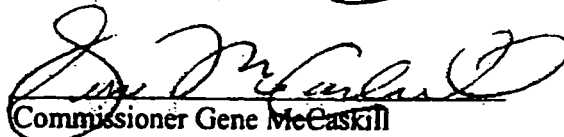
IT IS FURTHER ORDERED that Claimant's claim for all benefits available under the Act is **DENIED**.

AND IT IS SO ORDERED.



Commissioner Avery B. Willkerson, Jr.
For the Appellate Panel

WE CONCUR:



Commissioner Gene McCaskill



Commissioner Melody James

CERTIFICATE OF SERVICE

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

By Kim Falls on October 10, 2014

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



WCC File #: 1204039
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: William Lee Turner SSN: _____ Employer's Name: Salia Construction
Address: _____ Address: 4400 Lewisburg Rd
City: _____ State: SC Zip: _____ City: Birmingham State: AL Zip: 35207
Home Phone: (803) Work Phone: _____ Insurance Carrier: Old Republic General Insurance /Gallagher Bassett Services

Preparer's Name: John Koon Law Firm: Koon and Cook PA Preparer's Phone #: (803) 256 - 4082

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 April 19, 2012
☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back, head and thoracic spine (Part(s) of Body Injured) on April 19, 2012 (Month/Day/Year) in Richland county, state of South Carolina.
1b. Body part(s) affected are: back, thoracic spine, and head causing seizure disorder.
Briefly describe how the accident occurred. Claimant was climbing up the side of a work truck when he 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 04/19/2012 (Month/Day/Year) in the following manner: Claimant was found on the ground unconscious ambulance was called and he was taken from the job site to the hospital.

- ☒ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: back, thoracic spine, head and seizure disorder
☒ (b) additional medical examination and treatment for: back, head and thoracic spine
☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of April 19, 2012 thru January 2, 2013.
☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one): Claimant has not reached MMI
☐ (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 \$684.18 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. Salia Construction

11a. Further grounds or unusual aspects of claim:
All benefits available under the act.

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:
Dr. Alan C. Peterson, Jr. MD, Peterson & Plante Internal Medicine Associates 21 Gateway Corners Park Suite 101, Columbia SC 29203

11c. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe:

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

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

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour

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

Preparer's Signature

Attorney
Title

jkoon@koonandcook.com
Email

November 25, 2013
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. WCC

Form # 50 Revised 9/07

50

- 38 -

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

WCC File # 1204039

11B Continued

Richland County EMS
PO Box 863
Lewisville NC 27023

Image Care
PO Box 1247
Covington, GA 30015

Palmetto Health Richland
5 Richland Medical Park
Columbia SC 29201

McBee Rescue Squad
PO Box 355
79 S 6th Street
McBee, SC 29101

Sandhills Medical Foundation
1165 Hwy 1 South
Lugoff, SC 29078

Carolina Pines Regional Medical Center
1304 W. Bobo Newsome Hwy.
Hartsville, SC 29550

University Specialty Clinics Surgery
Two Medical Park, Suite 306
Columbia, SC 29203

Providence Hospital
110 Gateway Corp Blvd
Suite 160
Columbia, SC 29203

Moore Sports Rehab
114 Gateway Corp Blvd
Suite 430
Columbia, SC 29203

Palmetto Health ER Physicians
PO Box 402150
Atlanta GA 303842150

Pitts Radiology
PO Box 602728
Charlotte, NC 28260-2728

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803)737-5723 www.wcc.sc.gov



WCC File #: 1204039

Carrier File #: 002979-030511-WC-01

Carrier Code #:

Employer FEIN #:

Claimant's Name: William Lee Turner SSN

Employer's Name: SAITA Construction

Address

324 Commons Drive
Birmingham, Alabama 35201

Home Phone: (803) Work Phone #

Date of Injury: 4/19/12

Insurance Carrier: Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.

Preparer's Name: Jason W. Lockhart Law Firm McAngus Goudelock & Courie Preparer's Phone #: (803) 227-2283

Date of Injury or Illness: 4/19/12

Estimated time for hearing: 2 hours

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

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: The investigation of the Employer/Carrier does not reveal a compensable injury by accident within the course and scope of the Claimant's employment. In addition, the Employer/Carrier maintain that the Claimant's current problems with his head, back, and/or thoracic spine are not causally connected to the Claimant's alleged April 19, 2012 work-related accident.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Number 1 above.
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: See Number 1 above.
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are: See Number 1 above.
6. It is ☐ Admitted ☒ Denied the employee ☐ needs ☐ is entitled to additional medical care as a result of injury or illness. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to additional medical treatment.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to temporary total disability benefits.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to permanent disability benefits.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 to be submitted applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The Employer/Carrier maintain that the Claimant cannot satisfy his burden of proving a compensable injury to the head, back, and/or thoracic spine pursuant to Section 42-1-160 and/or Section 42-9-35 of the Act.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67.1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

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

Preparer's Signature

Attorney for Employer/Carrier
Title

jlockhart@mcclaw.com
Email

December 5, 2013
Date

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

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

Koon and Cook, P.A.

John K. Koon
Stephen H. Cook
Jamie L. Walters

Attorneys at Law
2016 Gadsden Street
Columbia, South Carolina 29201

Telephone: (803) 256-4082
Facsimile: (803) 254-0658

January 23, 2014

VIA HAND DELIVERY

The Honorable Susan S. Barden, Commissioner
South Carolina Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Our Client: William Lee Turner
Employer: Saiia Construction
WCC File No. 1204039
Hearing Date: February 4, 2014 at 02:30 PM

Dear Commissioner Barden:

Please find enclosed the original Form 58 and Notice of Witnesses and Medical Evidence without Submissions, and the Certificate of Mailing/Service that I have prepared on behalf of the Claimant.

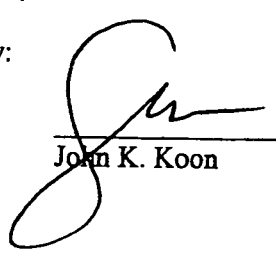
By copy of this letter we are serving the Form 58 and APA Submission on the attorney for the employer.

Thank you for your kind cooperation in this matter.

Sincerely,

KOON AND COOK, P.A.

By:



John K. Koon

JKK/awg
Enclosure(s)

cc: Jason W. Lockhart, Esquire



Claimant's Name: William Lee Turner

Employer's Name: Saia Construction

Address:

Address: 4400 Lewisburg Road

City:		State:		Zip:	
-------	--	--------	--	------	--

City:	Birmingham	State:	AL	Zip:	35207
-------	------------	--------	----	------	-------

Home Phone: (803) _____

Work Phone: (803) _____

Carrier: Old Republic General Ins/Gallagher Bassett Services

Preparer's Name: John K. Koon

Preparer's Phone #: (803) 256-4082

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 456.14 2. AWW: \$684.18 Date of Injury: April 19, 2012
3. Type of injury and body part(s): Back, thoracic spine, and head and brain leading to seizures
4. Facts in controversy: Is the Claimant entitled to temporary total disability benefits from April 19, 2012 thru January 2, 2013? Should the carrier be required to pay for past and future medical treatment?
5. Legal issues involved: Are the injuries sustained by the Claimant's fall compensable under workers' compensation laws?
6. Unusual aspects: _____
7. Witnesses (designate if expert):* Claimant, Paul Barnette, David Bolden, James Speegle
8. Exhibits: Deposition of Paul Barnette, David Bolden, James Speegle
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
Palmetto Health Richland medical reports; USC Department of Surgery- medical reports Dr. Alan C. Peterson, Jr. medical questionnaire
10. Name, address, and specialty, if any, of the treating physician: Alan Peterson, Jr. MD, 21 Gateway Corners Park, Suite 101, Columbia, SC 29203; Board Certified in Internal Medicine.
11. Impairment rating(s); body part(s); physician and date of opinion: None. Claimant has not reached MMI.
12. I am amending my Form 50/51 in the following manner: _____

Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jason Lochart, Esq. 1320 Main St. 10th Floor Cola SC 29211 address on the _____ day of 2014 by; ☒ first class postage ☒ certified mail ☐ personal service.

Signature: _____

Date of hearing: February 4, 2014

Email: _____

Time needed for hearing: 1 hr

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. 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.

WCC Form # 58

Revised 7/13

58

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA	)	
	)	BEFORE THE SOUTH CAROLINA
COUNTY OF RICHLAND	)	WORKER'S COMPENSATION
	)	COMMISSION
	)	
William Lee Turner,	)	NOTICE OF WITNESSES AND
Claimant,	)	MEDICAL RECORDS AS DIRECT
	)	EVIDENCE ON BEHALF OF THE
vs.	)	CLAIMANT
	)	
SAIIA Construction,	)	W.C.C. FILE NO.: 1204039
Employer,	)	
and	)	
	)	
Old Republic General Insurance Co.,	)	
c/o Gallagher Bassett Services, Inc)	)	
Carrier,	)	
	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION and THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY NOTIFIED that the Employee/Claimant, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensations Commission and Section 1-23-330, Code of Laws of South Carolina (1976), as amended, herewith submit the written medical reports of the below listed physicians, as direct evidence on behalf of the Employee/Claimant:

APA	Physician/Document	Date(s)	Pages
#1	Palmetto Health Richland	4/19/2012- 4/25/2012	1-24
#2	University Specialty Clinics	5/16/2012	25-26
#3	Peterson and Plante Internal Medicine Associates	4/30/2012- 4/15/2013	27-37

EXHIBITS:

1.	Deposition of Paul Barnette	In possession of both parties
2.	Deposition of David Bolden	In possession of both parties
3.	Deposition of James Speegle	In possession of both parties

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination, and should you desire to exercise said right, you are to forthwith schedule the deposition of the aforementioned doctor for the purpose of cross-examination.

You are hereby being furnished with copies of the reports of the aforesaid doctors on their examination aforementioned. Copies will be brought to the hearing for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Employee/Claimant.

KOON AND COOK, P.A.

By:



John K. Koon
2016 Gadsden Street
Columbia, SC 29201
(803) 256-4082
Attorneys for the Claimant

Columbia, South Carolina

January 22, 2014

Emergency Dept

TURNER, WILLIAM L - R015379577

Result type: Emergency Dept
Result date: 19 April 2012 19:14
Result status: Auth (Verified)
Result title: Emergency Dept
Performed by: Mullins MD, James T on 19 April 2012 19:14
Verified by: Ridley MD, Stephen F on 23 April 2012 00:57
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

Emergency Dept (Verified)

PATIENT: TRAUMA, M120297 DICT: James Mullins, MD-R
MR #: DOB:
ADMITTED: 04/19/2012 PT.LOC: STU
ACCOUNT #:

DATE OF VISITATION: 04/19/2012

ACCOUNT NUMBER: 1211002353

ATTENDING PHYSICIAN: Stephen F. Ridley, MD

CHIEF COMPLAINT: Fall.

MODE OF ARRIVAL: EMS.

HISTORY OF PRESENT ILLNESS: This patient is a 27-year-old Caucasian male who was involved in a fall coming off of a ladder from questionable 10-15 feet with landing directly on his head. Patient was noted to have a GCS of 3 upon arrival, was a trauma 911. Patient was seizing en route. He did receive Ativan and presented with a GCS of 3 upon arrival here in the emergency department.

REVIEW OF SYSTEMS: Unable to obtain.

PAST MEDICAL HISTORY: Unable to obtain.

PAST SURGICAL HISTORY: Unable to obtain.

MEDICATIONS: Unable to obtain.

SOCIAL HISTORY: Unable to obtain.

ALLERGIES: Unable to obtain.

PHYSICAL EXAMINATION:

VITAL SIGNS: Heart rate 94, respirations 20, [] at 100, BP 160/101 original.

GENERAL APPEARANCE: Patient is unresponsive with GCS of 3.

NEUROLOGIC: GCS of 3 and unresponsive to pain.

EYES: Deviated up and lateral and unresponsive originally.

ENT: Mucous membranes are moist. TMs are clear.

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 1 of 3
(Continued)

Emergency Dept

TURNER, WILLIAM L - R015379577

RESPIRATORY: Lungs are clear bilaterally, symmetric chest rise, no wheezes, rales or rhonchi.

CARDIOVASCULAR: S1, S2, no murmurs or gallops. Distal pulses are intact.

GASTROINTESTINAL: No abdominal tenderness to cough, no rebound or guarding, positive bowel sounds, no signs of organomegaly.

MUSCULOSKELETAL: No cyanosis or clubbing noted. No deformities were noted.

SKIN: Void of all rashes, bruises, lesions.

MEDICAL DECISION MAKING: This patient will be evaluated for trauma 911. Due to patient's complaints and risk of complications, a thorough physical exam was done to effect an efficient evaluation.

LABORATORY DATA: Trauma 911 labs are pending at this time, as well as an ABG.

ED COURSE: Patient was seen immediately upon arrival by myself for trauma 911. Due to patient status of fall with GCS of 3 with deviation, we did think the airway was most pertinent; we did intubate the patient here in the trauma bay used an 8-0 tube and was placed to 24. This was done by myself.

PROCEDURE NOTE: After noting the patient had a GCS of 3, we then used lidocaine 100 mg as well as etomidate 30 and 150 of [____]. We did intubate the patient on first attempt with 8-0 tube and was placed at 24. Cuff was inflated, had good color change, no complications.

At that point, we did get bilateral breath sounds, circulation was intact. Patient was not doing anything in terms of responding to pain, was not moving any of his extremities and was not actively seizing; however, at this point we are doing trauma 911 scans. We will continue to monitor this patient and he will be admitted to the trauma team for further care. We do suspect this is most likely a head injury, neck; and at this point, patient will be admitted.

DIAGNOSTIC IMPRESSION: Trauma 911 with concern of head and/or neck injury.

DISPOSITION: Patient will be admitted.

Patient was discussed with Dr. Ridley.

D: 04/19/2012 18:02 T: 04/19/2012 19:14 TID: kf

Job #: 81905 Doc #: 40921063

cc: James Mullins, MD-R
Stephen F. Ridley, MD

I was present with the resident during the history and exam. I discussed the case with the resident and agree with the findings and plan as documented in the resident's note. I supervised all above procedures done by the resident.

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 2 of 3
(Continued)

Internal Transfer

TURNER, WILLIAM L - R015379577

Result type: Internal Transfer
Result date: 21 April 2012 15:30
Result status: Auth (Verified)
Result title: Internal Transfer
Performed by: Skaggs MD, Joshua B on 21 April 2012 15:30
Verified by: Jones MD, Mark A on 07 May 2012 21:16
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

Internal Transfer (Verified)

PATIENT: TURNER, WILLIAM DICT: Joshua Skaggs, MD-R
MR #:
ADMITTED: 04/19/2012 DOB:
DISCHARGED: PT.LOC: SSU

ATTENDING PHYSICIAN: Mark A Jones, MD

TRANSFER DIAGNOSES: Include:

1. Small subdural hemorrhage.
2. Intraparenchymal contusion left lobe.
3. Endplate compression deformity of T3 and T4.

CONSULTATIONS:

1. Neurosurgery.
2. Speech therapy.
3. Physical therapy.
4. Occupational therapy.

PROCEDURES:

1. Endotracheal intubation.
2. Left subclavian central venous catheter placement.
3. Right arterial line placement.

BRIEF HISTORY: This is a 26-year-old male patient who presented to the emergency department after a fall from approximately 10-15 feet, landing on his head. The patient's GCS on arrival was 3. He reportedly was seizing en route to the ER. He was intubated once he arrived to the emergency department. Trauma surgery and neurosurgery were then consulted.

HOSPITAL COURSE: While in the STICU, neurosurgery evaluated the patient and recommended that he be followed with repeat head CT's as well as being given Keppra for seizure prophylaxis. He did have repeat CT scans of his head, which did not show any new intracranial abnormalities and ongoing contusion. In regards to the patient's T3, T4, end-plate fractures, neurosurgery noted that these were stable. No intervention was necessary. The patient's mental status did improve and he was subsequently extubated. However, after extubation, he was somewhat somnolent and was kept n.p.o. with speech therapy and cognitive evaluation pending. The patient did have an NG tube placed was noted to have heme positive secretions from the NG tube. A KUB was ordered, which showed nonobstructive gas pattern with an NG tube in the gastric body,

Printed by: Cantley, Precious K
Printed on: 06/14/12 14:08

Page 1 of 2
(Continued)

Internal Transfer

TURNER, WILLIAM L - R015379577

and a large amount of colonic stool. The patient was placed on a bowel regimen. He had been on Nexium but after he had heme positive gastric contents noted, he was also placed on sucralfate. He was receiving prophylaxis with Nexium as well. At this time, he is stable for transfer to the SSU for further management of his condition.

DISPOSITION: The patient was transferred to SSU for further management. He will require cognitive evaluation was speech therapy until his mental status improves. He will likely need to continue to remain n.p.o. with maintenance fluids in place. He will need to continue his bowel prophylaxis. He will need a post Lovenox CT scan as well, as has Lovenox was started earlier today.

D: 04/21/2012 17:00 T: 04/21/2012 13:30 TID: fy
Job #: 84096 Doc #: 10258948
cc: Joshua Skaggs, MD-R
Mark A Jones, MD

Attending Attestation: I saw this patient on rounds with team on date of transfer and I agree with the above assessment and summary and agree with the plans for transfer to SSU. MAJ.

Completed Action List:

- * Perform by Skaggs MD, Joshua B on 21 April 2012 15:30
- * Modify by Skaggs MD, Joshua B on 02 May 2012 18:23
- * Sign by Skaggs MD, Joshua B on 02 May 2012 18:23 Requested on 26 April 2012 12:15
- * Sign by Jones MD, Mark A on 07 May 2012 21:16 Requested by Skaggs MD, Joshua B on 02 May 2012 18:23
- * Modify by Jones MD, Mark A on 07 May 2012 21:16
- * VERIFY by Jones MD, Mark A on 07 May 2012 21:16

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:08

Page 2 of 2
(End of Report)

TURNER, WILLIAM L - R015379577

Internal Transfer (Verified)

P141

Internal Transfer

TURNER, WILLIAM L - R015379577

and a large amount of colonic stool. The patient was placed on a bowel regimen. He had been on Nexium but after he had heme positive gastric contents noted, he was also placed on sucralfate. He was receiving prophylaxis with Nexium as well. At this time, he is stable for transfer to the SSU for further management of his condition.

DISPOSITION: The patient was transferred to SSU for further management. He will require cognitive evaluation was speech therapy until his mental status improves. He will likely need to continue to remain n.p.o. with maintenance fluids in place. He will need to continue his bowel prophylaxis. He will need a post Lovenox CT scan as well, as has Lovenox was started earlier today.

D: 04/21/2012 17:00 T: 04/21/2012 13:30 TID: fy
Job #: 84096 Doc #: 10258948
cc: Joshua Skaggs, MD-R
Mark A Jones, MD

Attending Attestation: I saw this patient on rounds with team on date of transfer and I agree with the above assessment and summary and agree with the plans for transfer to SSU. MAJ.

Completed Action List:

- * Perform by Skaggs MD, Joshua B on 21 April 2012 15:30
- * Modify by Skaggs MD, Joshua B on 02 May 2012 18:23
- * Sign by Skaggs MD, Joshua B on 02 May 2012 18:23 Requested on 26 April 2012 12:16
- * Sign by Jones MD, Mark A on 07 May 2012 21:25 Requested by Skaggs MD, Joshua B on 02 May 2012 18:23
- * Modify by Jones MD, Mark A on 07 May 2012 21:25
- * VERIFY by Jones MD, Mark A on 07 May 2012 21:25

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:08

Page 2 of 2
(End of Report)

Internal Transfer

TURNER, WILLIAM L - R015379577

Result type: Internal Transfer
Result date: 23 April 2012 08:39
Result status: Auth (Verified)
Result title: Internal Transfer
Performed by: Stachowiak PA, James R on 23 April 2012 08:39
Verified by: Morrison MD, James E on 16 May 2012 09:33
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

Internal Transfer (Verified)

PATIENT: TURNER, WILLIAM DICT: James R Stachowiak, PA
MR #: DOB:
ADMITTED: 04/19/2012 PT.LOC: SSU
DISCHARGED: 04/23/2012

ATTENDING PHYSICIAN: James E. Morrison, MD

ADMITTING DIAGNOSES:

1. Fall off a ladder, questionable 10-15 feet, landing directly on his head.
2. Seizure en route to hospital with emergency medical services.
3. T3-T4 end plate fractures.
4. Traumatic subdural hematoma with traumatic hemorrhagic contusions.
5. Acute respiratory failure, intubated in the emergency department trauma bay.

TRANSFER DIAGNOSES:

1. Fall off a ladder, questionable 10-15 feet, landing directly on his head.
2. Seizure en route to hospital with emergency medical services.
3. T3-T4 end plate fractures.
4. Traumatic subdural hematoma with traumatic hemorrhagic contusions.
5. Acute respiratory failure, intubated in the emergency department trauma bay.

CONSULTATIONS THIS ADMISSION: Dr. Maryanov of neurosurgery.

PROCEDURES PERFORMED:

1. Endotracheal intubation in the emergency department.
2. Left subclavian central venous catheter placement.
3. Right arterial line placement.

HISTORY OF PRESENT ILLNESS: At this time, please refer to the internal facility transfer summary dictated by Dr. Joshua Skaggs, MD-R, dictated on 04/21/2012, transferred from STICU to SSU.

The patient was transferred to the SSU at this time. We are still waiting for speech therapy to come by to give the patient a swallow evaluation to advance him to a p.o. diet.

The patient has had an uneventful stay while in the SSU. He has made good improvement with his sensorium and awareness of his surroundings. Dr. Maryanov of neurosurgery came by and evaluated the patient on 04/21/2012. At

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:08

Page 1 of 2
(Continued)

Internal Transfer

TURNER, WILLIAM L - R015379577

that time, he felt from the closed head injury the patient sustained, he is stable from their standpoint. No surgical intervention was required. Post Lovenox CT ordered for 04/21/2012. Follow-up in the clinic in 3 weeks with repeat CT of the head.

Follow-up CT scan on 04/21/2012, post Lovenox scan, revealed no new intracranial abnormality was identified. A tiny focus of hemorrhage was again seen at the anterolateral margin in the left temporal lobe.

The patient has been seen and evaluated, and the chart was reviewed by Dr. James Morrison of the trauma surgery service today, 04/23/2012. He feels at this time the patient is suitable and stable for transfer to 7-East.

CONDITION ON TRANSFER: The patient is stable.

DISPOSITION: 7-East.

TRANSFER MEDICATIONS: Per the medication reconciliation order form.

ADDITIONAL TRANSFER INSTRUCTIONS:

1. The patient is to follow up with neurosurgery in 3 weeks for CT scan of the head without complications.
2. Physical therapy and occupational therapy to continue to work with the patient, as well as speech therapy for further evaluation and swallow.

The patient's disposition will likely be to home with family. We will talk to Debbie and Peggy about this.

D: 04/23/2012 08:32 T: 04/23/2012 08:39 TID: lry
Job #: 85513 Doc #: 40923309
cc: James R Stachowiak, PA
James E. Morrison, MD

DR MORRISON ADDENDUM: PATIENT EXAMINED WITH MR STACHOWIAK ON 4-23-2012.
SEE MY PROGRESS NOTE FROM SAME DAY. TRANSFER TO FLOOR. DETAILS AS ABOVE. JM.

Completed Action List:

- * Perform by Stachowiak PA, James R on 23 April 2012 08:39
- * Sign by Stachowiak PA, James R on 15 May 2012 17:59 Requested on 23 April 2012 08:58
- * Modify by Morrison MD, James E on 16 May 2012 09:33
- * Sign by Morrison MD, James E on 16 May 2012 09:33 Requested by Stachowiak PA, James R on 15 May 2012 17:59
- * VERIFY by Morrison MD, James E on 16 May 2012 09:33

Printed by: Cantley, Precious K
Printed on: 06/14/12 14:08

Page 2 of 2
(End of Report)

Discharge Summary

TURNER, WILLIAM L - R015379577

* Final Report *

D: 04/25/2012 11:42 T: 04/25/2012 10:40 TID: asc
Job #: 88728 Doc #: 10259842
cc: Stanley Hassinger, MD-R
Raymond P. Bynoe, MD

Signature Line

Electronically Signed & Verified on 04/25/2012 18:53
by Hassinger MD, Stanley

Electronically Signed & Verified on 05/03/12 11:51
by Bynoe MD, Raymond P

Completed Action List:

- * Perform by Hassinger MD, Stanley on 25 April 2012 10:40
- * Sign by Hassinger MD, Stanley on 25 April 2012 18:53 Requested on 25 April 2012 15:35
- * Sign by Bynoe MD, Raymond P on 03 May 2012 11:51 Requested by Hassinger MD, Stanley on 25 April 2012 18:53
- * VERIFY by Bynoe MD, Raymond P on 03 May 2012 11:51

Operative Report

TURNER, WILLIAM L - R015379577

* Final Report *

Result type: Operative Report
Result date: 19 April 2012 21:19
Result status: Auth (Verified)
Result title: Operative Report
Performed by: Huynh MD, Dustin H on 19 April 2012 21:19
Cosigned by: Jones MD, Mark A on 20 April 2012 09:56
Verified by: Jones MD, Mark A on 20 April 2012 09:56
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

* Final Report *

Operative Report (Verified)

PATIENT: TRAUMA, M120297
MR #: DICT: Dustin Huynh, MD-R
ADMITTED: 04/19/2012
DOB:
PT.LOC: STU

DATE OF OPERATION: 04/19/2012

PREOPERATIVE DIAGNOSES:

1. Status post fall.
2. Head injury.
3. Hemodynamic instability.
4. Respiratory failure.

POSTOPERATIVE DIAGNOSES:

1. Status post fall.
2. Head injury.
3. Hemodynamic instability.
4. Respiratory failure.

PROCEDURE:

1. Left subclavian central venous catheter placement with quad-lumen catheter.
2. Right arterial line placement of right radial artery (for hemodynamic monitoring).

ATTENDING SURGEON: Mark A Jones, MD.

RESIDENT SURGEON: Dustin Huynh, MD-R.

ANESTHESIA: The patient is currently on propofol.

ESTIMATED BLOOD LOSS: Minimal.

INDICATIONS FOR PROCEDURE: This is a trauma male 297 who apparently reportedly fell from a dumpster truck and apparently hit his head, with a GCS at the scene of 9. Upon arrival, his GCS was 3. The patient was intubated with appropriate workup. The patient was taken to the CT scanner, where he

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:08

Page 1 of 3
(Continued)

Operative Report

TURNER, WILLIAM L - R015379577

* Final Report *

was shown to have a subdural hematoma. The patient was then admitted to the ST ICU. The patient required hemodynamic monitoring and required line placement.

PROCEDURE IN DETAIL: Due to the nature of the urgency for the procedure, unable to obtain consent, but emergent consent was done. The patient was then prepped and draped in the usual sterile fashion. First, we focused on obtaining a central line. His left chest was then prepped and draped in the usual sterile fashion. Next, a large bore needle was then inserted from his left deltopectoral groove towards his sternal notch. His left subclavian vein was then entered with good venous blood return. Next, the syringe was then removed. Guidewire was then placed over the needle. The needle was then removed. A nick in the skin was done. Next, a dilator was inserted. Next, the quad-lumen central venous catheter was then inserted in Seldinger technique. The guidewire was then removed. All ports were flushed and had withdraw of good venous blood. It was then sutured to the skin. Appropriate sterile dressing was placed with Bio-Gel and Tegaderm. The patient tolerated it well. No apparent complications. A chest x-ray was ordered to confirm placement.

Next, we then focused on obtaining a right arterial line. His right wrist was then prepped and draped in the usual sterile fashion. Next, Arrow arterial kit was then used. His right radial artery was then entered with Arrow kit. Good arterial blood return. Guidewire was then inserted. Next, the catheter was then inserted using the Seldinger technique. Good arterial blood return after removal of the guidewire and the needle. It was then connected to the monitor with a good arterial waveform. It was then sutured to the skin and appropriate sterile dressing with Bio-Gel and Tegaderm was placed. The patient tolerated it well. No apparent complications.

FINDINGS: Good venous return on his left subclavian and right arterial line with good arterial blood return and good arterial waveform. All ports flushed and withdrew blood without difficulty.

DISPOSITION: The patient is currently in ST ICU.

Attending surgeon, Dr. Mark Jones, was present for the entire procedure.

D: 04/19/2012 20:59 T: 04/19/2012 21:19 TID: 89221
Job #: 82030 Doc #: 30023/16
cc: Dustin Huynh, MD-R

Attending Attestation: I was present for the procedure. I agree with the operative description given by Dr. Huynh above on 4-19-2012.MAJ.

Signature Line

Electronically Signed & Verified on 05/01/2012 17:33

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:08

Page 2 of 3
(Continued)

Rehabilitative Services
Comprehensive Evaluation Form

Date: 4/20/12 2:40 2:55
Patient: Wm. Turner
Age: 26 yr M

TURNER, WILLIAM "Lee"
R1211m2353 JONES, MARK A



Unit Record Number: 527.1

Diagnosis: Trauma 811 Fall

Date	Treatment/Prescription
4/20/12	Speech - Language - Cognitive Eval

Initial Evaluation 4/19/12 Pt admitted to PHE. 23 yr. old male - Fell off truck 4-5 feet PACT spine? seizure
CT head @ temporal SDH. Pt intubated 4/19/12 2° resp. Failure. extubated 4/20/12. GCS @ scene: 9, combative, vomiting, seizure in transit GCS: 3 upon arrival. LOC?. Pt is married and works as construction worker. PMH: DM, CAD. Pt seen @ bs. @ visitors; Pt semmentent. Arouses to verbal/tactile stimuli. difficulty maintaining LOA. Informal cognitive-linguistic evaluation and GOAT (Galveston Orientation and Amnesia Test) Score: 11 (76-100 = normal) Pt able to state name, where he lives & where is now; unintelligible speech @ vs. no response @ rest of test. Pt. able to open eyes on command, unable to follow 1 step commands consistently. Unable to maintain alertness. No eval. @ mod. dysarthria
A Severe cognitive-linguistic deficits. Cont @ Rancho II.

Patient Care Plan: Cognitive rehab 5x/week, cont dx to do LOA @ 24 hr @.

Goals: See separate goal sheet.

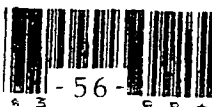
Patient/Family Goals: unable to state

Equipment Needs: N/A.

Rehab, Potential: good

Therapist's Signature: [Signature] mfg. co-sup / #5461.

① Ltd. Indiv. Eval.



TURNER, WILLIAM
R1211002353
JONES, MARK A

Palmetto Health Richland Rehabilitative Services
Physical Therapy Comprehensive Evaluation Form



Date of evaluation: 4-21-12		Diagnosis: Fall		Date of admission: 4-19-12		Patient's age: 26		Room #: 527.1	
Order Date:	Order:	Order Date:	Order:						
4-20-12	Consult PT - eval + tx								
4-20-12	"OK to clear TLS precautions" (per NIS note)								
History of current admission: 26 y.o.m. slip fall "5-10' possibly pre-seizing; GCS: 9, seizure x2 in transit, GCS 3 upon arrival to PRH. CT Head: SDH in @ occipital region, small hemorrhagic contusion @ temporal lobe; CT A/P: sup endplate compression frs C3+T4 (acute?); intubated 4/19, extubated 4/20 AM.									
PMH: recurrent pt e. Baptist 2° dehydration + vomiting									
Prior functional status: ☒ PFA									
Living situation: ☐ Alone ☒ With spouse ☐ With: _____ Comments: questionable home situation									
☐ Apartment ☐ Mobile home ☒ One level ☐ Two level ☐ Assisted living ☐ Nursing home ☐ Senior apt. ☐ Stairs ☐ Ramp									
Home DME: ☒ Receiving therapy prior to admission ☒									

SUBJECTIVE: "I have to pee."
Patient / family goals: agreeable to PT
Pain: Rating: ☒ Vata Location/Description: throat Action taken: pain meds given a tx

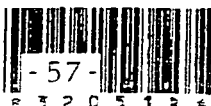
OBJECTIVE:

Xo 2L uanle ☐ Foley ☒ NGSBFT ☐ PEG ☐ Restraints ☐ OCT/Drains ☐ Wound vac ☐ Other

Patient Appearance: Pt sleeping upon arrival to room.

Cognition	WFL	Impaired	Comments
Level of alertness		✓	pt dazed + slightly lethargic during tx
Orientation		✓	(-) year, (-) place, (-) situation, (+) name
Following Directions		✓	multiple cues to follow simple commands
Judgment/Safety		✓	2° Ams

Strength: Manual Muscle Test	Left	Right	Range of Motion	Left	Right
Hip Flexion	3/5	3/5		(AROM) PROM / AAROM	(AROM) PROM / AAROM
Hip Abduction/Adduction	1	1	Hip	WFL	WFL
Knee Extension	4+/5	4+/5	Knee	1	1
Knee Flexion	1	1	Ankle	1	1
Ankle Dorsiflexion	1	1	Shoulder	WFL	WFL
Ankle Plantarflexion	1	1	Elbow/forearm	1	1
Shoulder Flexion	3+/5	3+/5	Wrist/Hand	1	1
Shoulder Abduction	1	1	Comments		
Elbow Flexion/Extension	1	1	Therapist Signature: Ashley Wilson, PT, DPT X540		
Grip	5/5	5/5	(evaluation continued on reverse side)		



TURNER, WILLIAM
R1211002353 JONES, MARK A



Physical Therapy Comprehensive Evaluation Form (page 2 of 2)

Gait	Distance	Device	Level of Assistance	Weight Bearing Status	Comments
Ambulation	steps bedside	② hand held	Min ②	—	per RN: unable to take NG tube off suction: had to amoc bed side; min ② 2° slight l'd balance
W/C Mobility	NT				
Stairs	↓				

Functional Mobility	I	S	SBA	Contact Guard A	Min A	Mod A	Max A	Dep.	Comments
Supine ↔ sit					✓				PT LHT & bed comments in chair position ptx in rate of RN.
Sit ↔ stand					✓	YZ			
Sitting Balance				✓	✓				↓ d dynamic sitting balance
Standing Balance				✓	✓				

	WFL	Impaired	Comments
Edema/skin integrity		✓	abrasions to ② lower legs
Sensation	✓		
Vision	✓		

	WFL	Impaired	Comments
Respiratory Status		✓	pt on 2L O2 via NC
Coordination		✓	slight l'd balance
Muscle Tone	✓		

② Patient/Family Education: Role of PT, PT plan & CAC

ASSESSMENT: Patient presents with the following deficits:

☐ LE Strength	☒ Balance	☒ Cognition	☒ Functional transfers
☐ LE Range of Motion	☐ Sensation	☐ Pain	☒ Bed mobility
☐ UE Strength	☒ Gross motor coordination	☒ Safety Awareness	☐
☐ UE Range of Motion	☐ Respiratory endurance	☒ Independent Ambulation	☐

Rehab Potential: ☒ Good ☐ Fair ☐ Guarded ☐ Other:

Comments: 2° young age + ① PTA

PLAN: Patient will be seen 5x/week (frequency) for the following:

☒ Gait Training/Ambulation	☒ Functional Transfer Training	☐ Patient / family education	☐ ND/C PT
☐ UE / LE Range of motion	☐ Neuromuscular Re-education	☐ Energy conservation	☐
☐ UE / LE Strengthening	☐ W/C Mobility	☒ Safety awareness	☐
☒ Balance training	☐ Home exercise program	☒ Stairs	☐

Please see PT flow sheet for patient goals.

Plan has been discussed with: ☒ Patient ☐ IP's family/caregiver

☐ SW/Case Management ☐ Nurse ☐ MD ☒ OT ☐ SLP

RECOMMENDATIONS:

Recommended Equipment: ☐ Rolling Walker ☐ Crutches ☐ Quad Cane ☐ Straight cane ☐ W/C ☐ Hospital bed ☐ Hemi Walker ☐ Bedside Commode

☒ To be determined ☐ Other:

Recommended Services: ☐ Rehab Placement/SNF ☐ Outpatient PT ☐ Home Health PT ☐ 24 hour Supervision/Assist upon D/C ☐ 24 hour total care

☒ To be determined ☐ Comments:

Therapist's Signature: Abby Wilson, PT, DPT X5480

Time: 9:00-9:13

Procedures: ☐ Brief Evaluation ☒ Limited Evaluation ☐ Intermediate Evaluation ☐ Complex Evaluation ☐ Re-evaluation

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete them.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement.

TURNER, WILLIAM
R1211002353 JONES, MARK A



Date:	Units:	Time:
Gait Distance:	Device:	Assistance:
Supine ↔ Sit:	Sit ↔ Stand:	Weight Bearing Status:
Pain:		

Assessment/Plan:		Signature:
Date:	Units:	Time:
Gait Distance:	Device:	Assistance:
Supine ↔ Sit:	Sit ↔ Stand:	Weight Bearing Status:
Pain:		
Assessment/Plan:		Signature:

Assessment/Plan:		Signature:
Date:	Units:	Time:
Gait Distance:	Device:	Assistance:
Supine ↔ Sit:	Sit ↔ Stand:	Weight Bearing Status:
Pain:		
Assessment/Plan:		Signature:

Date:	Units:	Time:
Gait Distance:	Device:	Assistance:
Supine ↔ Sit:	Sit ↔ Stand:	Weight Bearing Status:
Pain:		
Assessment/Plan:		Signature:

"Lee"



Date of evaluation: 4-2-12	Time: 9:00-9:13	Date of admission: 4-19-12	Patient's age:	Room # 527.1
Diagnosis: Trauma Bill Fall				
Order Date:	Order	Order Date:	Order	
4-20-12	PT consult: eval & TX.			
4-20-12	Intervention: OK to clear the precautions per neurosurgery; neurological intervention needed per			
History of current admission: 27 y/o male presenting to ED slip fell from ladder from ~10-15 ft. landing directly on his head. EOC at 3 on arrival. pt seizing en route. CT spine 4/19/12, CT scalp 4/19/12. CT head 4/19: small hemorrhagic contusion @ temporal lobe anteriorly, mild med. subdural hematoma. @ occipital region, @ max effect. @ midline shift. CT head 4/20: evolution @ extracerebellar & @ occipital lobe subdural hematoma, min subarachnoid hemorrhage again noted, intubated 4/19, extubated 4/20. Traumatic deformities @ T3-4.				
Prior functional status: @ 2 ADLs 4 ambulation. pt. @ 9 administered during eval; poor historian at times.				
Living situation: ☐ alone ☒ with spouse ☐ with		comments:		
☐ apartment ☐ mobile home ☒ one level ☐ two level ☐ assisted living ☐ nursing home ☐ senior apt. ☐ stairs: @ ☐ ramp		Home OME: @ Receiving therapy prior to admit: ☐ eyes ☐ no		
PT Appearance: @ ☒ ill. ☐ well ☐ N/A ☐ NGSBFT ☐ IPEG ☐ restraints ☐ CT/drains ☐ wound vac ☐ other @		Communication: @ ☒ answering appropriately ☐ skin integrity intact ☐ however @ ☐ unknt @ simple commands.		
Hand Dominance L @				
SUBJECTIVE: "I've got to pee."				
Patient / family goals: @				
Pain: Rating: @		Location/Description: @		Action taken: @

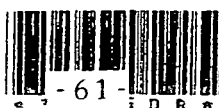
Range of Motion	Left	Right
	AROM / PROM / AAROM	AROM / PROM / AAROM
Shoulder	WFL	WFL
Elbow	↓	↓
Wrist	↓	↓
Digits	↓	↓
Lower Extremities	WFL	WFL

Strength: Manual Muscle Test	Left	Right
Deltoid	2/3+1/5	2/3+1/5
Biceps	4/5	4/5
Triceps	↓	↓
Wrist flex/ext	↓	↓
Hand	5/5	5/5
Lower Extremities	2/3+1/5	2/3+1/5

	Comments	
Muscle Tone	WFL	
Edema	0 visibly noted	
Joint Integrity	WFL	
Vision/Perception	Intact grasping	

	WFL	Impaired	Comments
Gross motor coordination		✓	2+ initiation @ timer
Fine motor coordination	✓		able to oppose digits (B) hand
Sensation	✓		Intact grasping

Therapist's Signature Kate Williams Steel



TURNER, WILLIAM
R1211002742

JONES, MARK A



Occupational Therapy Comprehensive Evaluation Form (page 2 of 2)

Functional Mobility	I	Mod I	Setup	SBA/S	Contact guard A	Min A	Mod A	Max A	Dep.	Comments
Rolling										
Supine → sit						✓				NT
Sitting Balance					✓	✓				
Sit → stand						✓	✓			during MMT for dynamic, 2" over trunk
Standing Balance						✓	✓			2 delayed initiation to motor task initially
Amputation						✓	✓			
Transfer						✓	✓			hand-held @ ~3-4 steps → HOB @ side.
ADL	I	Mod I	Setup	SBA/S	Contact guard A	Min A	Mod A	Max A	Dep.	Comments
Feeding										NT
Grooming										↓
UE dress/bathe										
LE dress/bathe								✓		in arm (B) socks.

Cognition	WFL	Impaired	Comments	Cognition (cont.)	WFL	Impaired	Comments
Level of alertness	✓	✓	1.5 hours	Problem Solving		✓	2.5 mentation, insight
Orientation		✓	Person, DOB & Year, @ PMA	Judgment/Safety		✓	Fill. Mark
Following Directions	✓	✓	1 processing time	Memory		✓	pt. unable to recall. fail
Attention Span	✓	✓	shortest 5 min	Motivation	✓		

ASSESSMENT: PL presents with the following deficits:

☒ Cognition	☒ Basic ADL	☐ Sensation	☒ Activity tolerance
☐ UE / LE Range of motion	☒ Sit/Stand balance	☒ Gross motor coordination	☒ Safety Awareness
☒ UE Strength	☒ Bed mobility	☐ Fine motor coordination	☐
☒ LE Strength	☒ Functional transfers	☐ Respiratory endurance	☐

Rehab Potential: ☒ Good ☐ Fair ☐ Guarded Comments:

PLAN: PL will be seen 6x week (frequency) for the following:

☒ Cognitive retraining	☒ Balance	☒ Patient / family education	☐ Training with adaptive equipment
☐ UE / LE Range of motion	☒ Functional transfer training	☐ Energy conservation	☐
☒ UE / LE Strengthening	☒ Safety awareness	☐ Home exercise program	☐
☒ ADL retraining	☐ Neuro-muscular re-ed	☐ Splinting / positioning	☐

Please see OT flow sheet for patient goals.

Plan has been discussed with: ☒ Patient ☐ Pt's family/caregiver ☐ SW/Case Management ☐ Nurse ☐ MD ☐ PT ☐ SLP

RECOMMENDATIONS:

Recommended Equipment: ☐ BSC ☐ Shower chair/Tub bench ☐ Hip kit ☐ Hwc ☐ Hospital bed ☐ Grab bars ☐ Splint ☐ Rolling Walker ☒ To be determined
☐ Other:
 Recommended Services: ☐ Rehab ☐ Outpatient OT ☐ Home Health OT ☐ 24 hour supervision/assist upon DIC ☐ 24 hour total care
☐ DIC OT ☐ To be determined ☐ Comments:

Therapist's Signature: Katie Williams OT/SLP - 62 - Date: 4-21-12

Procedures: ☐ Brief Evaluation ☐ Limited Evaluation ☐ Comprehensive Evaluation ☐ Complex Evaluation ☐ Re-evaluation

02/6/09

Palmetto Health Richland
Rehabilitative Services
Occupational Therapy Progress Flow Sheet

"Lee"

TURNER, WILLIAM
R1211002353

JONES, MARK A



Room: 527-T 503

Diagnosis: Trauma DII Fall

Precautions: Fall

Age: 26

Goals Effective Through: 4-29-12

Frequency: 3X week 3 VISITS

Goals: Pt. Will (1) follow SLS motor commander to complete grooming task.
(2) plan & sequence ADL task & 100% accuracy. (3) complete Dr. minimum
i safe approach mod. (4) complete cognitive strengthening trer. activity & 100%.

Patient/Family Goals: Agreeable

Nullary

Date: 4/23/12

Units: 1 cognitive re-eval.

Time: 2:15-2:29

Pt seen & okay from running, supine in dlyt state & wife & x2 family
members @ bedside. Pt agreeable to OOB, down/doff socks & x1 simple common.
Supine -> sit mod (1) sit -> stand mod (1) ambulate & SBA x10' to sink.
Wash hands & x1 cue to initiate task ambulate 300' & SBA -> contact
guard (A) x3 cues to attend to task 2° obstacles in path requiring
min. cues to re-direct path. Pt answers life event questions i.e. wedding
anniversary, location questions - long term. Pt & poor Pain.

Plan / Recommendations: short term memory of event & Signature: J. Carol Spec. OTR/c
cont. 300' sit -> stand mod (1) ambulate & SBA x10' to sink. Return to J. Carol Spec. OTR/c

Date: 4/24/12

Units: 1 SCLHT

Time: 4:20-4:43

Pt standing in OOB of animal, demonstrated sub-transfer & picking up
of flow & (S) Arms (OOD) & (S) SLS of balance & CIO ambulation. Pt
answered home safety questions correctly & difficulty & giving or
accepting. Pt family educated at length. Pt appears to & further
results of needs &

Plan / Recommendations:

d/c OT

Signature:

Pain: 0

Kasey J. Jones 224

Date:

Units:

Time:

Plan / Recommendations:

Signature:

Pain:

Date:

Units:

Time:

Plan / Recommendations:

Signature:

Pain:



Consultation Report

TURNER, WILLIAM L - R015379577

* Final Report *

Result type: Consultation Report
Result date: 19 April 2012 18:41
Result status: Auth (Verified)
Result title: Consultation Report
Performed by: Wehner Jr PA-C, Joseph A on 19 April 2012 18:41
Verified by: Webb MD, Sharon W on 21 May 2012 20:42
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

* Final Report *

Consultation Report (Verified)

PATIENT: TRAUMA, M120297
MR #:
ADMITTED: 04/19/2012
DICT: Joseph Anton Wehner, PA
DOB:
PT. LOC: STU

DATE OF CONSULTATION: 04/19/2012

TIME OF CONSULTATION: 7:00 p.m.

ATTENDING PHYSICIAN: Sharon W. Webb, MD

REFERRING PHYSICIAN: Mark A Jones, MD

REASON FOR CONSULT: Fall.

HISTORY OF PRESENT ILLNESS: Trauma Male 120297 is a 23-year-old white male who fell off the back of a truck approximately 4 or 5 feet, striking his head. The patient was brought to the emergency department in transfer from another facility where he was conscious, alert, and oriented x3. Upon his arrival here, he had a GCS of 3.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: None.

MEDICATIONS: No daily medications.

ALLERGIES: No known drug allergies.

FAMILY HISTORY: Positive for diabetes and coronary artery disease.

SOCIAL HISTORY: He is married and lives with his wife. He smokes cigarettes. Denies alcohol and drug use per the wife. He works as a construction worker.

REVIEW OF SYSTEMS: A 13-point review of systems is also negative per the wife. He was feeling fine today.

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 1 of 3
(Continued)

Consultation Report

TURNER, WILLIAM L - R015379577

* Final Report *

PHYSICAL EXAMINATION:

VITAL SIGNS: A heart rate of 112, pulse ox 100 percent, blood pressure 156/96, and at this time he has a GCS of 9I E3 V1I M5.

NEUROLOGIC: Review of cranial nerves: Unable to obtain due to patient's condition. Pupils 4 mm and reactive. Sensation appears to be intact to his upper and lower extremities. Motor: He moves all extremities equal and well. Unable to evaluate proprioception, coordination or pronator drift due to patient's condition.

HEENT: Nares are patent. Trachea is midline. C-collar is in place. Several abrasions noted.

PULMONARY: Even, clear, and nonlabored. He is intubated.

CARDIOVASCULAR: Regular rate and rhythm.

ABDOMEN: Soft and not distended.

MUSCULOSKELETAL: No obvious deformities noted.

SKIN: Warm and dry.

LABORATORY DATA: PT of 17.3, INR of 1.3. Sodium is 147. Potassium is 3.7.

IMAGING: Reports reviewed and personally reviewed images. CT of the cervical spine: No fractures noted. CT of the head: Two areas of small subdural blood noted. CT of the chest, abdomen and pelvis: Possible thoracic 3 and 4 endplate fractures, unknown if it is acute or chronic.

IMPRESSION:

1. Subdural hematoma.
2. T3 fracture.
3. T4 fracture.

PLAN: We start the patient on Keppra, follow her exam, and repeat a head CT in 6-8 hours.

The patient was also evaluated by Dr. Sharon Webb.

D: 04/19/2012 21:29 T: 04/19/2012 13:41 TID: cc
Job #: 82073 Doc #: 10258622
cc: Joseph Anton Wehner, PA
Sharon W. Webb, MD
Mark A Jones, MD

Signature Line

Electronically Signed & Verified on 04/27/2012 08:14
by Wehner Jr PA-C, Joseph A

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 2 of 3
(Continued)

Discharge Summary

TURNER, WILLIAM L - R015379577

* Final Report *

Result type: Discharge Summary
Result date: 25 April 2012 10:40
Result status: Auth (Verified)
Result title: Discharge Summary
Performed by: Hassinger MD, Stanley on 25 April 2012 10:40
Verified by: Bynoe MD, Raymond P on 03 May 2012 11:51
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

* Final Report *

Discharge Summary

PATIENT: TURNER, WILLIAM DICT: Stanley Hassinger, MD-R
MR #:
ADMITTED: 04/19/2012 DOB:
DISCHARGED: 04/25/2012 PT.LOC: 7E

ATTENDING PHYSICIAN: Raymond P. Bynoe, MD

DISCHARGE DIAGNOSES:

1. Small subdural hemorrhage, traumatic.
2. Fall off of a ladder, suspected 10 to 15 feet.
3. Seizure at another hospital with EMS.
4. T3 to T4 endplate fractures.
5. Acute respiratory failure, intubated in the Emergency Department trauma bay.

CONSULTATIONS THIS ADMISSION: Dr. Timothy Maryanov, Neurosurgery.

PROCEDURES PERFORMED:

1. Endotracheal intubation.
2. Left subclavian central venous catheter placement.
3. Right arterial line placement.

HOSPITAL COURSE: Please see the full H&P for complete details. Briefly, this is a 26-year-old male who came into the ED after a fall from approximately 10 - 15 feet landing on his head. GCS on arrival was 3. He was intubated. He was admitted to the STICU. Neurosurgery was consulted. He was admitted under the care of trauma surgery. While on STICU, Neurosurgery evaluated the patient and recommended repeat head CT scan as well as Keppra for seizure prophylaxis. On repeat CT scan of his head, there were no new intracranial abnormalities, but there were ongoing contusions. Neurosurgery evaluated the patient's T3 and T4 endplate fractures and said that these were stable, no intervention was necessary. The patient's mental status gradually improved and he was extubated. He did have some somnolence issues after extubation and was kept n.p.o. An NG tube was placed and did have return of heme positive secretions. He was started on Nexium as well as

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 1 of 3
(Continued)

Discharge Summary

TURNER, WILLIAM L - R015379577

* Final Report *

a bowel regimen and Sucralfate. The patient did eventually have speech therapy evaluation and was put on a regular diet.

LABS AND IMAGING:

1. CT of head on 04/19/2012 showed small hemorrhagic contusion left temporal lobe anteriorly in the middle cranial fossa with a tiny amount of acute appearing extra axial blood in this location. Small volume of left temporal acute posttraumatic extra-axial fluid laterally seen. Mild to moderate size subdural hematoma left occipital region. No mass effect. There is no midline shift or any herniation. No skull fracture.
2. CT of the chest, abdomen and pelvis on 04/19/2012 showed minimal superior endplate compression deformities of T3 and T4 inferiorly of uncertain chronicity, cannot exclude acute mild superior endplate compression fractures. No evidence of trauma to the abdomen or pelvis identified. No acute process in the abdomen or pelvis.
3. CT of the cervical spine on 04/19/2012 showed no acute osseous injury of the cervical spine.
4. Repeat head CT on 04/20/2012 showed evolution of the left retro-cerebellar and left occipital epidural hemorrhage. Minimal subarachnoid hemorrhage is again noted along with areas of hemorrhagic contusion in the left temporal lobe, multifocal mucosal sinus disease, mildly progressed.

DISCHARGE MEDICATIONS: Please see medication reconciliation.

FOLLOW-UP APPOINTMENTS:

1. The patient is to follow up with Dr. Raymond Bynoe in his clinic in 1 to 2 weeks.
2. The patient to follow up with Dr. Alan Peterson, his primary care physician, within the next 2 to 4 weeks. The patient is to follow up with Dr. Maryanov in 2 to 4 weeks.

DISCHARGE INSTRUCTIONS: The patient is to follow up in one month with a repeat head CT scan with Neurosurgery. He is not to engage in any contact sports. No strenuous activities and is not to return to work until released by Neurosurgery. He is not to drive until released by Neurosurgery. He can have a regular diet as tolerated. He is to contact his medical doctor if he has any headaches not resolve off the medication, if he has any visual changes, nausea, vomiting, fever over 101.5 sustained, if he has chills or any other general questions. If he has any seizure activity, he is to call 911.

DISCHARGE CONDITION: Stable.

DISPOSITION: The patient is discharged to home.

Attending physician Dr. Raymond Bynoe evaluated the patient on the day of discharge and agreed with the discharge plan.

Printed by: Cantey, Precious K
Printed on: 06/14/12 14:07

Page 2 of 3
(Continued)

⑦ Pt / Family cd.

TURNER, WILLIAM
R1211002353

JONES, MARK A

Palmetto Health Richland
Rehabilitative Services
Speech Therapy Progress Flow Sheet
Room: 5277 745



Diagnosis: SDH

Precautions:

Age: 74

Goals Effective Through: 4/30/12

Frequency: 5x/wk

Goals: ① Cont dx tx. ② Follow 1 step commands $\geq 90\%$ acc.

③ Sustain attn to task for 1 min w/o min redirection. ④ Montreal Cognitive Assessment (MOCA) WFL ⑤ Short-term memory tasks $\geq 90\%$. ⑥ Word Fluency task ≥ 11 items/

Patient / Family Goals: Unable to state

Date: 4/23/12 Units: Int. Speech tx

Time: 11:00-11:25

Category: Disorders

⑤ Chart reviewed: pt seen OOB in chair; awake, alert. GCS ⑤. Visitors.

① ② Commands (1, 2, 3-step) $\geq 100\%$ ③ Pt sustained, alertness & redirection during administration of MOCA ④ Pt was administered the MOCA to assess cognitive skills. Total score: 21/30 (226/30 Normal); deficits noted in visuospatial, executive functioning skills, short-term memory & word fluency (1 item/1 min, ≥ 11 words)

① Rancho VII; appropriate, appropriate

Plan / Recommendations:

Signature:

Pain: 0

① Cont cognitive tx 5x/week; requires diet (several) - disorders tx

Date: 4/25/12 Units: Int. Indiv. tx

Time: 11:03-11:31

#0532

⑤ Chart reviewed. Pt planned d/c for today. A family present. GCS ⑤ ④ MOCA given: 26/30 (226/30 normal) Deficits noted in short-term memory and functional math concepts. ⑦ Pt / family given more than a bump on the head booklet. Ed on Tpl, s/s of TBI, when to call MD. All voiced understanding. Discussed pt. deficits, how to compensate via memory log; calendar use, phone alerts, etc. Discussed & insight to deficit can also affect safety. A family asked appropriate 7's

Plan / Recommendations:

Signature:

Pain: 0

eval & poor eye contact; Rancho VIII ⑧ FIM 1-2x, under pt. d/c home

Date: Units:

Time:

Pain:

Plan / Recommendations:

Signature:

Date:

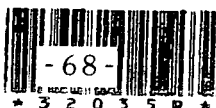
Units:

Time:

Plan / Recommendations:

Signature:

Pain:





UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

UNIVERSITY SPECIALTY CLINICS

Neurology Faculty

Souvik Sen, MD, MS, MPH
Chair

General Neurology

Theodore Faber, MD
Davit Mrelashvili, MD
James Selph, MD
Souvik Sen, MD, MS, MPH
Y. Swamy Venkatesh, MD,
DM, FRCP (Edin), FAAN

Epilepsy

James Selph, MD

Multiple Sclerosis

Davit Mrelashvili, MD

Neuroimmunology

Davit Mrelashvili, MD

Neurophysiology

Miroslav Cuturic, MD
Theodore Faber, MD
James Selph, MD
Y. Swamy Venkatesh, MD,
DM, FRCP (Edin), FAAN

Vascular Neurology

Souvik Sen, MD, MS, MPH
Y. Swamy Venkatesh, MD,
DM, FRCP (Edin), FAAN

Movement Disorders

Theodore Faber, MD
Y. Swamy Venkatesh, MD,
DM, FRCP (Edin), FAAN

Therapeutic Botox

Miroslav Cuturic, MD
Theodore Faber, MD
Y. Swamy Venkatesh, MD,
DM, FRCP (Edin), FAAN

CONSULTATION H&P

PATIENT NAME: William Turner
DATE OF SERVICE: 5/16/12
DOB:
REFERRING PHYSICIAN: Alan Peterson, M.D.

CHIEF COMPLAINT: Seizure status post head injury.

HISTORY OF PRESENT ILLNESS: The patient is a 23-year-old gentleman who, in early April, was at work when he fell off the back of a truck. Medical records are somewhat variable, suggesting a fall anywhere from 4 to 5 feet vs. 10 to 15 feet. It did occur at work. He himself has absolutely no memory of it or what might have precipitated the fall. His GCS on arrival was 3. He was intubated and admitted to the STICU and was followed by Neurosurgery without surgical treatment. It appears that he had a reported history of a seizure at another hospital while being transferred by EMS. He was subsequently stabilized. He had some T3-4 endplate fractures that were stable, not requiring intervention. He was subsequently discharged. He reports no residual deficits. He has a history of back pain and in fact was taking Ultram prior to his fall. He has continued to have chronic back pain, potentially involving more upper thoracic regions as opposed to lower back regions. He is followed by his primary care physician. He does receive pain medications for this. In addition, he did receive some prophylaxis with Keppra following his transfer to Richland, but has not had any seizures at Richland Hospital or since discharge from Richland Hospital.

PAST MEDICAL HISTORY: Please see those issues as outlined above. There is no other past medical history of neurological disease.

SOCIAL HISTORY:

Marital Status: Married.
Employment: Sales
Construction:
Tobacco: none.

Alcohol: None.
Illicit Drug Use: None.
Caffeine: 1 dr/day.
Sleep: 6 hr/night.

MEDICATIONS:

Hydrocodone/APAP.
Levetiracetam

ALLERGIES: No known drug allergies.

FAMILY MEDICAL HISTORY: There is no family history of epilepsy. A family history form was completed by the patient, was reviewed by me, and is included in the chart.

ROS: A templated 14 system ROS was completed by the patient, reviewed by me, and is located in the chart. The reviewed systems included: Constitutional, Eyes, ENT, CV, Respiratory, GI, GU, Musculoskeletal, Skin/breast, Endo, Home, Immune, Psych, and Neuro. Pertinent and relevant positives and negatives are contained within the HPI.

EXAMINATION

VITALS: BP 110/73, P 83, W 132, H 5 feet 6 inches, BMI 21.2.

GENERAL: Well developed; well nourished; no acute distress.

HEAD: Normocephalic. Atmumatic.

EYES: Normal disc and vessels on fundus exam

CV: RRR

ENT: No abnormalities

SKIN: There are no rashes or lesions noted.

8 Medical Park, Suite 420, 3390 Medical Park Road, Columbia, SC 29203
803-545-6050, FAX 803-545-6051

Patient Name: William Turner

Date: 4/30/12

Chart # _____ DOB: _____ Age: _____ Relative: _____

Chief Complaint:

- ☐ Patient presents today for follow up and/or evaluation of _____
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☒ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with _____

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

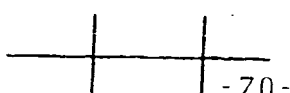
28 yo M @ office for initial visit after
recent accident - head trauma requiring
ICU admission & TX; Sp Sub - Dual Hematomas,
Non-surgical type. At @ office for PIV &
exam. At had seen ER prior to accident
& ER visit during
at had seizure & EMS transport.
Sp Subdural / med ventilation.

Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HEENT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
 Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
 Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

Pertinent Labs and Studies done on _____:

____ AST	____ TC	____ TSH	U/A
____ ALT	____ TG	____ ft4	UCx&S
____ TB	____ HDL	____ Insulin	PFT's
____ DB	____ LDL	____ PSA	ABI's
____ GGTP	____ Vit D	____ A1C	A-U/S
____ AP		____ CRP	ECHO
			NucST
____ Ca++	____ Mg++	____ PO4--	CarU/S
			EKG



- 70 -

AM



MD Init

Examination:

- Vitals: Height 6'0" Weight 134 Temp: R: 14 P: 68 BP: 122/80
General: WDOWN AD / Pleasant and cooperative / NAD
HEENT: AT/NC / NI TM's and canals / Nares clear / OP clear
Eyes: PERRL / Conjunctivae nl / Fundi nl
Neck: Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
CV: RRR / No MGR / No edema / NI periph pulses
Pulm: CTAB
Breasts: Symmetric / No discharge / No masses / No tenderness
Abd: Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
GU Male: No lesions / No hydrocoele / No tenderness / No masses / NI prostate
GU Female: No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix /
NI adnexa / NI uterus
Rectal: No masses / No fissures / No hemorrhoids
Lymph: No cervical LA / No axillary LA / No inguinal LA
MS: w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints /
No clubbing / No cyanosis / No edema / NI gait TRAPPEL BACK PAIN
Skin: No lesions / No rashes / No wounds / No ulcers
Neuro: w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech /
Strength intact and symmetric / DTR's intact and symmetric
Psych: A&O x 3 / Appropriate affect / Memory intact
Additional Physical Comments:

Assessment and Plan ☐ All problems on Summary List reviewed and remain w/o change except as follows:

- (1) MINI CRAMA - 310 FALL & TCU ADM
AD. GAIT, TAT. BARS & MEDS VERIFICATION
310 SUB - DURAL HEMATOMA
* VERT FX T₃ & T₄ - R/O NEURO-SURG.
(2) SEIZURE EPISODE PER EMS * TRAUMA SURG.
COAR KEDRA 750 BID

WILL OBTAIN HOSP RECORDS

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or Days / Weeks / Months / Years / PRN for minutes with
Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA A1C BS
μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:

Referrals:

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other:

- ☐ Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from
☐ Patient and/or family was counseled for mins out of a total visit time of mins as outlined in A&P.
☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature

- 71 -

4/30/12

PATIENT NAME: William Turner
DATE OF SERVICE: 5/16/12
DOB:
PAGE 2

NEURO:

MENTAL STATUS: Alert. Attention and concentration are good. The patient was oriented to person place and time. Speech is articulate and language is fluent. Repetition and naming intact. Memory is intact. Fund of knowledge is intact.

CRANIAL NERVES: Pupils are equal round and reactive to light. Accommodation is present. Extraocular movements are full. Saccades and smooth pursuit are normal. There is no notable nystagmus. Visual fields are full bilaterally. There is no notable ptosis. Facial sensation is intact bilaterally. Face and smile are symmetric. Jaw opening is strong bilaterally. Eye closure is strong bilaterally. Hearing is intact bilaterally. Palate elevates symmetrically. Shoulder shrug is symmetric. Tongue protrusion is midline.

MOTOR: Muscle tone is normal.

STRENGTH: No drift is noted.

For strength on the LEFT upper extremity, the patient has 5/5 strength both proximally and distally.

For strength on the RIGHT upper extremity, the patient has 5/5 strength both proximally and distally.

For strength on the LEFT lower extremity, the patient has 5/5 strength both proximally and distally.

For strength on the RIGHT lower extremity, the patient has 5/5 strength both proximally and distally.

SENSORY: Sensation is intact to light touch, sharp, vibration, temp, joint position sense in all 4 ext.

REFLEXES: L Biceps=2+, L Triceps=2+, L brachioradialis=2+, L Patellar= 2+, and L Ankle= 2+.

R Biceps=2+, R Triceps=2+, R brachioradialis=2+, R Patellar= 2+, and R Ankle= 2+. Plantar reflex is flexor bilaterally.

COORDINATION/MOVEMENT: There is no tremor noted or other abnormal movements. Coordination and fine motor movements were normal and without ataxia or dysmetria.

GAIT: Patient has a normal gait.

DATA:

Records from Richland Hospital, including his CT and followup CT's as well as Neurosurgery and discharge notes were reviewed and printed out and are included in the chart.

IMPRESSION:

History of head injury with Intracerebral hemorrhage, without focal neurological deficits, but with seizure at the time of the bleed.

RECOMMENDATIONS:

He has already been placed on driving restrictions by other physicians. I told him I would not rescind these and that for any seizure he is not to drive for six months after that seizure. I also counseled to avoid heights, ladders, power machinery, power tools and discussed water safety issues as well. I told him at this time it would make the most sense to discontinue the levotiracetam to see how he would do going forward. I recommended Flexeril and Aleve for his back pain issues. He is going to follow up with his primary care physician, but he is welcome to follow up here as needed.



James Selph, M.D.

JS/dmc-m45609

D&T: 5/16/12

Department of Neurology
8 Medical Park, Suite 420, 3390 Medical Park Road, Columbia, SC 29203
803-545-6050, FAX 803-545-6051

Peterson and Plante Internal Medicine Associates Office Note Dr. Yelluso

Patient Name: William Turner Date: 5/17/12
Chart # DOB: Age: 26 Relative:

Chief Complaint:

- ☒ Patient presents today for follow up and/or evaluation of Back pain
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

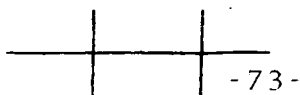
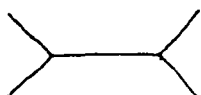
26 yo w 5' @ office for 2 hr. D TRUMP
for 2 wks thoracic back pain taking pain meds
memory + mental functioning better
back worse sitting + lying down
ambulating well

Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HEENT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☒ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks THORACIC BACK PAIN
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

Pertinent Labs and Studies done on :

___ AST	___ TC	___ TSH	U/A
___ ALT	___ TG	___ FT4	UCx&S
___ TB	___ HDL	___ Insulin	PFT's
___ DB	___ LDL	___ PSA	ABI's
___ GGTP		___ A1C	A-U/S
___ AP	___ Vit D	___ CRP	ECHO
			NucST
___ Ca++	___ Mg++	___ PO4--	CarU/S
			EKG



☐
MD Init

Examination:

- Vitals:** Height _____ Weight _____ Temp: _____ R: 116 P: 68 BP: 118/72
General: WDWN W / Pleasant and cooperative / NAD As City
HENT: AT/NC / NI TM's and canals / Nares clear / OP clear
Eyes: PERRL / Conjunctivae nl / Fundi nl
Neck: Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
CV: RRR / No MGR / No edema / NI periph pulses
Pulm: CTAB
Breasts: Symmetric / No discharge / No masses / No tenderness
Abd: Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
GU Male: No lesions / No hydrocoele / No tenderness / No masses / NI prostate
GU Female: No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
☐ **Rectal:** No masses / No fissures / No hemorrhoids
☐ **Lymph:** No cervical LA / No axillary LA / No inguinal LA
☐ **MS:** w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait THORACIC BACK PAIN POINT-TOES
☐ **Skin:** No lesions / No rashes / No wounds / No ulcers T₂-T₄
☐ **Neuro:** w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
☐ **Psych:** A&O x 3 / Appropriate affect / Memory intact
Additional Physical Comments: _____

Assessment and Plan ☐ All problems on Summary List reviewed and remain w/o change except as follows:

(1) MULTITRAUMA HX - SPD FALL - C SUB-DURAL HEMATOMA
+ THORACIC VERG - EX T₂ + T₄

FLU HEAD CT - PEPPERS FLU NEURO SURS
CHARGE MORCO 7.5/32.5 + Q₈₀ - WOOD
TRAMADOL 50 mg Q₆ PRN

(2) SEIZURE EPISODE - WREN + DC KOPPER
KEPRA 250 1/2 BID x TUE

(3) CONSTIPATION - 1/2 QDAY x WED + OPD
2nd TO PAIN MEDS
STOOL SOFTENER

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 7 Days / Weeks / (Months) Years / PRN for _____ minutes with

Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA A1C BS
μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:**Referrals:**

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other: _____

- ☐ Labs / Test results / Medical records discussed with patient Medical recs requested from DALMEOTO
☐ Patient and/or family was counseled for _____ mins out of a total visit time of _____ mins as outlined in A&P.
☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature _____

- 74 -

Patient Name: William Turner Date: 6/18/12
 Chart # _____ DOB: _____ Age: _____ Relative: _____

Chief Complaint:

- ☒ Patient presents today for follow up and/or evaluation of follow up
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with _____

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

26 y.o. male of African descent for medical review
+ Hx: After trauma, a closed head injury
he had seizure episode at age 10
now he reports no more seizure
he has worse back pain after seizure
+ related fall

Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☒ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HEENT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
 Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
 Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

He has worse back pain

Relevant Labs and Studies done on _____:

☐ AST	☐ TC	☐ TSH	☐ U/A
☐ ALT	☐ TG	☐ fT4	☐ UCx&S
☐ TB	☐ HDL	☐ Insulin	☐ PFT's
☐ DB	☐ LDL	☐ PSA	☐ ABI's
☐ GGTP	☐ Vit D	☐ A1C	☐ A-U/S
☐ AP	☐ CRP	☐ ECHO	☐ NucST
☐ Ca++	☐ Mg++	☐ PO4--	☐ CarU/S
			☐ EKG



MD Init

Examination:

- ☒ **Vitals:** Height 5'6" Weight 160 Temp: 98.6 R: 116 P: 68 BP: 122/72
- ☒ **General:** WDNW W / Pleasant and cooperative / NAD NOSEY
- ☒ **HENMT:** AT/NC / NI TM's and canals / Nares clear / OP clear
- ☒ **Eyes:** PERRL / Conjunctivae nl / Fundi nl
- ☒ **Neck:** Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
- ☒ **CV:** RRR / No MGR / No edema / NI periph pulses
- ☒ **Pulm:** CTAB
- ☒ **Breasts:** Symmetric / No discharge / No masses / No tenderness
- ☒ **Abd:** Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
- ☒ **GU Male:** No lesions / No hydrocoele / No tenderness / No masses / NI prostate
- ☒ **GU Female:** No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
- ☒ **Rectal:** No masses / No fissures / No hemorrhoids
- ☒ **Lymph:** No cervical LA / No axillary LA / No inguinal LA
- ☒ **MS:** w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait
- ☒ **Skin:** No lesions / No rashes / No wounds / No ulcers
- ☒ **Neuro:** w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
- ☒ **Psych:** A&O x 3 / Appropriate affect / Memory intact
- Additional Physical Comments:**

Assessment and Plan

☐ All problems on Summary List reviewed and remain w/o change except as follows:

① S/P CLOSED HEAD INJURY - ACCIDENT (BAND) WITH SEIZURE

CORT. KOPPA 750 BID

NO AWARE OF DRIVING POSTULATIONS

② VERB. T₃ T₄ - ORR MARCO / DRAMATIC -

REPEAT THERAPEUTIC SPINE ELIM FOR

COMPARISON AFTER ACENT-SEIZURE + FALL

HYDROLYTIC T₃ T₄ (GAM E FOD)

RECOMMEND PT OUT OF WORK UNTIL "SAFE" WITH

SEIZURE FREE T₃ T₄

NO DRIVING UNTIL SEIZURE FREE & STABLE

EXPLAINED TO PT

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 1 Days / Weeks Months Years / PRN for 15 minutes with

Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA A1C BS

μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:

Referrals:

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling

☐ DM teaching / ☐ Annual assessment / ☐ Other:

- ☐ Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from
- ☐ Patient and/or family was counseled for 15 mins out of a total visit time of 15 mins as outlined in A&P.
- ☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
- ☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature [Signature]

- 76 -

D

e

Patient Name: William Turner Date: 7/16/12
Chart # DOB: Age: Relative:

Chief Complaint:

- ☒ Patient presents today for follow up and/or evaluation of 1 mth seizure d/o.
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☐ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

26 yo. w d e office. No further
seizure c rx. wife relates mood
swings. at yo neck/throat
back pain.

Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

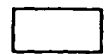
- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HEENT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

Pertinent Labs and Studies done on

___ AST	___ TC	___ TSH	U/A
___ ALT	___ TG	___ fT4	UCx&S
___ TB	___ HDL	___ Insulin	PFT's
___ DB	___ LDL	___ PSA	ABI's
___ GGTP		___ A1C	A-U/S
___ AP	___ Vit D	___ CRP	ECHO
			NucST
___ Ca++	___ Mg++	___ PO4--	CarU/S
			EKG



- 77 -



MD Init

Examination:

- ☒ **Vitals:** Height _____ Weight _____ Temp: _____ R: 16 P: 72 BP: 100/68
- ☒ **General:** WDNW / Pleasant and cooperative / NAD
- ☒ **HENMT:** AT/NC / NI TM's and canals / Nares clear / OP clear
- ☒ **Eyes:** PERRL / Conjunctivae nl / Fundi nl
- ☒ **Neck:** Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
- ☒ **CV:** RRR / No MGR / No edema / NI periph pulses
- ☒ **Pulm:** CTAB
- ☒ **Breasts:** Symmetric / No discharge / No masses / No tenderness
- ☒ **Abd:** Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
- ☒ **GU Male:** No lesions / No hydrocoele / No tenderness / No masses / NI prostate
- ☒ **GU Female:** No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
- ☐ **Rectal:** No masses / No fissures / No hemorrhoids
- ☐ **Lymph:** No cervical LA / No axillary LA / No inguinal LA
- ☐ **MS:** w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait
- ☐ **Skin:** No lesions / No rashes / No wounds / No ulcers
- ☐ **Neuro:** w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
- ☐ **Psych:** A&O x 3 / Appropriate affect / Memory intact
- Additional Physical Comments:** _____

Assessment and Plan

- ☐ All problems on Summary List reviewed and remain w/o change except as follows:

① Closed Head Injury - Recurrent Grand mal seizures
Cogn. Keppra 750 BID
No driving until 6 moth seizure-free

② Vert Ex T-t - E/U X-ray (-)
per chest & CO

✓ Thoracic Spinal - MRI
Mobic 15 QID
Nuro 25/325 1 QID
#90 Phle

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 7 Days (Weeks) Months / Years / PRN for _____ minutes with
Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA AIC BS
μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:**Referrals:**

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other:

- ☐ Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from _____
- ☐ Patient and/or family was counseled for _____ mins out of a total visit time of _____ mins as outlined in A&P.
- ☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
- ☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature _____

-78-

Patient Name: William "Lee" Turner Date: 7/23/12
Chart # _____ DOB: _____ Age: _____ Relative: _____

Chief Complaint:

- ☐ Patient presents today for follow up and/or evaluation of 1 week Flu - Results MRI T-spine
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with _____

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

26 y.o. w. 3 wks of aches for flu.
2 F/U chest CT due to suspected
T3-T4. No further services to MRI
at the med well.
pt requesting to return to work.

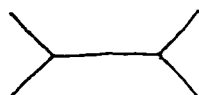
Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HENTM:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

45 Back Pain
@ times

Pertinent Labs and Studies done on _____:

____ AST	____ TC	____ TSH	U/A
____ ALT	____ TG	____ ft4	UCx&S
____ TB	____ HDL	____ Insulin	PFT's
____ DB	____ LDL	____ PSA	ABI's
____ GGTP		____ A1C	A-U/S
____ AP	____ Vit D	____ CRP	ECHO
			NucST
____ Ca++	____ Mg++	____ PO4--	CarU/S
			EKG



MD Init

Examination:

- ☒ **Vitals:** Height _____ Weight _____ Temp: _____ R: 116 P: 76 BP: 114/64
☒ **General:** WDWN W / Pleasant and cooperative / NAD ADDERY
☒ **HEENT:** AT/NC / NI TM's and canals / Nares clear / OP clear
☒ **Eyes:** PERRL / Conjunctivae nl / Fundi nl
☒ **Neck:** Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
☒ **CV:** RRR / No MGR / No edema / NI periph pulses
☒ **Palm:** CTAB
☒ **Breasts:** Symmetric / No discharge / No masses / No tenderness
☒ **Abd:** Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
☒ **GU Male:** No lesions / No hydrocoele / No tenderness / No masses / NI prostate
☒ **GU Female:** No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
☐ **Rectal:** No masses / No fissures / No hemorrhoids
☐ **Lymph:** No cervical LA / No axillary LA / No inguinal LA
☐ **MS:** w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait NO PAIN TENDERNESS TODAY
☐ **Skin:** No lesions / No rashes / No wounds / No ulcers
☐ **Neuro:** w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
☐ **Psych:** A&O x 3 / Appropriate affect / Memory intact
Additional Physical Comments: _____

Assessment and Plan

☐ All problems on Summary List reviewed and remain w/o change except as follows:

① VERT EX T3-T4 - CREST CT & HONOR
ABT SUP ENDOLATE FX

② CLOSED HEAD W/ SURG I/F
SEIZURE DIS -
COAG KEDRA 750g BID
MOBIC 150 QID, PRN

WRAP & DC HORCO 7.5/325 Q8 PRN

③ AT MRY RETURNED TO WORK -

NO DRIVER VAIL 6 MONTHS
FROM LAST SEIZURE

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 3 Days / Weeks / Months / Years / PRN for _____ minutes with
Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA A1C BS
μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:

Referrals:

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other: _____

- ☐ Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from _____
☐ Patient and/or family was counseled for _____ mins out of a total visit time of _____ mins as outlined in A&P.
☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature _____

- 80 -

✓ In my opinion, it is more likely than not that the injuries to William Lee Turner's head were caused by the fall on April 19, 2012.

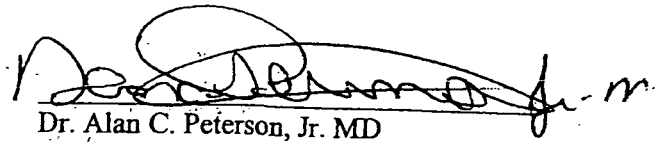
✓ In my opinion, it is more likely than not that William Lee Turner's fall gave rise to the seizures he has experienced since the fall. (Please give the reasoning behind this opinion)
NO KNOWN SEIZURES THAT I AM AWARE
OF PRIOR TO ACCIDENT/FALL &
RESULTANT HEAD TRAUMA

✓ In my opinion, and based on Mr. Turner's medical history, it is more likely than not that Mr. Turner's fall was not a result of a preexisting seizure condition.

Other: _____

4/15/13

Date



Dr. Alan C. Peterson, Jr. MD
Peterson & Plante Internal Medicine Associates
21 Gateway Corners Park, Suite 101
Columbia, SC 29203

Reply To
JASON W. LOCKHART
Direct Dial: (803) 227-2283
jlockhart@mgclaw.com
COLUMBIA

January 24, 2014

VIA HAND DELIVERY

Commissioner Susan S. Barden
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: William Lee Turner v. SAIIA Construction and Old Republic
General Insurance Corporation c/o Gallagher Bassett Services, Inc.
Date of Accident: April 19, 2012
WCC File No.: 1204039
Our File No.: 2098.12265
Claim No.: 002979-030511-WC-01

Dear Commissioner Barden:

Please find enclosed our Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to John K. Koon, Esquire, the Claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

With kind regards, I am

Very truly yours,

Jason W. Lockhart

JWL/rds

Enc.

cc: John K. Koon, Esquire (w/enc)
Tara Potter, Gallagher Bassett Services, Inc. (w/enc)(via/email only)
Jimmy Speegle, SAIIA Construction (w/enc)(via/email only)
Rick Leemhuis, SAIIA Construction (w/enc)(via/email only)



PRE-HEARING BRIEF
WCC File No: 1204039

Claimant's Name: <u>William Lee Turner</u>	SSN: _____	Employer's Name: <u>SAIIA Construction</u>
Address: _____		324 Commons Drive
Home Phone: <u>(803) _____</u>	Work Phone: _____	Address: <u>Birmingham, Alabama 35201</u>
Preparer's Name: <u>Jason W. Lockhart</u>		Old Republic General Insurance Corporation
		Carrier: <u>c/o Gallagher Bassett Services, Inc.</u>
		Preparer's Phone #: <u>(803) 227-2283</u>

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

- Comp. Rate: \$456.14 2. AWW: \$ 684.18 Date of Injury: 04/19/12
- Type of Injury and body part(s): The Claimant allegedly sustained a compensable injury to the head and back while in the course and scope of his employment with the Defendants.
- Facts in controversy: Whether the Claimant can satisfy his burden of proving that he sustained a compensable injury to the head and back while in the course and scope of his employment; Whether the Claimant's current problems with his head and/or back are causally connected to his alleged April 19, 2012 work-related accident; Whether the Employer/Carrier are responsible for any additional medical treatment, temporary total disability benefits, and/or permanent partial disability benefits.
- Legal issues involved: Section 42-1-160; Section 42-9-30; Section 42-9-35; Section 42-9-260; Section 42-15-60; Section 42-15-80.
- Unusual aspects: Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to appropriately exercise due process rights afforded by law to cross-examine, respond to, and otherwise oppose evidence presented by the Claimant.
- Witnesses (designate if expert): * Robert Bennett, David Bolden, Paul Barnette, James Speegle, and/or other representatives of the Employer.
- Exhibits: Deposition of Claimant; Deposition of Paul Barnette; Deposition of David Bolden; Deposition of James Speegle; Written Statement of David Bolden and James Speegle (dated 4/19/12)(consisting of 1 page); Portions of the Claimant's personnel file and/or wage information may be submitted at the hearing in response to the Claimant's testimony.
- Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): Peterson and Plante Internal Medicine Associates, P.A. (dated 7/23/12-9/18/13)(consisting of 9 pages); The Pain Center of First Choice Healthcare (dated 9/18/13-10/17/13)(consisting of 9 pages); USC Department of Neurosurgery (dated 5/29/12)(consisting of 1 page); The Moore Orthopaedic Clinic, P.A. (dated 10/29/12)(consisting of 2 pages); South Carolina Diagnostic Imaging (dated 10/1/13)(consisting of 1 page); ImageCare, LLC (dated 7/17/12)(consisting of 1 page); Sandhills Medical Foundation - Lugoff (dated 3/27/12-4/16/12)(consisting of 5 pages); Palmetto Health Baptist (dated 4/17/12)(consisting of 3 pages); Palmetto Health Richland (dated 4/19/12-5/22/12)(consisting of 8 pages). The Defendants rely upon certain portions of the medical evidence submitted by the Claimant. The Defendants reserve the right to move to either postpone or adjourn the scheduled hearing to procure the deposition testimony of physicians listed by the Claimant, if necessary.
- Name, address, and specialty, if any, of the treating physician: Alan C. Peterson, Jr., M.D., Peterson & Plante Internal Medicine Assoc. PA, 1750 Laurel Street, Suite 1, Columbia, South Carolina 29201.
- Impairment rating(s); body part(s); physician and date of opinion: None known.
- I am amending my Form 50/51 in the following manner: Not applicable.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to

John K. Koon, Esquire, Koon and Cook, P.A.

1206 Gadsden Street
Columbia, South Carolina 29201

by ☒ first class postage ☐ certified mail ☐ personal service.

on the 24th day of January 20 14.

Signature: _____
Date of Hearing: February 4, 2014

Email: jlockhart@mqclaw.com
Time needed for hearing: 2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. 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.

WCC FORM # 53
Revised 7/13

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1204039

WILLIAM LEE TURNER,

Employee,

Claimant,

vs.

SAILA CONSTRUCTION,

Employer,

AND

OLD REPUBLIC GENERAL INSURANCE
CORPORATION C/O GALLAGHER
BASSETT SERVICES, INC.,

Carrier,

Defendants.

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

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND JOHN K. KOON, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR/EXHIBITS	DATES	PAGES
1.	Written Statement of David Bolden and James Speegle	4/19/12	1
2.	Peterson and Plante Internal Medicine Associates, P.A.	7/23/12-9/18/13	2-10
3.	The Pain Center of First Choice Healthcare	9/18/13-10/17/13	11-19
4.	USC Department of Neurosurgery	5/29/12	20
5.	The Moore Orthopaedic Clinic, P.A.	10/29/12	21-22
6.	South Carolina Diagnostic Imaging	10/1/13	23
7.	ImageCare, LLC	7/17/12	24
8.	Sandhills Medical Foundation - Lugoff	3/27/12-4/16/12	25-29
9.	Palmetto Health Baptist	4/17/12	30-32
10.	Palmetto Health Richland	4/19/12-5/22/12	33-40

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Robert Bennett, David Bolden, Paul Barnette, James Speegle, and/or other representatives of the Employer.



JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
January 24, 2014

I David Bolden was talking To Paul Barnette
At the sledge press. Paul said hook Lee Turner
was laying on his back on ground, By Trunk #2031
in SARA parking lot. By sledge press I David Bolden
call #78 saying we man drop. Then I call Troy Miller
call 51. man down at SARA parking lot At
Sledge press.

David Bolden
DJB

4-19-12

David also replied to me that the last time he
seen Lee up, ~~he~~ He was standing beside the truck, not on the truck,
putting items in the truck.

Jimmy Speegle

DJB DAVID BOLDEN
DJB

Peterson

Patient Name: William Lee Turner

Date: 7/23/12

Chart # _____ DOB: _____ Age: _____ Relative: _____

Chief Complaint:

- ☐ Patient presents today for follow up and/or evaluation of Well Flu - Results MRI T-spine
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with _____

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

26 y.o. w. of e.o. ADLs for Flu.
E F/U chest CT due to suspected
T3-T4. No further services to me.
at the moment well.
PT requesting to return to work.

Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☐ **Eyes:** Pain / Discomfort / Change in vision
☐ **HEENT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
 Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectoration
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
 Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

45 BACK PAIN
@ times

Pertinent Labs and Studies done on _____:

___ AST	___ TC	___ TSH
___ ALT	___ TG	___ fT4
___ TB	___ HDL	___ Insulin
___ DB	___ LDL	___ PSA
___ GGTP	___ Vit D	___ A1C
___ AP		___ CRP
___ Ca++	___ Mg++	___ PO4--

U/A
 UCx&S
 PFT's
 ABI's
 A-U/S
 ECHO
 NucST
 CarU/S
 EKG



Examination:

- Vitals:** Height _____ Weight _____ Temp: _____ R: 160 P: 76 BP: 112/64
General: WDNW 0 / Pleasant and cooperative / NAD 100% Oxy.
HENT: AT/NC / NI TM's and canals / Nares clear / OP clear
Eyes: PERRL / Conjunctivae nl / Fundi nl
Neck: Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
CV: RRR / No MGR / No edema / NI periph pulses
Palm: CTAB
Breasts: Symmetric / No discharge / No masses / No tenderness
Abd: Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
GU Male: No lesions / No hydrocoele / No tenderness / No masses / NI prostate
GU Female: No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
Rectal: No masses / No fissures / No hemorrhoids
Lymph: No cervical LA / No axillary LA / No inguinal LA
MS: w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait NO PAIN TRAPEZIUS TORSION
Skin: No lesions / No rashes / No wounds / No ulcers
Neuro: w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
Psych: A&O x 3 / Appropriate affect / Memory intact
Additional Physical Comments:

Assessment and Plan

- ☐ All problems on Summary List reviewed and remain w/o change except as follows:

① VERT EX T3-T4 - CHEST CT & IMAGING
ABT SUP ENDPLATE FX

② CLOSED HEAD INJURY LTR T3 - T4
SEIZURE DIS -
COAG KEMPA 750g BID
MOBIC 150 QID, PRN

WRAP + DC HORCO 7.5/325 Q8 PRN

③ PT MAY RETURN TO WORK -

NO DRIVING UNTIL 6 MONTHS
FROM LAST SEIZURE

- ☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 3 Days / Weeks / Months / Years / PRN for _____ minutes with
Labs: Fasting / Non-fasting Full Panel BMP CMP CBC LFT's Lipids TFT's VitD UA PSA A1C BS
μAlb:Cr Ins PT/INR BNP B12 EKG

Studies:**Referrals:**

HM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other:

- ☐ Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from _____
☐ Patient and/or family was counseled for _____ mins out of a total visit time of _____ mins as outlined in A&P.
☐ Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
☐ Patient is at HIGH RISK for morbidity and/or mortality

Physician Signature _____

-88-3-

Date: 7-21-13

Relative:

Chief Complaint:

- Summary List Review:** ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

Pain? Yes / No (If Yes, include quality, intensity and location)

27 y.o. W @ office for F/U. pt
RETURNED TO WORK 1/2/13. pt stopped
Cymbalta & does well. Beer pain
+ extreme anxiety, but getting better.

☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness

- **Eyes:** Pain / Discomfort / Change in vision
- **HENMT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge / Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
- **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
- **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
- **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
 - **Female:** Breast discharge / Abnormal periods / Pregnant
- **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements / Change in bowel habits / Diarrhea / Constipation / Heartburn
- **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
- **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
- **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
- **Heme:** Excessive bleeding / Bruising
- **Lymph:** Neck masses / Armpit masses / Groin masses
- **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
- **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

___ AST	___ TC	___ TSH	U/A
___ ALT	___ TG	___ fT4	UCx&S
___ TB	___ HDL	___ Insulin	PFT's
___ DB	___ LDL	___ PSA	ABI's
___ GGTP		___ A1C	A-U/S
___ AP	___ Vit D	___ CRP	ECHO
			NucST
___ Ca++	___ Mg++	___ PO4--	CarU/S
			EKG

- 89 - - 4 -

P181

MO Inc

Vitals: Height _____ Weight 29 Temp: _____ R: MC P: 68 BP: 149/78

☐ General: WDN ONS / Pleasant and cooperative / NAD

☐ HENMT: AT/NC / NI TM's and canals / Nares clear / OP clear

☐ Eyes: PERRL / Conjunctivae nl / Fundi nl

☐ Neck: Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses

☐ CV: RRR / No MGR / No edema / NI periph pulses

☐ Pulm: CTAB

☐ Breasts: Symmetric / No discharge / No masses / No tenderness

☐ Abd: Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's

☐ GU Male: No lesions / No hydrocoele / No tenderness / No masses / NI prostate

☐ GU Female: No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus

☐ Rectal: No masses / No fissures / No hemorrhoids

☐ Lymph: No cervical LA / No axillary LA / No inguinal LA

☐ MS: w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait

☐ Skin: No lesions / No rashes / No wounds / No ulcers

☐ Neuro: w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric

☐ Psych: A&O x 3 / Appropriate affect / Memory intact

Additional Physical Comments:

① SEIZURE OPS - COST RODARD 7500 RAI
NO SEIZURE X 2 SMALL
PT DRIVING AGAIN PLU LOTS.

(3) Lower Back Pain - improved 0 ~~1~~

(3) IRADIATION - off gamma labels...

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 4 Days / Weeks / Months / Years / PRN for _____ minutes with
abs: Fasting / Non-fasting Full Panel BMP CMP CBC (LFT's) Lipids TFT's VitD UA PSA A1C BS
 μAlb:Cr Ins PT/INR BNP B12 EKG

Referrals:

IM: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling
☐ DM teaching / ☐ Annual assessment / ☐ Other:

1 Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from _____
 1 Patient and/or family was counseled for _____ mins out of a total visit time of _____ mins as outlined in A&P.
 1 Treatment options and possible SE's were discussed with patient, and patient voiced understanding.
 1 Patient is at HIGH RISK for morbidity and/or mortality.

P182

Notes

Koon and Cook, P.A.

John K. Koon
Stephen H. Cook
Jamie L. Walters

Attorneys at Law
2016 Gadsden Street
Columbia, South Carolina 29201

65615
Telephone: (803) 256-4082
Facsimile: (803) 254-0658

April 11, 2013

Dr. Alan C. Peterson, Jr. MD
Peterson & Plante Internal Medicine Associates
21 Gateway Corners Park, Suite 101
Columbia, SC 29203

Re: William Lee Turner
Date of Injury: 04/19/2012
Your Chart #

Dear Dr. Peterson:

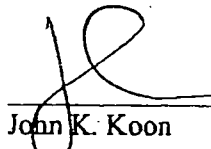
We represent William L. Turner in a Workers' Compensation claim in regard to the injuries he sustained when he fell from the cab of his employer's truck on April 19, 2012. We need additional information to evaluate Mr. Turner's situation.

Are you able to give us an opinion based on his history and your records? Please check the appropriate responses below and return this letter to me via fax or the enclosed return envelope. If there is a fee for completing the questionnaire, please let me know and we will pay it immediately.

Thank you for your attention to this matter.

Sincerely,

KOON AND COOK, P.A.

By: 
John K. Koon
Attorney for William L. Turner

Patient Name: William Turner Date: 7-8-13
 Chart # DOB: Age: Relative:

Chief Complaint:

- ☒ Patient presents today for follow up and/or evaluation of 4mth Flv - Seizure, irritability
☐ Patient presents today for annual review of chronic conditions (see Summary List)
☐ Patient presents as a new patient with total PMH and Medication Hx taken
☐ Patient did/did not have recent MD appointment(s) with

Summary List Review: ☐ PMSHx reviewed ☐ Meds reviewed ☐ SocHx reviewed ☐ FamHx reviewed

HPI: ☒ See Chief Complaint

Pain? Yes / No (If Yes, include quality, intensity and location)

27 YO. MD @ OFFICE FOR FLV. PT. SEIZURE
REPORTED 7 T Mths AGO. APOXIR SEIZURES
RELATES BACK OUT OF MED. SLOWLY RELIEF
DESIRE HAVING SEIZURES. PT WORKING W/
MILITARY @ PROSECUTOR. RECENT BACK PAIN FLV
UP BETWEEN SPANNER BLADES.

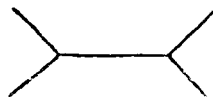
Review of Systems: (Circle individual complaint if positive. Check box to left if all negative.)

- ☐ **Constitutional:** Fever / Chills / Change in appetite / Abnormal weight gain or loss / Fatigue / Weakness
☒ **Eyes:** Pain / Discomfort / Change in vision
☐ **HENMT:** Headache / Ear discomfort / Ear discharge / Change in hearing / Nose bleed / Nose discharge /
 Nose congestion / Nose discomfort / Mouth discomfort / Throat discomfort
☐ **Cardiovascular:** Chest pain / Palpitations / Swelling in legs / Color change in fingers or toes
☐ **Pulmonary:** Cough / Shortness of breath / Wheezing / Expectorations
☐ **Endocrine:** Excessive thirst / Excessive urination / Temperature intolerance / Excessive sweating / Low libido
☐ **Female:** Breast discharge / Abnormal periods / Pregnant
☐ **GI:** Nausea / Vomiting / Swallowing problems / Abdominal pain / Change in bowel movements /
 Change in bowel habits / Diarrhea / Constipation / Heartburn
☐ **GU:** Urinary frequency / Urinary urgency / Urinary pain / Blood in urine / Pelvic pain / Discharge
☐ **Musculoskeletal:** Limited range of motion of a joint / Abnormal gait / Joint swelling / Joint pain / Muscle pain
☐ **Skin:** Rash / Cut / Burns / Itching / New or unusual moles or marks
☐ **Heme:** Excessive bleeding / Bruising
☐ **Lymph:** Neck masses / Armpit masses / Groin masses
☐ **Neurologic:** Numbness / Tingling / Weakness / Burning / Seizures / Fainting / Dizziness / Tremors / Memory loss
☐ **Psychiatric:** Change in mood / Poor sleep / Hallucinations / Suicidal thoughts

TRAPSCAPULAR
BACK PAIN

Pertinent Labs and Studies done on :

___ AST	___ TC	___ TSH	U/A
___ ALT	___ TG	___ FT4	UCx&S
___ TB	___ HDL	___ Insulin	PFT's
___ DB	___ LDL	___ PSA	ABI's
___ GGTP	___ Vit D	___ A1C	A-U/S
___ AP		___ CRP	ECHO
			NucST
___ Ca++	___ Mg++	___ PO4--	CarU/S
			EKG



- 92 - 7 -



MD Init

Examination:

- WV 7-11-11
- ☐ Vitals: Height 5' 10" Weight 150 Temp: 98.6 R: 116 P: 76 BP: 110/62
- ☒ General: WDNW ♂ / Pleasant and cooperative / NAD At home
- ☒ HENMT: AT/NC / NI TM's and canals / Nares clear / OP clear
- ☒ Eyes: PERRL / Conjunctivae nl / Fundi nl
- ☒ Neck: Supple / Trachea midline / No JVD / No TM / No LA / No CB / No masses
- ☒ CV: RRR / No MGR / No edema / NI periph pulses
- ☒ Pulm: CTAB
- ☒ Breasts: Symmetric / No discharge / No masses / No tenderness
- ☒ Abd: Soft / NT / No HSM / No hernias / No bruits / No masses / NI BS's
- ☒ GU Male: No lesions / No hydrocoele / No tenderness / No masses / NI prostate
- ☒ GU Female: No atrophy / No lesions / No discharge / NI urethra / No cystocoele / No rectocoele / NI cervix / NI adnexa / NI uterus
- ☒ Rectal: No masses / No fissures / No hemorrhoids
- ☒ Lymph: No cervical LA / No axillary LA / No inguinal LA
- ☒ MS: w/o Δ for pt OR NI posture / No atrophy / FROM / No tenderness / NI structure and alignment of all joints / No clubbing / No cyanosis / No edema / NI gait
- ☒ Skin: No lesions / No rashes / No wounds / No ulcers
- ☒ Neuro: w/o Δ for pt OR CN II-XII intact / Motor intact / Sensory intact / Cerebellum intact / NI gait / NI speech / Strength intact and symmetric / DTR's intact and symmetric
- ☒ Psych: A&O x 3 / Appropriate affect / Memory intact
- Additional Physical Comments:

Assessment and Plan ☐ All problems on Summary List reviewed and remain w/o change except as follows:

No Acute Surgery
(1) Seizure Dis - Assmt of Keppra, which
patient discontinued on his own
Asst of appropriate seizure discussed & pt
Restart Keppra 500 BID

Neuro Surg consult discussed

(2) Therapeutic Appt - ASD 5/325 - Q8pro
Driving precautions #45
ADH

☐ See Addendum Sheet for additional A&P

Follow-up: As scheduled or 6 Days / Weeks / Months / Years / PRN for minutes with

labs: Fasting / Non-fasting Full Panel BMP CMP CBC EFT's Lipids TFT's VitD UA PSA A1C BS

μAlb:Cr Ins PT/INR BNP B12 EKG Keppra Level

Medications:

Referrals:

U: ☐ UTD or needs / ☐ Mammogram / ☐ DEXA / ☐ Colon / ☐ Flu vax / ☐ PVX / ☐ tobacco counseling

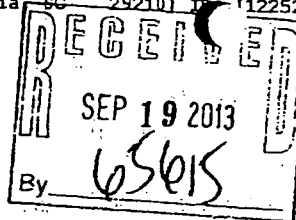
☐ DM teaching / ☐ Annual assessment / ☐ Other:

Labs / Test results / Medical records discussed with patient ☐ Medical recs requested from

Patient and/or family was counseled for mins out of a total visit time of mins as outlined in A&P.

Treatment options and possible SE's were discussed with patient, and patient voiced understanding.

Patient is at HIGH RISK for morbidity and/or mortality



115 Blamey Drive Suite 111
Columbia, SC 29223
Phone: 803-419-9091
Fax: 803-419-9199

William L. Turner
09/18/2013 02:40 PM
Location: The Pain Center North East Columbia
Patient #: DOB: Gender:

Alan Peterson

(Gisele Girault, MD 09/18/2013 03:26 PM)

The patient is a 27 year old male who presents for evaluation of neck pain. The onset of the neck pain has been sudden and has been occurring in a persistent pattern for 1 year. The course has been increasing. The neck pain is described as a severe cramping. The neck pain is described as being located in the midline of neck and upper shoulders and radiating to the into right shoulder and into left shoulder. The patient describes the pain as 9 out of 10. Aggravating factors have included twisting, lifting, position of arm, flexion and extension. There have been no relieving factors.

Additional reason for visit:

Pain is described as the following:

The onset of the pain has been injury and has been occurring in a persistent pattern for 1 year. The course has been increasing. The pain is characterized as aching, burning, pressure, throbbing and tightness. The pain is described as being located in the upper back and lower back. The patient describes the pain as 9 out of 10. The pain does not radiate. The pain is precipitated by trauma. The symptoms are aggravated by exertion, weight lifting and prolonged standing. The symptoms have no relieving factors.

Allergies (Gisele Girault, MD: 09/18/2013 03:53 PM)
No Known Drug Allergies 09/18/2013

Past Medical History (Gisele Girault, MD: 09/18/2013 03:53 PM)
No Known Problems - Status is Inactive (09/18/2013) (Marked as Inactive)

Family History (Gisele Girault, MD: 09/18/2013 03:53 PM)
The father is living
The mother is living

Social History (Gisele Girault, MD: 09/18/2013 03:53 PM)
Marital status: Married
Most recent primary occupation: Construction trade
Highest Education Level Attained: High school graduate
Exercise: Light
No Drug Use
Non Drinker/No Alcohol Use
Tobacco Use: Current every day smoker

Medication History (Gisele Girault, MD: 09/18/2013 03:53 PM)
Hydrocodone-Acetaminophen (5-325MG Tablet, Oral every four hours) Active.
Levetiracetam (500MG Tablet, Oral) Active.

Past Surgical (Gisele Girault, MD: 09/18/2013 03:53 PM)
Neck Surgery

[Signature]
9/26/13

William L. Turner

Patient #:

DOB:

Wednesday, September 18, 2013

- 94 - 0 -

Page 1 / 4

This fax was sent with GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

P186

From: FAXmaker

To: (803) 251-4304

Page: 1/5

Date: 9/19/2013 10:56:38 AM

FAX TRANSMISSION

History & Physical Report #1

William L. Turner

9/18/2013 2:40 PM

Location: The Pain Center North East Columbia

Patient #:

DOB: 11/11/1985

Married / Language: English / Race: White

Male

History of Present Illness (Gisele Girault, MD; 9/18/2013 3:26 PM)

The patient is a 27 year old male who presents for evaluation of neck pain. The onset of the neck pain has been sudden and has been occurring in a persistent pattern for 1 year. The course has been increasing. The neck pain is described as a severe cramping. The neck pain is described as being located in the midline of neck and upper shoulders and radiating to the into right shoulder and into left shoulder. The patient describes the pain as 9 out of 10. Aggravating factors have included twisting, lifting, position of arm, flexion and extension. There have been no relieving factors.

Additional reason for visit:

Pain is described as the following:

The onset of the pain has been injury and has been occurring in a persistent pattern for 1 year. The course has been increasing. The pain is characterized as aching, burning, pressure, throbbing and tightness. The pain is described as being located in the upper back and lower back. The patient describes the pain as 9 out of 10. The pain does not radiate. The pain is precipitated by trauma. The symptoms are aggravated by exertion, weight lifting and prolonged standing. The symptoms have no relieving factors.

Medication History (Gisele Girault, MD; 9/18/2013 3:24 PM)

Hydrocodone-Acetaminophen (5-325MG Tablet, Oral every four hours) Active.
Levetiracetam (500MG Tablet, Oral) Active.

Allergies (Gisele Girault, MD; 9/18/2013 3:27 PM)

No Known Drug Allergies. 09/18/2013

Problem List/Past Medical (Gisele Girault, MD; 9/18/2013 3:53 PM)

No Known Problems. 09/18/2013 (Marked as Inactive)

Past Surgical History (Gisele Girault, MD; 9/18/2013 3:27 PM)

Neck Surgery

Family History (Gisele Girault, MD; 9/18/2013 3:27 PM)

The father is living

The mother is living

Social History (Gisele Girault, MD; 9/18/2013 3:28 PM)

Marital status. Married.

Most recent primary occupation. Construction trade.

Highest Education Level Attained. High school graduate.

Exercise. Light

No Drug Use

Non Drinker/No Alcohol Use

Tobacco Use. Current every day smoker.

Review of Systems (Gisele Girault, MD; 9/18/2013 3:27 PM)

General: Not Present- Chills, Fatigue, Fever, Night Sweats and Weight Loss.

Skin: Not Present- Rash.

HEENT: Not Present- Visual Disturbances, Hearing Loss, Ear Pain, Sore Throat and Facial Numbness/Tingling.

Neck: Present- Neck Pain and Neck Stiffness.

Respiratory: Not Present- Cough, Wheezing and Dyspnea.

Cardiovascular: Not Present- Chest Pain, Palpitations and Difficulty Breathing On Exertion.

Gastrointestinal: Not Present- Abdominal Pain, Change in Bowel Habits, Constipation, Diarrhea, Difficulty Swallowing, Nausea and Vomiting.

Male Genitourinary: Not Present- Urgency and Painful Urination.

Musculoskeletal: Present- See HPI, Back Pain, Backache, Decreased Range of Motion and Neck Pain.

Neurological: Not Present- Confusion, Dizziness, Fainting, Personality Changes, Seizures, Vertigo and Weakness.

Psychiatric: Not Present- Hallucinations, Memory Loss and Panic Attacks.

Endocrine: Not Present- Cold Intolerance, Excessive Sweating and Excessive Thirst.

Hematology: Not Present- Abnormal Bleeding and Easy Bruising.

Vitals (Gisele Girault, MD; 9/18/2013 3:25 PM)

9/18/2013 3:24 PM

Weight: 135 lb Height: 66 in

Body Surface Area: 1.69 m² Body Mass Index: 21.79 kg/m²

Pain Level: 9/10

Pulse: 78 (Regular) Resp.: 16 (Unlabored)

BP: 122/76 (Sitting, Left Arm, Standard)

Physical Exam (Gisele Girault, MD; 9/18/2013 3:44 PM)
The physical exam findings are as follows:

General

Mental Status - Alert. **General Appearance** - no acute distress and Well groomed. **Orientation** - Oriented X3. **Build & Nutrition** - Well nourished. **Gait** - Normal.

Integumentary

General Characteristics: Overall examination of the patient's skin reveals - no rashes and no suspicious lesions. **Color** - normal coloration of skin. **Skin Moisture** - normal skin moisture.

Chest and Lung Exam

Chest and lung exam reveals - normal excursion with symmetric chest walls and quiet, even and easy respiratory effort with no use of accessory muscles.

Cardiovascular

Cardiovascular examination reveals - (see Vital Signs section for blood pressure measurements) and no digital clubbing, cyanosis, edema, increased warmth or tenderness. Note: Upper extremity pulses are 2+ bilaterally symmetrical LE pulses are 2+ and bilaterally symmetrical

Note: RRR no murmurs

Abdomen

Palpation/ Percussion: Palpation and Percussion of the abdomen reveal - Non Tender.

Neurologic

Sensory:

Light Touch: Intact - Globally.

Overall Assessment of Muscle Strength and Tone reveals:

Upper Extremities: Right Deltoid - 5/5. Left Deltoid - 5/5. Right Bicep - 5/5. Left Bicep - 5/5. Right Tricep - 5/5. Left Tricep - 5/5.

Right Wrist Extensors - 5/5. **Left Wrist Extensors** - 5/5. **Right Intrinsic** - 5/5. **Left Intrinsic** - 5/5.

Lower Extremities: Right Quadriceps - 5/5. Left Quadriceps - 5/5. Right Tibialis Anterior - 5/5. Left Tibialis Anterior - 5/5. Right

Gastroc-Soleus - 5/5. **Left Gastroc-Soleus** - 5/5. **Right EHL** - 5/5. **Left EHL** - 5/5.

Reflexes (Dermatomes): 2/2 Normal - All.

Note: CN II-XII grossly intact

Neuropsychiatric

The patient's mood and affect are described as - normal

Musculoskeletal

Spinal Exam:

Cervical Spine:

Inspection and Palpation: Tenderness - no tenderness or pain on palpation (flexion and extension FROM).

ROM: Cervical ROM - normal cervical spine movements.

Strength and Tone: Strength & Tone - normal strength and tone, no laxity or crepitus.

Lumbosacral Spine:

Inspection and Palpation: Tenderness - no tenderness or pain on palpation (no scoliosis and Kyphosis).

ROM: ROM - normal lumbar spine movements.

Provocative Testing - Bilateral - Straight Leg Raising Test is negative.

Assessment & Plan (Gisele Girault, MD; 9/18/2013 3:53 PM)

Unspecified Diagnosis

Current Plans

Drug Test (80101/G0431)

Baseline drug testing is being performed. Baseline testing is necessary for patient's seeking or modifying treatment involving controlled medications so as to identify the potential presence of illicit substances or substances that may not have been properly disclosed prior to initiating treatment involving controlled medications. Therefore, the patient will undergo drug testing with confirmation. Enzyme immunoassay urine drug testing is being ordered to screen for the following drug classes: amphetamines, barbiturates, benzodiazepines, buprenorphine, cocaine, marijuana, ecstasy, methadone, opiates, oxycodone, and propoxyphene. Confirmation testing using LC/MS will be performed to identify the specific metabolites for the drug classes found to be positive on the immunoassay test. Negative findings for medications prescribed to the patient will also be confirmed by LC-MS, which provides detection of sub-threshold concentrations as patients on lower prescribed doses or drugs that demonstrate poor cross-reactivity with immunoassays (ex, hydrocodone), or who are hypermetabolizers may have concentrations of drugs and metabolites below the detectable threshold of the immunoassay chemistry analyzer. Synthetic medications that are not detectable via enzyme immunoassay will also be tested using LC/MS including: Tramadol, Meperidine, Tapentadol, Fentanyl, Soma, Librium, sleep aids (such as Ambien Sonata) Bath Salts, and synthetic marijuana. Confirming the pertinent positive findings, pertinent negative findings and testing synthetics is medically necessary to accurately assess the absence or presence of medications by eliminating false positive and false negative results and to identify substances that may not have been disclosed. This baseline testing assesses the patient's compliance and is necessary for the protection of the patient's health.

A urine drug test is being ordered and is medically necessary due to considerations of initiating this patient on opioid or sedative hypnotic medications (V58.69). Test will include immunoassay for drug classes and complete confirmation with LOMS.

Encounter for therapeutic drug monitoring (V58.83)

CHRONIC PAIN DUE TO TRAUMA (338.21)

Thoracic vertebral fracture (805.2)

Story: Peasant WM who had a fall off a truck last year and had a T3-T4 vertebral fracture with a closed head injury. He was doing well until he fell off a horse a few weeks ago and he has pain in the same T3-4 area and has severe muscle spasm. He has been on Norco and I am willing to continue this for one month until we get another MRI and Plain film of the Thoracic spine. I am concerned that he has a fracture. He has agreed to do PT and possible TESI after I have the MRI results.

Impression: PLAN:

01/14/2014 08:29 am

William L. Turner DCE

Page 10/11

1. refill Norco fro one month only
2. MRI T spine
3. plain film t-spine
4. possible TEST after MARI
5. back brace
6. tizanidine fro muscle spasms
7. f/u after MRI
8. PT after MRI

Current Plans

- | Started Hydrocodone-Acetaminophen 5-325MG. 1 (one) Tablet every eight hours, #90, 30 days starting 09/18/2013. No Refill
- | MRI OF THORACIC SPINE
- | THORACIC SPINE 2 VIEW X-RAY (72072)
- | I am recommending a thoracic epidural steroid injection
- | I have discussed the procedure with the patient in detail covering the risk, benefits and alternatives. The patient voices understanding and has agreed to proceed with the recommended procedure.
- | I am recommending physical therapy evaluation and treatment
- | The risks and benefits of chronic opioid usage was discussed with the patient. The risk discussed include: addiction, tolerance, constipation, and hypogonadism.
- | A "Controlled Substance Agreement" was given to the patient to read and then explained in detail. After voicing agreement, the patient signed the pain management agreement indicating understanding and agreement to comply.
- | Patient has a painful condition that will be helped by restricting mobility of the trunk to support weak spinal muscles. Thus I am prescribing a lumbar brace (L0637).

Thoracic back pain (724.1)

Signed electronically by Gisele Girault, MD (9/18/2013 3:54 PM)

Laboratories

Drug Test (80101/G0431) Ordered
Diagnosis: Unspecified Diagnosis

Procedures

MRI OF THORACIC SPINE Performed: 09/18/2013 (Ordered)
THORACIC SPINE 2 VIEW X-RAY (72072) Performed: 09/18/2013 (Ordered)

History & Physical Report #3

William L. Turner

9/18/2013 4:05 PM

Location: The Pain Center North East Columbia

Patient #:

DOB:

Married / Language: English / Race: White

Male

The patient is a 27 year old Male.

Assessment & Plan (Gisele Girault, MD; 9/19/2013 12:58 PM)

Thoracic vertebral fracture (805.2)

Story: Peasant WM who had a fall off a truck last year and had a T3-T4 vertebral fracture with a closed head injury. He was doing well until he fell off a horse a few weeks ago and he has pain in the same T3-4 area and has severe muscle spasm. He has been on Norco and I am willing to continue this for one month until we get another MRI and Plain film of the T-spine. I am concerned that he has a fracture. He has agreed to do PT and possible TESI after I have the MRI results.

Impression: PLAN:

1. refill Norco for one month only
2. MRI T spine
3. plain film t-spine
4. possible TESI after MRI
5. back brace
6. tizanidine for muscle spasms
7. f/u after MRI
8. PT after MRI

Current Plans

- 1 Started Diclofenac Sodium 75MG, 1 (one) Tablet DR two times daily, #60, 30 days starting 09/19/2013, No Refill.
- 1 Started TIZANidine HCl 2MG, 1 (one) Capsule three times daily, #90, 30 days starting 09/19/2013, No Refill.

Signed electronically by Gisele Girault, MD (9/19/2013 12:58 PM)

History & Physical Report #2

William L. Turner
9/18/2013 3:52 PM
Location: The Pain Center North East Columbia
Patient #:
DOB:
Married / Language: English / Race: White
Male

The patient is a 27 year old Male.

Signed electronically by Gisele Gault, MD (9/18/2013 3:55 PM)

History & Physical Report #5

William L. Turner

10/17/2013 3:58 PM

Location: The Pain Center North East Columbia

Patient #:

DOB:

Married / Language: English / Race: White

Male

History of Present Illness (Fonda Wilkins, NP; 10/17/2013 4:23 PM)

The patient is a 27 year old male who presents with a complaint of Pain. The onset of the pain has been injury and has been occurring in a persistent pattern for 1 year. The course has been recurrent. The pain is characterized as aching, burning, pressure, throbbing and tightness. The pain is described as being located in the upper back and lower back. The patient describes the pain as 7 out of 10. The pain does not radiate. The pain is precipitated by trauma. The symptoms are aggravated by exertion, weight lifting and prolonged standing. The symptoms have no relieving factors.

Additional reason for visit:

Neck pain is described as the following:

The onset of the neck pain has been sudden and has been occurring in a persistent pattern for 1 year. The course has been recurrent. The neck pain is described as a severe cramping. The neck pain is described as being located in the midline of neck and upper shoulders and radiating to the into right shoulder and into left shoulder. The patient describes the pain as 6 out of 10. Aggravating factors have included twisting, lifting, position of arm, flexion and extension. There have been no relieving factors.

Allergies (ANIKA SCOTT; 10/17/2013 3:58 PM)

No Known Drug Allergies. 09/18/2013

Past Surgical History (ANIKA SCOTT; 10/17/2013 3:58 PM)

Neck Surgery

Family History (ANIKA SCOTT; 10/17/2013 3:58 PM)

The mother is living

The father is living

Social History (ANIKA SCOTT; 10/17/2013 3:58 PM)

Tobacco Use. Current every day smoker.

No Drug Use

Non Drinker/No Alcohol Use

Marital status. Married.

Exercise. Light

Highest Education Level Attained. High school graduate.

Most recent primary occupation. Construction trade.

Other Problems (ANIKA SCOTT; 10/17/2013 4:22 PM)

Thoracic vertebral fracture (805.2). Peasant WM who had a fall off a truck last year and had a T3-T4 vertebral fracture with a closed head injury. He was doing well until he fell off a horse a few weeks ago and he has pain in the same T3-4 area and has severe muscle spasm. He has been on Norco and I am willing to continue this for one month until we get another MRI and Plain film of the T0 spine. I am concerned that he has a fracture. He has agreed to do PT and possible TESI after I have the MRI results.

Encounter for therapeutic drug monitoring (V58.83)

Unspecified Diagnosis

Thoracic back pain (724.1)

CHRONIC PAIN DUE TO TRAUMA (338.21)

Review of Systems (ANIKA SCOTT; 10/17/2013 4:12 PM)

General: Not Present- Chills, Fatigue, Fever, Night Sweats and Weight Loss.

Skin: Not Present- Rash.

HEENT: Not Present- Visual Disturbances, Hearing Loss, Ear Pain, Sore Throat and Facial Numbness/Tingling.

Neck: Present- Neck Pain and Neck Stiffness.

Respiratory: Not Present- Cough, Wheezing and Dyspnea.

Cardiovascular: Not Present- Chest Pain, Palpitations and Difficulty Breathing On Exertion.

Gastrointestinal: Not Present- Abdominal Pain, Change in Bowel Habits, Constipation, Diarrhea, Difficulty Swallowing, Nausea and Vomiting.

Male Genitourinary: Not Present- Urgency and Painful Urination.

Musculoskeletal: Present- See HPI, Back Pain, Backache, Decreased Range of Motion, Neck Pain and Tenderness.

Neurological: Not Present- Confusion, Dizziness, Fainting, Personality Changes, Seizures, Vertigo and Weakness.

Psychiatric: Not Present- Hallucinations, Memory Loss and Panic Attacks.

Endocrine: Not Present- Cold Intolerance, Excessive Sweating and Excessive Thirst.

Hematology: Not Present- Abnormal Bleeding and Easy Bruising.

Vitals (ANIKA SCOTT; 10/17/2013 4:11 PM)

10/17/2013 4:11 PM

Weight: 137 lb Height: 66 in
Body Surface Area: 1.7 m² Body Mass Index: 22.11 kg/m²
Pain Level: 7/10
Pulse: 87 (Regular) Resp: 12 (Unlabored)
BP: 133/92 (Sitting, Left Arm, Standard)

Physical Exam (Fonda Wilkins, NP; 10/17/2013 4:30 PM)

The physical exam findings are as follows:

General

Mental Status - Alert. **General Appearance** - no acute distress and Well groomed. **Orientation** - Oriented X3. **Build & Nutrition** - Well nourished. **Gait** - Normal.

Integumentary

General Characteristics: Overall examination of the patient's skin reveals - no rashes and no suspicious lesions. **Color** - normal coloration of skin. **Skin Moisture** - normal skin moisture.

Head and Neck

Head - normocephalic, atraumatic.
Trachea - midline.

Chest and Lung Exam

Chest and lung exam reveals - normal excursion with symmetric chest walls and quiet, even and easy respiratory effort with no use of accessory muscles.

Cardiovascular

Cardiovascular examination reveals - (see Vital Signs section for blood pressure measurements) and no digital clubbing, cyanosis, edema, increased warmth or tenderness. Note: Upper extremity pulses are 2+ bilaterally symmetrical LE pulses are 2+ and bilaterally symmetrical

Note: RRR no murmurs

Abdomen

Palpation/ Percussion: Palpation and Percussion of the abdomen reveal - Non Tender.

Neurologic

Sensory:

Light Touch: Intact - Globally.

Overall Assessment of Muscle Strength and Tone reveals:

Upper Extremities: Right Deltoid - 5/5. Left Deltoid - 5/5. Right Bicep - 5/5. Left Bicep - 5/5. Right Tricep - 5/5. Left Tricep - 5/5.
Right Wrist Extensors - 5/5. **Left Wrist Extensors** - 5/5. **Right Intrinsic** - 5/5. **Left Intrinsic** - 5/5.
Lower Extremities: Right Quadriceps - 5/5. Left Quadriceps - 5/5. Right Tibialis Anterior - 5/5. Left Tibialis Anterior - 5/5. Right Gastroc-Soleus - 5/5. Left Gastroc-Soleus - 5/5. Right EHL - 5/5. Left EHL - 5/5.
Reflexes (Dermatomes): 2/2 Normal - Afl.

Note: CN II-XII grossly intact

Neuropsychiatric

The patient's mood and affect are described as - normal.

Musculoskeletal

Spinal Exam:

Cervical Spine:

Inspection and Palpation: Tenderness - no tenderness or pain on palpation (flexion and extension FROM).

ROM: Cervical ROM - normal cervical spine movements.

Strength and Tone: Strength & Tone - normal strength and tone, no laxity or crepitus.

Thoracic (Dorsal) Spine:

Inspection and Palpation: Tenderness - moderate and generalized. **Swelling** - none.

Lumbosacral Spine:

Inspection and Palpation: **Swelling** - no swelling, edema or erythema of surrounding tissue. **Tenderness** - mild and generalized.

ROM: ROM - normal lumbar spine movements.

Provocative Testing - Bilateral - Straight Leg Raising Test is negative.

Assessment & Plan (Fonda Wilkins, NP; 10/17/2013 4:23 PM)

Thoracic vertebral fracture (805.2)

Story: Peasant WM who had a fall off a truck last year and had a T3-T4 vertebral fracture with a closed head injury. He was doing well until he fell off a horse a few weeks ago and he has pain in the same T3-4 area and has severe muscle spasm. Reviewed his MRI with Dr Girault and then with pt, and we will proceed with TESI series. Norco discontinued.

Impression: PLAN:

1. D/C Norco
2. MRI T spine reviewed with pt
3. PT referral
4. TESI series
5. back brace
6. continue tizanidine
7. continue Diclofenac

B/f/u 4 weeks

Current Plans

- | Continued Diclofenac Sodium 75MG, 1 (one) Tablet DR two times daily, #60, 30 days starting 10/17/2013, No Refill.
- | Continued TIZANIDINE HCl 2MG, 1 (one) Capsule three times daily, #90, 30 days starting 10/17/2013, No Refill.
- | Patient has a painful condition that will be helped by restricting mobility of the trunk to support weak spinal muscles. Thus I am prescribing a lumbar brace (L0637).
- | I am recommending a thoracic epidural steroid injection.
- | We reviewed the MRI report with the patient today. Questions were answered. A copy of the report is to be scanned into the patient's chart.
- | Reports reviewed

Completed and submitted for review by Fonda Wilkins NP (10/17/2013 4:30 PM)

Signed electronically by Gisele Girault, MD (10/18/2013 7:43 AM)

History & Physical Report #4

William L. Turner

9/18/2013 4:12 PM

Location: The Pain Center North East Columbia

Patient #:

DOB:

Married / Language: English / Race: White

Male

The patient is a 27 year old Male.

Signed electronically by Gisele Gault, MD (9/19/2013 12:49 PM)

Moore Orthopaedics
14 Medical Park, Suite 200
Columbia, South Carolina 29203
18032278170 Phone / 18032278270 Fax

10/29/2012

WILLIAM TURNER -

Richland Office

HISTORY:

Mr. Turner is here for evaluation of some high thoracic, low cervical pain. He had a fall out of truck back in April. He does have a MRI which seems to indicate some superior endplate injuries at the level of T3/T4. He has not worked since primarily because he had some seizures associated with this and that is why he cannot return to work but he has been doing a lot of work around the house including a lot of farming and building a house and he has not been limited by his back pain. He actually notes that the back pain feels better when he is working. He has no numbness, no tingling, no weakness in his extremities.

PAST MEDICAL, SURGICAL, FAMILY HISTORY, REVIEW OF SYSTEMS, MEDICATIONS, ALLERGIES, SOCIAL HISTORY: Please see the scanned Moore Intake Form dated October 29, 2012 and reviewed by me today in the clinic.

PHYSICAL EXAMINATION: The patient has good cervical range of motion with just a little stiffness. No impressive pain. He has lots of tenderness to deep palpation in his traps and rhomboids and even cervical paraspinal as well as in the midline of his thoracic and lower cervical spine. Intact sensation to light touch and pressure in all dermatomes in the upper extremities. 5/5 strength in all muscle groups in the upper extremities. Good perfusion and capillary refill in his digits. Good radial pulses bilaterally. Well-nourished, 26-year-old male in no acute distress.

RADIOGRAPHS:

MRI collected previously as described. With regards to his cervical and thoracic spine we did do some images of that today. With regards to AP and lateral of the cervical spine, relatively well maintained disc spaces. No signs of listhesis. No signs of fracture. No impressive signs of pathology. Cervical lordosis is well maintained on the AP, lateral and obliques. With regard to his thoracic spine, AP and lateral films show no impressive signs of fracture, listhesis or other bony abnormality. Some of the fine details are obscured by pulmonary artifact.

PLAN:

I think he has some myofascial pain related to his fall. He has a lot of muscle tightness. I did offer a trigger point injection which he declined. We are going to try a little physical therapy for some soft tissue work and mobilization, stretching, strengthening and posture, etc. I will see him back in about four weeks. I am comfortable with him returning to work but he is going to be held out according to his other doctor's recommendations for his seizures which is very appropriate. I will see him back in about four weeks.

David A. Scott, MD

CC List: Alan Peterson Jr, MD

DAS:ats7

DD: 10/29/2012 DT: 10/30/2012 13:07:19

Moore Orthopaedics
14 Medical Park, Suite 200
Columbia, South Carolina 29203
18032278170 Phone / 18032278270 Fax

10/29/2012

WILLIAM TURNER -

Richland Office

243487

This document was electronically authenticated by David A. Scott, MD on 10/30/2012 16:36:46.



SOUTH CAROLINA DIAGNOSTIC IMAGING

Palmetto Imaging Downtown
1331 Lady Street, Columbia, SC 29201
p: (803) 256-7646 f: (803) 256-6546

PATIENT: TURNER, WILLIAM
DOB:
MRN:
PHYSICIAN: GISELE J GIZMUT, MD
EXAM DATE: 10/01/2013

EXAM: MR-Thoracic Spine Without Contrast

REASON FOR EXAM: Back pain

TECHNIQUE: The following sequences were obtained on a Siemens 1.5 Tesla magnet: Screening sagittal T2 of the cervical spine, coronal T2, sagittal T1, T2, STIR, axial T1 and T2.

FINDINGS: The conus is seen at L1 and appears normal. The L1-2 and T12-L1 discs are well maintained. The T11-12 disc is well maintained. The T10-11 is well maintained. At T9-10, there is a non-acute Schmorls node seen into the inferior endplate of T9 and disc desiccation without stenosis. At T8-9, there is mild facet arthropathy bilaterally. At T7-8, there is loss of disc height and signal consistent with disc desiccation. There is no significant disc bulge. At T6-7, there is a Schmorls node seen in the inferior endplate of T6. At T4-5, there is facet arthropathy, right greater than left. At T3-4, the disc is well maintained. There is a small non-acute Schmorls node at T4-5 into the superior endplate of T5. At T2-3, there is loss of disc height and signal with mild posterior bulging of the disc without stenosis.

CONCLUSION: Numerous non-acute Schmorls nodes with disc desiccation.

Robin Daum Kowalski, MD

RD/kp

DD: 10/02/2013 09:16 A

DT: 10/02/2013 11:13 A

Accession#: 08-1706201 VS#: 11555226 CS#: 508564

cc:

Electronically Signed and Reviewed by Robin Daum Kowalski, MD 10/02/2013 11:37 A

IMAGECARE, LLC

**710 RABON ROAD
COLUMBIA, SC 29203
803-462-3680**

Name: Turner, William L Jr
Patient ID:
DOB:
Acc#:
Patient Phone #: (803)

Exam Date: 07/17/2012
Exam: MRI T-spine w/o contrast
Reason: PAIN IN BACK (724.5)
Referrer: Peterson, Alan

PROCEDURE: MRI of the thoracic spine without contrast, initial exam

CLINICAL HISTORY: Thoracic pain since falling from truck several months ago

TECHNIQUE: 3.9 mm sagittal composed T2-weighted images of the entire spine were obtained with 3 mm sagittal T1, T2, and T2 STIR images of the thoracic spine and 3 mm axial 3-D gradient echo T2 weighted images of the thoracic spine.

FINDINGS: On the composed sagittal T2-weighted images of the entire spine, normal anatomic alignment of the cervical, thoracic, and lumbosacral spine segments is noted. Very mild chronic appearing fracture deformities of the anterior superior endplates of T3 and T4 are noted with no kyphosis or scoliosis or retropulsion of bone into the spinal canal at either level. The remaining thoracic vertebral segments, discs, and spinal cord are normal in appearance with no soft tissue abnormalities of the adjacent paraspinal soft tissues. The cervical spine segments and discs and lumbosacral spine segments and discs appear normal on the composed sagittal images.

IMPRESSION: (1) Mild old healed fracture deformities of the anterior superior endplates of T3 and T4 are noted without associated kyphosis or scoliosis with the remainder of the exam normal in appearance.

(2) The cervical and lumbosacral spine segments and discs are normal in appearance on the sagittal composed images.

Martin P. Dommers, M.D.
Electronic Signature
Date Finalized: 07/18/2012

DD: 07/17/2012 DT:07/18/2012

Sandhills Medical Foundation-Lugoff

40 Baldwin Ave
Lugoff, SC 29078
Phone: 803-408-3262
Fax: 803-408-8895

William Turner, Jr

Patient #: _____

DOB: _____ (MM/DD/YYYY)

Date of Encounter: 03/27/2012 02:39 PM

History of Present Illness

Meha Minhas, MD 03/27/2012 05:11 PM

Patient words: here today for mid and lower back pain x 3 days. Advil taken for pain but no relief.

The patient is a 26 year old male who presents with a complaint of Low back pain. The onset of the low back pain has been sudden and has been occurring in a persistent pattern for 3 days. The course has been constant. The pain is located in the lower back and is described as dull aching. There is no radiation. The back pain is aggravated by nothing. There has been no use of assistive devices. Note for "Low back pain": pt works in construction and also has been lifting logs.

History

Cynthia Michad, LPN 03/27/2012 07:39 PM

Allergy

Allergy History Unknown

Review of Systems

Meha Minhas, MD 03/27/2012 05:11 PM

General: Present- Feeling well. Not Present- Fatigue and Fever.

Respiratory: Not Present- Cough and Difficulty Breathing.

Cardiovascular: Not Present- Chest Pain, Shortness of Breath and Swelling of Extremities.

Gastrointestinal: Not Present- Abdominal Pain, Heartburn and Indigestion.

Musculoskeletal: Present- Back Pain.

Neurological: Not Present- Difficulty Speaking, Headaches and Weakness.

Psychiatric: Not Present- Anxiety and Depression.

Vital Signs

Date:	03/27/2012 02:40 PM	Height:	66 in	Note: -
Temperature:	97 °F	Weight:	137 lb	
Pulse:	91	Waist:		
Respirations:	20	BMI:	22.11 kg/m ²	
Peak Flow:		BSA:	1.7 m ²	
Blood Pressure:	119/78			
Reading Type:	Manual			

Physical Exam

Meha Minhas, MD, 03/27/2012 05:15 PM

General

Mental Status - Alert. **General Appearance** - Cooperative and Well groomed. **Build & Nutrition** - Well nourished. **Posture** - Normal posture. **Gait** - Normal. **Hydration** - Well hydrated.

Chest and Lung Exam

Chest and lung exam reveals - on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Cardiovascular

Cardiovascular examination reveals - normal heart sounds, regular rate and rhythm with no murmurs.

Abdomen

Inspection: Inspection of the abdomen reveals - No Visible peristalsis.

Palpation/Percussion: Palpation and Percussion of the abdomen reveal - Non Tender, No Rebound tenderness and No Rigidity (guarding).

Auscultation: Auscultation of the abdomen reveals - Bowel sounds normal.

Neurologic

Neurologic evaluation reveals - alert and oriented x 3 with no impairment of recent or remote memory, pupils equal and reactive to light and accommodation and symmetrical functioning of facial nerves. **Meningeal Signs** - None.

Musculoskeletal

Spine

Other Characteristics - Tenderness over lumbar vertebra.

Assessment & Plan (Meha Minhas, MD; 03/27/2012 05:16 PM)

LUMBAGO (724.2)

will need a x ray if not better in 4-6 weeks.

Plans:

Flexeril 5MG, 1 Tablet two times daily, #60, 03/27/2012, No Refill. Active.

Ultram 50MG, 1 Tablet two times daily, #60, 03/27/2012, No Refill. Active.

FOLLOW-UP AS NEEDED

Meha Minhas MD

Meha Minhas MD

Tuesday, May 14, 2013

Page 2/2

Page: 8/12

To: 18037480526

- 110-25-

P202

MAY-19-2013 12:58 From:

Sandhills Medical Foundation-Lugoff

40 Baldwin Ave
Lugoff, SC 29078
Phone: 803-408-3262
Fax: 803-408-8895

William Turner, Jr

Patient #:

DOB:

Date of Encounter: 04/16/2012 10:18 AM

History of Present Illness

Meha Minhas, MD 05/16/2012 10:41 AM

Patient words: Pt is in for a follow up on back pain

The patient is a 26 year old male who presents with a complaint of Low back pain. The onset of the low back pain has been sudden and has been occurring in a persistent pattern for 3 days . The course has been constant . The pain is located in the lower back and is described as dull aching . There is no radiation . The back pain is aggravated by nothing . There has been no use of assistive devices . Note for "Low back pain": pt works in construction and also has been lifting logs. Pt now has pain in the upper back as well.

History

There is no documented history at this time.

Review of Systems

Meha Minhas, MD 05/16/2012 10:37 AM

General: Not Present- Fatigue, Feeling well and Fever.
Respiratory: Not Present- Cough and Difficulty Breathing.
Cardiovascular: Not Present- Chest Pain, Shortness of Breath and Swelling of Extremities.
Gastrointestinal: Not Present- Abdominal Pain, Heartburn and Indigestion.
Musculoskeletal: Present- Back Pain.
Neurological: Not Present- Difficulty Speaking, Headaches and Weakness.
Psychiatric: Not Present- Anxiety and Depression.

Vital Signs

Date:	04/16/2012 10:23 AM	Height:	66 in	Note: -
Temperature:	97.5 °F	Weight:	135 lb	
Pulse:	107	Waist:		
Respirations:	18	BMI:	21.79 kg/m ²	
Peak Flow:		BSA:	1.69 m ²	
Blood Pressure:	112/73			
Reading Type:	Manual			

Physical Exam

Meha Minhas, MD, 05/16/2012 10:38 AM

General

Mental Status - Alert, **General Appearance** - Cooperative and Well groomed, **Build & Nutrition** - Well nourished, **Posture** - Normal posture, **Gait** - Normal, **Hydration** - Well hydrated.

Chest and Lung Exam

Chest and lung exam reveals - on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Cardiovascular

Cardiovascular examination reveals - normal heart sounds, regular rate and rhythm with no murmurs.

Abdomen

Inspection: Inspection of the abdomen reveals - No Visible peristalsis.

Palpation/Percussion: Palpation and Percussion of the abdomen reveal - Non Tender, No Rebound tenderness and No Rigidity (guarding).

Auscultation: Auscultation of the abdomen reveals - Bowel sounds normal.

Neurologic

Neurologic evaluation reveals - alert and oriented x3 with no impairment of recent or remote memory, pupils equal and reactive to light and accommodation and symmetrical functioning of facial nerves. **Meningeal Signs** - None.

Musculoskeletal

Spine

Other Characteristics - Tenderness between thoracic vertebra and Tenderness over lumbar vertebra.

Assessment & Plan (Meha Minhas, MD; 04/16/2012 04:44 PM)

LUMBAGO (724.2)

Plans:

LOWER SPINE, MIN 4 VIEWS X-RAY (72110) Routine

THORACIC SPINE 3 VIEW X-RAY (72072) Routine

Neurontin 300MG, 1 Capsule three times daily, #90, 04/16/2012, Ref. x3. Active.

Ultram ER 100MG, 1 Tablet ER 24HR two times daily, #60, 04/16/2012, Ref. x2. Active.

Meha Minhas MD

Meha Minhas MD

Procedure

DIAGNOSTIC X-RAY

William Turner, Jr

Final, Reviewed

Diagnosis:

Ordered by Meha Minhas, MD on 4/16/2012 (Routine)

Performed on 4/16/2012 12:43 PM

Reviewed by Meha Minhas, MD on 4/16/2012

Comments: See Note (Outpatient)

Patient: TURNER, WILLIAM LEE

Age:

Sex:

DOB:

Serv D/Tm: 04/16/12 / Ord Dr: MINHAS, MEHA MD MRN: M000342956

Loc: WWRAD Rm/Bcd: Accl #: K10000888210

Status: REG CLI Req #: 12-0015807

[rep ct name]
[rep ct add1]
[rep ct city st zip]

Report Status: Draft

REASON FOR EXAM: LUMBAGO

THORACIC SPINE (THREE VIEWS) 4-16-12

Three views reveal minimal scoliosis convex to the left, minimal degenerative disc disease changes at several levels. No acute osseous abnormalities are seen.

LUMBAR SPINE (THREE VIEWS)

Three views reveal minimal degenerative disc disease changes at L1-2 and L3-4, minimal degenerative facet joint changes at L4-5 and L5-S1.

IMPRESSION: MINIMAL DEGENERATIVE CHANGES AS DESCRIBED ABOVE.

Dictated by: DONALD J COPLEY MD

Trans by: GLD

Trans date/time: 04/16/12 1243

)

Emergency Dept

TURNER, WILLIAM L - B000865692

Result type: Emergency Dept
Result date: 17 April 2012 13:14
Result status: Auth (Verified)
Result title: Emergency Dept
Performed by: Robinson MD; John G on 17 April 2012 13:14
Verified by: Robinson MD, John G on 21 April 2012 13:38
Encounter info: B1210801645, Baptist, ERB-Emergency Room, 04/17/12 - 04/17/12
Contributor system: Softmed

Emergency Dept

PLACE OF VISIT: Baptist Emergency Department

MODE OF ARRIVAL: Ambulatory.

CHIEF COMPLAINT: Screening exam.

HISTORY OF PRESENT ILLNESS: This is a 26-year-old male who was brought in by family. They were concerned because he had low back pain. The patient states he strained his back lifting some heavy logs last week. He was seen in the emergency department last week and started on Flexeril and Ultram. He had a few episodes of diarrhea and earlier this week, he was not urinating very much, but he states he urinated 4 times yesterday. He has urinated today with any problems. He has no abdominal pain. His back pain is minimal at this time. He denies any bowel or bladder incontinence. Denies any extremity paresthesias or weakness. The pain is bilateral low back, does not radiate anywhere else. He felt a little bit up in the left scapular area yesterday but that resolved. His mother was concerned because he had some diarrhea before. They he might be dehydrated. The patient states he urinated right before he came to the emergency department.

REVIEW OF SYSTEMS: No hematochezia or melena. No abdominal pain. No dysuria. Vomiting 1 time yesterday. None since then, none before that. No fever, no bowel or bladder incontinence. No extremity weakness or paresthesias. No abdominal pain. The rest of the review of systems has been reviewed as otherwise unremarkable. He denies any urinary hesitancy. He does not feel like he has to urinate but cannot do so. He just states he does not have to right now.

FAMILY HISTORY: Diabetes.

SOCIAL HISTORY: He is married. He works on log houses. Uses tobacco. No alcohol or drug use.

PAST SURGICAL HISTORY: None.

PAST MEDICAL HISTORY: No significant illnesses.

Printed by: Hamlin, Brenda F
Printed on: 04/26/13 10:26

Page 1 of 3
(Continued)

ALLERGIES: No known drug allergies.

MEDICATIONS: He has been on Ultram and Flexeril for a back strain, seen in the emergency department in Hartsville.

PHYSICAL EXAMINATION: Vital Signs: Presentation is as follows. Temperature 96.1, pulse 94, respirations 16, blood pressure 119/86, satting 100 percent room air. General: He is a well-nourished, well-developed, thin white male in no acute pulmonary or vascular stress, nontoxic in appearance, alert, and oriented x3. He is ambulating without difficulty. HEENT: The head is normocephalic, atraumatic. Eyes: Pupils equal, round, reactive to light. All extraocular motions are intact. The oropharynx is clear, moist, and pink. Neck: Supple. No lymphadenopathy. No thyromegaly is noted. Lungs: Clear to auscultation bilaterally. Cardiovascular: Regular rate and rhythm. No murmurs, rubs, gallops. Two-plus radial pulses bilaterally. Abdomen: Positive bowel sounds, soft, nondistended, nontender. No palpable masses. Musculoskeletal: Full, pain-free, active range of motion in all major joints and all 4 extremities. No areas of erythema, edema, or tenderness.

Back: Some mild paraspinal tenderness only. No tenderness of the spine. Full range of motion throughout the spine and the back with negative straight-leg raise bilaterally. Neurological: 5/5 strength in all myotomes and all 4 extremities with 2-plus symmetrical reflexes in the patella. Skin: Warm and dry. No rashes, lesions, bruising, petechia, or ecchymosis noted.

EMERGENCY DEPARTMENT COURSE/MEDICAL DECISION MAKING: The patient was brought in. The family is concerned he is dehydrated. The patient is a young male who is alert and oriented, has virtually no complaints other than some mild low back pain that he states is a muscle strain and is getting better after treatment. His exam is very unremarkable. I do not find anything significantly abnormal on exam, including a normal neurological exam. No evidence of fracture. I do not think he needs any x-rays. His wife and his mother keep interjecting, stating he vomited 1 time last week, he had diarrhea a couple days ago. They told me the pharmacist told him he may have these as side effects. They want to know if these are side effects or is it a virus. Could he of had a virus twice? I almost got overwhelmed by the family members, and it seemed at some point, they were trying to forge a diagnosis, and the patient seemed to be very upset about this too. I think a happy medium at this time is to check a couple of basic labs; a CBC to look for any significant changes as well as a Chem-7 to look for any electrolyte abnormalities to suggest significant dehydration or electrolyte change as well as his renal function. We will also check urinalysis. Again, I do not see any evidence of any acute abdominal process requiring CT scan. This does not sound like kidney stones. He states he is

Emergency Dept

TURNER, WILLIAM L - B000865692

able to urinate, just did not have to, but he urinated right before he came in here, and his exam is otherwise completely normal, and otherwise I do not see any indication for any other workup.

LABORATORY RESULTS: CBC is normal. Chem-7 is normal, including a normal creatinine 0.6.

EMERGENCY DEPARTMENT COURSE: He was given 1 L normal saline bolus. He was unable to void. He states he has a bit of a social anxiety where he can not urinate in public places and the family attests to this, and he would just like to be discharged. If he has worsening symptoms to return. The family is comfortable with this. I found no other problems. At this point, I am going to discharge him. If he has worsening symptoms, he is to return.

IMPRESSION:

1. Acute back pain.
2. Vomiting.

DISPOSITION: Discharged from the emergency department. Comprehensive instructions by FirstNet provided. Follow up with primary care physician in 2 to 4 days. Return immediately for any worsening symptoms or any other concerns.

D: 04/17/2012 15:52 T: 04/17/2012 13:14 TID: lc
Job #: 16263 Doc #: 10158723
cc: John Galt Robinson, MD

Signature Line

Electronically Signed & Verified on 04/21/2012 13:38
by Robinson MD, John G

Completed Action List:

- * Perform by Robinson MD, John G on 17 April 2012 13:14
- * Sign by Robinson MD, John G on 21 April 2012 13:38 Requested on 17 April 2012 19:25
- * VERIFY by Robinson MD, John G on 21 April 2012 13:38

Printed by: Hamlin, Brenda F
Printed on: 04/26/13 10:26

Page 3 of 3
(End of Report)

Emergency Dept

TURNER, WILLIAM - R015362186

Result type: Emergency Dept
 Result date: 19 April 2012 19:14
 Result status: Auth (Verified)
 Result title: Emergency Dept
 Performed by: Mullins MD, James T on 19 April 2012 19:14
 Verified by: Ridley MD, Stephen F on 23 April 2012 00:57
 Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

Emergency Dept (Verified)

PATIENT: TRAUMA, M120297
 MR #: DICT: James Mullins, MD-R
 ADMITTED: 04/19/2012
 ACCOUNT #: PT.LOC: STU

DATE OF VISITATION: 04/19/2012

ACCOUNT NUMBER:

ATTENDING PHYSICIAN: Stephen F. Ridley, MD

CHIEF COMPLAINT: Fall.

MODE OF ARRIVAL: EMS.

HISTORY OF PRESENT ILLNESS: This patient is a 27-year-old Caucasian male who was involved in a fall coming off of a ladder from questionable 10-15 feet with landing directly on his head. Patient was noted to have a GCS of 3 upon arrival, was a trauma 911. Patient was seizing en route. He did receive Ativan and presented with a GCS of 3 upon arrival here in the emergency department.

REVIEW OF SYSTEMS: Unable to obtain.

PAST MEDICAL HISTORY: Unable to obtain.

PAST SURGICAL HISTORY: Unable to obtain.

MEDICATIONS: Unable to obtain.

SOCIAL HISTORY: Unable to obtain.

ALLERGIES: Unable to obtain.

PHYSICAL EXAMINATION:

VITAL SIGNS: Heart rate 94, respirations 20, [] at 100, BP 160/101 original.

GENERAL APPEARANCE: Patient is unresponsive with GCS of 3.

NEUROLOGIC: GCS of 3 and unresponsive to pain.

EYES: Deviated up and lateral and unresponsive originally.

ENT: Mucous membranes are moist. TMs are clear.

Printed by: Canley, Precious K
 Printed on: 05/17/12 10:34

Page 1 of 3
 (Continued)

Emergency Dept

TURNER, WILLIAM - R015362186

RESPIRATORY: Lungs are clear bilaterally, symmetric chest rise, no wheezes, rales or rhonchi.

CARDIOVASCULAR: S1, S2, no murmurs or gallops. Distal pulses are intact.

GASTROINTESTINAL: No abdominal tenderness to cough, no rebound or guarding, positive bowel sounds, no signs of organomegaly.

MUSCULOSKELETAL: No cyanosis or clubbing noted. No deformities were noted.

SKIN: Void of all rashes, bruises, lesions.

MEDICAL DECISION MAKING: This patient will be evaluated for trauma 911. Due to patient's complaints and risk of complications, a thorough physical exam was done to effect an efficient evaluation.

LABORATORY DATA: Trauma 911 labs are pending at this time, as well as an ABG.

ED COURSE: Patient was seen immediately upon arrival by myself for trauma 911. Due to patient status of fall with GCS of 3 with deviation, we did think the airway was most pertinent; we did intubate the patient here in the trauma bay used an 8-0 tube and was placed to 24. This was done by myself.

PROCEDURE NOTE: After noting the patient had a GCS of 3, we then used lidocaine 100 mg as well as etomidate 30 and 150 of []. We did intubate the patient on first attempt with 8-0 tube and was placed at 24. Cuff was inflated, had good color change, no complications.

At that point, we did get bilateral breath sounds, circulation was intact. Patient was not doing anything in terms of responding to pain, was not moving any of his extremities and was not actively seizing; however, at this point we are doing trauma 911 scans. We will continue to monitor this patient and he will be admitted to the trauma team for further care. We do suspect this is most likely a head injury, neck; and at this point, patient will be admitted.

DIAGNOSTIC IMPRESSION: Trauma 911 with concern of head and/or neck injury.

DISPOSITION: Patient will be admitted.

Patient was discussed with Dr. Ridley.

D: 04/19/2012 18:02 T: 04/19/2012 19:14 TID: kf
Job #: 81905 Doc #: 40921063
cc: James Mullins, MD-R
Stephen F. Ridley, MD

I was present with the resident during the history and exam. I discussed the case with the resident and agree with the findings and plan as documented in the resident's note. I supervised all above procedures done by the resident.

Printed by: Cantey, Precious K
Printed on: 05/17/12 10:34

Page 2 of 3
(Continued)

93721

PALMETTO HEALTH RICHLAND
5 Richland Medical Park Drive
Columbia, SC 29203
(803) 434-7000

William Turner

CONSULTATION REPORT

PATIENT: TRAUMA, M120297 DICT: Joseph Anton Wehner, PA
MR #: DOB:
ADMITTED: 04/19/2012 PT.LOC: STU^0527^01^R^^

DATE OF CONSULTATION: 04/19/2012

TIME OF CONSULTATION: 7:00 p.m.

ATTENDING PHYSICIAN: Sharon W. Webb, MD

REFERRING PHYSICIAN: Mark A Jones, MD

REASON FOR CONSULT: Fall.

HISTORY OF PRESENT ILLNESS: Trauma Male 120297 is a 23-year-old white male who fell off the back of a truck approximately 4 or 5 feet, striking his head. The patient was brought to the emergency department in transfer from another facility where he was conscious, alert, and oriented x3. Upon his arrival here, he had a GCS of 3.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: None.

MEDICATIONS: No daily medications.

ALLERGIES: No known drug allergies.

FAMILY HISTORY: Positive for diabetes and coronary artery disease.

SOCIAL HISTORY: He is married and lives with his wife. He smokes cigarettes. Denies alcohol and drug use per the wife. He works as a construction worker.

REVIEW OF SYSTEMS: A 13-point review of systems is also negative per the wife. He was feeling fine today.

PHYSICAL EXAMINATION:

VITAL SIGNS: A heart rate of 112, pulse ox 100 percent, blood pressure 156/96, and at this time he has a GCS of 9E3 V11 M5.

PATIENT: TRAUMA
MR #:
Patient Type:

CONSULTATION REPORT
Page 1 of 2

PALMETTO HEALTH RICHLAND
5 Richland Medical Park Drive
Columbia, SC 29203
(803) 434-7000

NEUROLOGIC: Review of cranial nerves: Unable to obtain due to patient's condition. Pupils 4 mm and reactive. Sensation appears to be intact to his upper and lower extremities. Motor: He moves all extremities equal and well. Unable to evaluate proprioception, coordination or pronator drift due to patient's condition.
HEENT: Nares are patent. Trachea is midline. C-collar is in place. Several abrasions noted.
PULMONARY: Even, clear, and nonlabored. He is intubated.
CARDIOVASCULAR: Regular rate and rhythm.
ABDOMEN: Soft and not distended.
MUSCULOSKELETAL: No obvious deformities noted.
SKIN: Warm and dry.

LABORATORY DATA: PT of 17.3, INR of 1.3. Sodium is 147. Potassium is 3.7.

IMAGING: Reports reviewed and personally reviewed images. CT of the cervical spine: No fractures noted. CT of the head: Two areas of small subdural blood noted. CT of the chest, abdomen and pelvis: Possible thoracic 3 and 4 endplate fractures, unknown if it is acute or chronic.

IMPRESSION:

1. Subdural hematoma.
2. T3 fracture.
3. T4 fracture.

PLAN: We _____ the patient with Keppra. Repeat a head CT in 6-8 hours.

The patient was also evaluated by Dr. Sharon Webb.

D: 04/19/2012 21:29 T: 04/19/2012 18:41 TID: cc
Job #: 82073 Doc #: 10258622
cc: Joseph Anton Wehner, PA
Sharon W. Webb, MD
Mark A Jones, MD

PATIENT: TRAUMA
MR #:

CONSULTATION REPORT
Page 2 of 2



Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203

To: N/A
N/A
N/A, N/A
N/A, N/A N/A

Patient: TURNER, WILLIAM L
Address:
Phone:
DOB: Age:

Ord Phy: Maxey MD, Melissa
FIN: R1211002353
Pt Type: IPR-Inpatient
MRN: R015379577
CC:

RADIOLOGY SERVICES

Exam:
CT Cervical Spine W/O IV Cont + Recons

Exam Date/Time:
4/19/2012 6:40:00 PM

Accession Number:
CT-12-022201

Reason for Exam:

Trauma

Findings:

CERVICAL SPINE CT - 04/19/12

INDICATION: MVA, neck pain.

TECHNIQUE: Multiple contiguous axial CT images were obtained from the skull base through the lung apices without contrast. Coronal and sagittal reconstructions were performed on the CT scanner.

FINDINGS: I see no fracture or abnormal alignment. Disc spaces are normal in terms of height. I see no evidence of any definite significant disc herniation. There is an endotracheal tube and NG tube in place.

IMPRESSION: No acute osseous injury of the cervical spine identified.

*** Final ***

Trans On: 04/19/2012 19:00by: SEE

Read by: Taffoni MD, Matthew J

Released By: Taffoni MD, Matthew J

Released on: 04/19/2012 19:18

CT Head W/O IV Contrast

TURNER, WILLIAM - R015362186

*.Final Report *

Result type: CT Head W/O IV Contrast
Result date: 21 April 2012 10:44
Result status: Auth (Verified)
Performed by: Wallace, Carolyn J on 21 April 2012 10:44
Verified by: Marcus MD, Matthew A on 22 April 2012 08:21
Encounter info: R1211002353, Richland, IPR-Inpatient, 04/19/12 - 04/25/12

*** Final Report ***

Reason For Exam
post lovenox scan

Finding:
NONCONTRAST CT OF THE HEAD - 04/21/12

HISTORY: Post Lovenox scan, trauma.

COMMENTS: Noncontrast CT of the head was performed and compared to the study of 04/20/12. There is a tiny focus of hemorrhage related to a cortical contusion in the left anterolateral temporal lobe. No new foci of intracranial hemorrhage are evident. Subtle increased density along the posterior falx, extending along the tentorium relates to small amounts of residual extra-axial blood. Ventricles are stable in caliber and morphology. No intraventricular hemorrhage is evident. Gray-white differentiation is stable. There is no CT evidence of acute infarct. Calvarium is stable. Patchy paranasal sinus opacification is again evident.

IMPRESSION: No new intracranial abnormality. Tiny focus of hemorrhage again seen at the anterolateral margin of the left temporal lobe, in keeping with a small contusion. Likely trace amounts of residual extra-axial blood along the posterior falx extending along the tentorium.

Signature Line

*** Final ***

Trans On: 04/21/2012 12:5by: WLC

Read by: Marcus MD, Matthew A
Released By: Marcus MD, Matthew A
Released on: 04/22/2012 08:21

Completed Action List:

- * Order by Skaggs MD, Joshua B on 21 April 2012 09:28
- * Perform by Wallace, Carolyn J on 21 April 2012 10:44

Printed by: Sikes, Stacie A
Printed on: 05/01/12 10:26

Page 1 of 2
(Continued)

CT Head W/O IV Contrast

TURNER, WILLIAM - R015362186

* Final Report *

* VERIFY by Marcus MD, Matthew A on 22 April 2012 08:21

Printed by: Sikes, Stacie A
Printed on: 05/01/12 10:26

Page 2 of 2
(End of Report)



Palmetto Health Richland
5 Richland Medical Park
Columbia, SC 29203

69060

To: Maryanov MD, Timothy Y
USC DEPARTMENT OF
NEUROSURGERY
3 RICHLAND MEDICAL PARK DRIVE,
SUITE 310
COLUMBIA, SC 29203

Patient: TURNER, WILLIAM

Address:

Phone:

DOB:

Age:

Ord Phy: Maryanov MD, Timothy Y

FIN: R1214301076

Pt Type: 3MP-Op Registration

MRN: R015362186

CC:

RADIOLOGY SERVICES

Exam:

CT Head W/O IV Contrast

Exam Date/Time:

5/22/2012 11:26:22 AM

Accession Number:

CT-12-028876

Reason for Exam:

subdural hemorrhage

Findings:

INDICATION: Subdural hematoma.

TECHNIQUE: Axial images are obtained through the brain without contrast and compared to the previous study of 04/21/12.

FINDINGS: The tiny left temporal subdural hematoma seen previously is not identified today and no new findings are evident. Other sites of hemorrhage are no longer visible. Ventricles, cisterns and sulci remain within normal limits in size for age, and they are symmetrical about midline. No mass effect or midline shift has emerged. Calvarium remains intact, and sinuses again show polypoid thickening in the antra, with patchy opacity of several ethmoid cells.

IMPRESSION: Bleeds are no longer evident. Sinusitis is again seen.

*** Final ***

Trans On: 05/22/2012 11:5by: DLV

Read by: Friedman MD, Samuel Elias

Released By: Friedman MD, Samuel Elias

Released on: 05/22/2012 12:26

c

USC DEPARTMENT OF NEUROSURGERY
Three Richland Medical Park, Suite 310, Columbia, SC 29203
PHONE 803-434-8323, FAX 803-434-8326
FOLLOW-UP VISIT

PATIENT: William Turner
VISIT DATE: 05/29/12

Chart #:

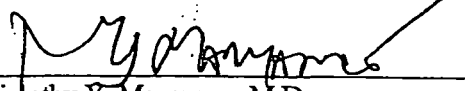
DOB:

HISTORY OF PRESENT ILLNESS: Mr. Turner is a 26-year-old gentleman who sustained a fall on April 19, 2012. As a result of this fall, he had several injuries including closed head injury with traumatic intracranial hemorrhage and mild anterior endplate fractures of his upper thoracic spine. He now comes back for follow up about six weeks after these injuries have occurred. He says that he has been doing well. He denies having headaches. He admits to having some back pain which is better than it was when he was initially discharged from the hospital.

PHYSICAL EXAMINATION: On examination today, he is alert, awake. Gives a good history of his illness. His motor exam shows full 5/5 motor strength in the bilateral upper and lower extremities in all major myotomes. His musculoskeletal examination does show he has a little bit of tenderness to palpation in his upper thoracic spine.

REVIEW OF IMAGING: I reviewed his imaging. This is a head CT performed on 05/22/12. This head CT is normal. The hemorrhage has resolved. There is no evidence of hydrocephalus.

IMPRESSION AND PLAN: A 26-year-old male status post a fall with hemorrhagic closed head injury and upper thoracic anterior endplate fractures. The patient has done well with his recovery. I like his plan of treating his back pain with occasional Ultram. I recommended trying to switch over to Tylenol and Motrin for his back pain. In this setting, I do not feel the patient needs any restriction for his activity. I am okay that he goes back to work without any restrictions starting on June 4. I gave him a note to that effect. I do not feel he need further follow up with Neurosurgery. I answered all of his and his wife's questions to their satisfaction. It was my pleasure to participate in the care of this patient.


Timothy Y. Maryanov, M.D.

TYM:TrUSA0366-339360

OFFICE NOTE

Timothy Y. Maryanov, M.D.

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1204039**

William Lee Turner,	)		
	)		
vs.	)		
	)		
Saiia Construction,	)		BRIEF ON LEGAL ISSUES
	)		
	)		
and	)		
	)		
Old Republic General Ins c/o	)		
Gallagher Bassett Service, Inc.,	)		
	)		
	)		
Carrier,	)		

STATEMENT OF THE CASE

This matter comes before the South Carolina Workers' Compensation Commission on February 4, 2014. The purpose of the hearing is to determine the issues as set forth in Forms 50 and 51. Claimant filed a claim by way of Form 50 on November 26, 2013, regarding a date of injury on or about April 19, 2012. Employer filed a Form 51 on December 5, 2013 and contests whether Claimant's injuries are compensable and claims that Claimant's current problems are not causally connected to the alleged April 19, 2012 work-related accident. Claimant filed a Form 58 on January 23, 2014.

FACTS OF THE CASE

On the afternoon of Thursday, April 19, 2012, William Lee Turner, the Claimant, was finishing his shift with Saiia Construction in Eastover, South Carolina. Mr. Turner had washed

his Sterling dump truck with soap and water. The Claimant had to climb the first step and the second step because his backpack was placed on the seat according to witness Paul Barnette.

“ It [he backpack] had been put on the seat and to be able to get up to put my stuff up there --it wasn't thrown in, it wasn't in the floorboard, it was in the seat. **So sometime another he did get up the first step and then the second step.**”

Deposition of Paul Barnette, page 13, lines 21-25.

To access the cab, Mr. Turner had to step up two steps, making the cab of the truck roughly five feet and six inches (5'6") off the ground. The reasonable inference is that while he was on these steps, or possibly while he was inside of the cab, Mr. Turner fell to the ground, hitting the back of his head against the ground. As a result of this fall, Mr. Turner does not remember anything from the day before the accident, Wednesday, or the day of the accident, Thursday.

David Bolden and Paul Barnett, two truck drivers who work with the Claimant, were standing roughly 30 yards away from Mr. Turner when he fell. Neither person saw Mr. Turner fall, but each saw Mr. Turner lying on the ground immediately after the fall. The back of his head was bleeding. .

APPLICABLE LAW

Generally, a presumption of fact that one charged with the performance of a duty and injured while performing such duty or found injured at a place where his duty may have required him to be is injured “in the course of employment” and as a consequence of the employment within the Workmen’s Compensation Act. Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941). *See also* Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962) (reiterating the presumption stated in Owens).

In Owens, a game warden employed by Ocean Forest Club, Inc. was found deceased in a portion of the wooded premises that he had employed to patrol. The cause of his death was a bullet wound through his head. The game warden's widow filed a claim for compensation under the Workmen's Compensation Act, Act July 17 1935, 39 St. at Large, p. 1231. When Liability was denied, a hearing was held before a Commissioner, who awarded compensation to the plaintiff widow. The defendant company appealed.

Reviewing the factual findings of the Commissioner, the South Carolina Supreme Court held that the evidence was clear that, at the time of his death, the game warden was on the company's property during his hours of employment, and that he was found dead from a gunshot wound. The Court also noted that all the evidence relating to the cause of death of the game warden was circumstantial in nature. The Court went on to say "circumstantial evidence may be sufficient to support a finding of fact or an award, and a finding or award may be based on inferences drawn from circumstantial evidence; the evidence need not, although it may, be direct or positive. Circumstantial evidence, to establish a claim, need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached." Owens, 196 S.C. 97, 12 S.E.2d 839. Furthermore, when an employee's death occurs "there is a natural presumption, or a presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of the employment." Jake v. Jones, 240 S.C. at 579, 126 S.E.2d at 723. In Jake, the Supreme Court affirmed a decision to find that the deceased's accident arose out of and in the course of employment where he was found drowned by a barge that he worked on. Jake, 240 S.C. at 578, 126 S.E.2d at 722. The deceased was found disrobed and could not swim, furthermore, swimming in that area around the

barge that he worked on was prohibited by his employer. Nevertheless, his death was compensable under the Workmen's Compensation Act.

Similarly in our case, the Claimant was injured on his truck, on company property, and during work hours. (Turner Dep. 30:10-25) Claimant's backpack was in the passenger seat which means that he had to climb the first and second steps of the dump truck according to Paul Barnette. The steps had just been washed with soap and water. Furthermore the circumstantial evidence along with more direct evidence points to the fact that the Claimant's fall gave rise to seizures as Dr. Alan Peterson explained in his report. (Claimant's APA, p. 37). Claimant had not complained of dizziness or any problems that day before his fall. While Mr. Turner, in our present case, luckily was only injured and did not die from the incident, his situation is still analogous to that of the plaintiff in Jake. Mr. Turner's situation falls squarely within the course of employment and does not have the same strange outliers—disrobed in the water where swimming was prohibited, and in the water though he could not swim. The presumption should be applied to all unwitnessed falls, and Mr. Turner's injuries should be compensable.

In Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999), the Court of Appeals reviewed the elements required for an injury to be compensable. First, it must be by accident arising out of and in the course of employment. Baggott v. Southern Music Inc., 330 S.C. 1, 496 S.E.2d 852 (1998). Second, an injury arises out of employment when there is apparent to the rational mind, upon consideration of the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Clade v. Champion Lab, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998). Third, an injury occurs in the course of employment if it happens within the period of employment at a place

where the employee reasonably may be in the performance of his duties and where fulfilling those duties. Id.

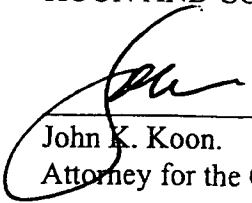
First of all, the Claimant accident was arising out of and in the course of employment. Mr. Turner operates a dump truck on-site, and routinely makes 25 or more trips a day hauling materials to the on-site landfill. (Barnette Dep. 7:16-21). Furthermore, it is apparent to the rational mind, that a fall from the dump truck that Mr. Turner routinely drives and spends the vast majority of his day entering and exiting has a causal relationship as the conditions under which his work is performed and what caused his injury. Finally, the injury occurred within the period of employment at a place where the employee reasonably may be in the performance of his duties. (Turner Dep. 30:10-25). Mr. Turner was on the job site, during working hours, and fell from the dump truck that he routinely operates. Id.

CONCLUSION

Claimant suffered a severe injury on April 19, 2012. Following that date, Employer did not provide medical treatment or payment for temporary disability payments. Claimant's request for temporary total disability benefits from April 19, 2012 thru January 2, 2013 were denied by Employer. All injuries, disabilities, and needed medical care in this incident from April 12, 2012 is attributed to Claimant's fall on his employer's premises at the time of work, and was in a place doing an activity that Claimant would reasonably do in the course and scope of his employment. Therefore, Claimant's injuries related to the accident on April 19, 2012 should be compensable under the South Carolina Workers' Compensation Act.

KOON AND COOK, P.A.

By:


John K. Koon.

Attorney for the Claimant

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



WCC File #: 1204039
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: William Lee Turner SSN: _____
Address: _____
City: _____ State: _____ Zip: _____
Home Phone: () - - Work Phone: () - -
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: () - -
Employer's Name: SATIA Construction
Address: 324 Commons Drive
City: Birmingham State: AL Zip: 35201
Insurance Carrier: Old Republic General Ins. Co. c/o Gallagher Bassett Services, Inc.

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☐ Employer (check one) Date of Injury or Illness: 4/19/12

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 ATTACHMENT.

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the ____ day of ____ 20__, by X first class postage ____ certified mail ____ personal service.

Preparer's Signature

Attorney for Claimant
Title

preston@pfmcdlaw.com
Email

4/28/14
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

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

ATTACHMENT TO FORM 30

William Lee Turner v. Saia Construction

WCC File No.: 1204039

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a Matter of Law by failing to apply the unexplained injury and death presumption to this claim.

3. That where the Hearing Commissioner made specific Findings of Fact: that the Claimant had absolutely no memory of the day before, the day of or any of the events surrounding the alleged accident nor of the day after the alleged accident (Findings of Fact number 9); and that, "The alleged accident was unwitnessed" (Findings of Fact number 10 and number 11), the Hearing Commissioner erred as a matter of law by failing in her duty and responsibility as a Commissioner pursuant to her Oath of Office to apply the law of the State of South Carolina and thus erred by failing to apply the unexplained injury or death presumption as applied by our Appellant Courts as specifically established by the Supreme Court that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, 196 S.C., 12 S.E.2d, 839 (1941). Jake v. Jones, 240 S.C. 574, 126 S.E.2d, 721 (1962).

The Commission has been specifically ordered to apply this presumption previously in an undisputed, factual evidence case involving an unwitnessed fall in the case of Daniel Windham v. Sears Roebuck and Company, Docket No. 2007-CP-21-1391, Order of the Honorable Thomas A. Russo, dated February 20, 2008. When the Commission failed to apply the presumption on Remand, the Circuit Court then applied the presumption to the undisputed facts in its subsequent Order in the matter of Daniel C. Windham

v. Sears Roebuck and Company, Docket No. 2009-CP-21-1001, Order of the Honorable Thomas A. Russo, April 6, 2010 holding:

"Therefore it is Ordered, based on the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed facts, Mr. Windham is determined to have sustained injury by accident arising out of in the course of his employment as a Matter of Law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for the entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED."

4. That the Hearing Commissioner erred as a matter of law by basing her Decision on conjecture, speculation and innuendo wherein the undisputed facts in evidence, in addition to the undisputed factual findings that the accident was unwitnessed and that the Claimant had absolutely no memory of the accident, comes from his co-worker Mr. Paul Barnette and establishes as uncontested/undisputed facts that the Claimant did not complain of any headaches, he was not complaining of any dizziness nor had he complained of any ill feeling at all and had no complaints of even feeling unusual in any way on the day of the accident. His testimony specifically was:

"Q: So would it be fair to say that at all times from seven o'clock that morning until he moved the truck at whatever time it was - - -

A: Between 2:30 and somewhere. I know our time is on our deposition.

Q: And he had no complaints of headache?

A: No.

Q: No complaints of dizziness?

A: No.

Q: No complaints of feeling ill?

A: No.

Q: Any complaints of feeling unusual?

A: Not that day. I thought Lee, I - - you know, in the back of my mind, I thought, you know, Lee was back to one hundred percent. I thought Lee was doing 'A Number One' that day."

Deposition Transcript of Paul Barnette, p. 18, ll. 10-25. (Emphasis added).

Considering this and all of the undisputed facts on the day of the accident, the Commissioner's Decision to the contrary is not based on substantial evidence and is the subject of conjecture, speculation and innuendo.

5. That the Hearing Commissioner erred as a matter of law in her Order and specifically under her Findings of Fact and Conclusions of Law by failing to apply a fundamental construction principle of the Act which is that:

"Workers Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of uncertainties of trial and suit for damages, to cast on industry in which they are employed a share of the burden resulting from industrial accidents and to prevent burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."

6. That the Hearing Commissioner erred as a matter of law by making Findings of Fact which are the subject of conjecture, speculation and innuendo and by applying those Findings in an arbitrary and capricious manner to establish a factual basis that does not exist in the Record to deny this Claimant benefits; specifically including Findings of Fact 3, 12, 13, 14, 15, 17, 19, 20, 21, 24, 25.

7. That the Hearing Commissioner erred as a matter of law by characterizing the contentions of the parties and dispute between the parties in Finding of Fact number 19 in an

unwitnessed injury or accident presumption case in an erroneous manner by framing the dispute as follows:

"There is no dispute that Claimant injured his head in the fall, but the dispute is whether the Claimant fell from a standing position or from the steps of the cab."

This is an incorrect statement of the position of the parties, the facts of the case and the undisputed findings that the Commissioner made that this was an unwitnessed case in which the Claimant has no memory of what occurred.

8. That the Hearing Commissioner erred as a matter of law after specifically making Findings of Fact 4, 5, 6, 9, 10 and 11, by failing to apply under Conclusions of Law 9 and 10 the unexplained injury or death presumption and by trying to "factually" distinguish a legal presumption under Conclusion of Law number 10.

9. That the Hearing Commissioner erred as a matter of law in making Finding of Fact 16 that:

"If Barrette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different . . ."

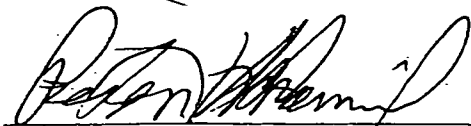
This indicates that the Commissioner's Decision is biased and based on speculation, innuendo and on a set of assumed facts not in evidence and therefore outside of the evidence in the Record; and it adds an additional element to the burden of proof

10. That the Hearing Commissioner erred as a matter of law by failing to apply the concept of circumstantial evidence to the facts of this case.

11. That the Hearing Commissioner erred by applying in fact the wrong burden of proof.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,



Preston F. McDaniel, Esquire
Attorney for the Claimant

April 28, 2014

STATE of SOUTH CAROLINA)
)
COUNTY of RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1204039

WILLIAM LEE TURNER,)
)
Employee/Claimant,)
)
vs.)
)
SAIIA CONSTRUCTION,)
)
Employer,)
)
OLD REPUBLIC GENERAL)
INSURANCE COMPANY,)
)
Carrier,)
)
Defendants.)
_____)

APPELLANT'S BRIEF
TO THE FULL COMMISSION

STATEMENT OF THE CASE

Mr. Lee Turner worked for Saiia Construction Co. for approximately six (6) years prior to the accident. He is a heavy equipment operator but while working for Saiia, he drove dump trucks exclusively. (Tr., p. 20, l. 18 - p. 21, l. 6; p. 24, ll. 9-13). On Monday before the accident on Thursday, he did see a doctor for minor back problems but he was not having any problems with dizziness or his ability to walk, or any problems with feeling faint or being unsteady on his feet and there is no evidence in the Record from that doctor visit that he was reporting or having any of those problems at that time. (Tr., p. 22, ll. 5-19; Defendants' APA's p. 29). He testified that he has absolutely no memory of the day of or of the accident other than

what he had been told and that after the accident he was in a coma for three (3) days and knows nothing about that period of time.

(Tr., p. 26, ll. 3-6). He further testified that there is absolutely no history of seizure or any other type of disorder in his family. (Tr., p. 26, ll. 16-22). He does remember Tuesday and Wednesday before the accident happened on Thursday and he was having no problems of that nature at that time. (Tr., p. 28, ll. 13-21). He has never had high blood pressure, diabetes, or heart problems and no other health problems other than the back problems that he had had prior to the date of this accident. (Tr., p. 29, ll. 2-10).

The testimony and evidence concerning the events of the day of the fall came from Mr. Turner's fellow employees and friends, Mr. Paul Barnette and Mr. Bolden. Mr. Barnette testified that he and Mr. Turner were real close; that they discussed personal matters; that he knew about Mr. Turner's past back problems; that he felt if Mr. Turner was having any problems, he would have discussed those with him freely; that he never heard him complain of any type of dizziness or syncope prior to the date of the accident; and that Mr. Turner was a very energetic young man (Depo. Tr., p. 5, l. 11 - p. 6, l. 1; p. 6, ll. 22-23). On the date of the accident, Mr. Turner was feeling real good; he was very energetic, he was cutting up while driving the truck, blowing

the horn and giving thumbs up and in Mr. Barnette's opinion Mr. Turner was 100% that day. (Depo. Tr., p. 7, l. 1-10).

Mr. Barnette testified that he and Mr. Turner had pulled their trucks in to wash them and that he had backed his on one side of Mr. Turner's. Mr. Turner's was on the wash rack and he had actually helped Mr. Turner wash about half of the truck when he suggested that Mr. Turner go and get their time sheets straight and get Mr. Barnette's lunch cooler and his bag while Mr. Barnette washed his truck. (Depo. Tr., p. 8, l. 21 - p. 9, l. 15). Mr. Turner pulled his truck over to the office and stopped about 40 and no more than 60 feet away. Approximately 7-8 minutes and no more than 10 minutes later, Mr. David Bolden stepped out of the hut and walked over to Mr. Barnette and was talking to him on the blind side away from Mr. Turner at that time and then as Mr. Barnette came around to the back of the truck to wash off the tailgate he caught a glimpse and saw Mr. Turner on the ground on his back. (Depo. Tr., p. 9, l. 17 - p. 10, l. 8).

Mr. Barnette stated that after Mr. Turner had gone in to get their time sheets straight and to get their two backpacks and after he was found on the ground that they found his 12 pack lunch sack and his backpack placed neatly on the seat of the truck. There was no question that the backpack had been put onto the seat and that his stuff was placed on the seat and had not been thrown in there nor was it laying on the floorboard. To be able to do

this, it would require Mr. Barnette or whomever was putting something like that on the seat in the truck to climb the first and second step of the truck. Again, at the time of the accident, they had just completed washing Mr. Barnette's truck with soap and water. (Depo. Tr., p. 13, ll. 4-18). He also stated that the steps on the truck were perforated steps and that the steps would catch a cleat of a boot or shoe and that he had caught his foot on the steps but had been able to correct and not fall. (Depo. Tr., p. 14, l. 21 - p. 15, l. 13). He himself had lost his balance on the steps of the truck and that the truck steps were approximately 18 inches and 36 inches off of the ground and Mr. Turner was 5'3" - 5'4" tall. (Depo. Tr., p. 17, l. 2 - p. 18, l. 9). When they ran over to Mr. Turner after the accident, he was laying on his back. He was trying to move but he was not flailing, thrashing about and was basically laying with his arms straight out with his palms up. He had a small amount of blood on the back of his head and in his opinion, Mr. Turner had not been laying there more than 3-4 minutes before they saw him and got to him. (Depo. Tr., p. 22, ll. 5-17; p. 24, ll. 15-20). He again testified that on the date of the accident Mr. Turner had no complaints of headache, no complaints of dizziness, no complaints of feeling ill, and no complaints of feeling unusual. (Depo. Tr., p. 18, ll. 15-25).

Very importantly, Mr. Barnette also testified specifically that the door of the truck was still open when Mr. Turner was found lying on the ground in addition to the cooler and the backpack being neatly arranged on the seat. (Depo. Tr., p. 28, ll. 2-13.)

Mr. David Bolden, the other fellow employee that came to Mr. Turner's side, said that he was laying on his back just beside the truck and that his feet were nearer to the truck than his head was. He also stated that he was lying flat on his back with his arms outstretched like he was holding his hands above his head. (Depo. Tr., p. 5, ll. 1-20). He testified that he had worked for Saiia for approximately 4 years and that he considered himself to be a friend of Mr. Turner's. He had never known Mr. Turner to complain of any problems with dizziness or passing out or seizures, nor taking any medicine or any of those type problems and that Mr. Turner was in good health as far as he knew that day from the way he was acting. (Depo. Tr., p. 11, l. 24 - p. 12, l. 16). Mr. Bolden actually observed Mr. Turner walking towards the truck after he had done to the trailer and observed him putting the backpack and the cooler while standing on the ground into the floor board of the truck but he did not see him move the backpack and/or cooler from the floorboard of the truck to the seat of the truck where it was found neatly placed after the accident. While he was observing him and watching him place the cooler inside the

truck, the door of the truck was open and the door of the truck was still open when they found him minutes later. (Depo. Tr., p. 13, l. 2 - p. 14, l. 13). There is no testimony of any witness actually to the accident and the Claimant has absolutely no memory of the day of the accident or days that followed it.

The factual evidence establishes that Mr. Turner was lying with his feet towards the truck and his head away from the truck with the door open and was found lying on his back with the back of his head flat against the ground. The medical evidence establishes a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle and to the front of the brain not the back of the head or brain on which Mr. Turner was found lying. The occipital lobe is the back of the head.

ARGUMENTS

I. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION IN THIS CASE.

There is absolutely no question that there was no evidence as to what happened to Mr. Turner that resulted in his injuries other than a fall which is accidental in nature unless caused by a medical condition. However, there is also absolutely no evidence that his injuries were caused by any condition such as epilepsy or seizure disorder, other medical condition or aneurysm or any type of brain lesion; i.e. no evidence of a non-accidental cause of the

fall. The evidence is that his injuries came from a fall which is from Dr. Peterson, who expressed the opinion that due to the, "traumatic" nature of his injuries, in his opinion, the injuries that Mr. Turner sustained were more probable than not from the fall. (Claimant's APA, p. 37).

The Defendants and the Hearing Commissioner inaccurately and inappropriately try to make the "cause" not be accidental in nature and the idiopathic fall cases instead of applying the unexplained death or injury presumption which applies to this case.

As established by the South Carolina Supreme Court in the case of Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) and as has been repeatedly recited since, the unexplained injury presumption is stated as follows:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, Inc., supra. (Emp. Added).

See also: Halpern v. DeJay Stores, Inc., 236 S.C. 587, 115 S.E.2d 297 (1960), Packer v. Corbit Canning Co., 238 S.C. 431, 120 S.E.2d 398 (1961), Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962), and Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999).

The Hearing Commissioner failed to apply the presumption and she and the Defendants rely instead on the cause of the fall not being accidentally and another distinct line of cases which are referred to as the idiopathic (unknown cause) fall cases. However two of those supposed idiopathic fall cases actually involve witnessed seizure disorders (i.e. medical not accidental in cause), and in the other case Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 254 (S.C. App. 1998), the claimant testified that she fell for no reason (i.e. truly idiopathic). In Crosby, the claimant knew all of the facts surrounding the fall and testified there was no problem with the floor; there was no wet spot; there no rise in the floor; she did not trip; she did not stumble; there was absolutely nothing that caused or contributed to the fall, she just simply fell. The Court of Appeals held this to be an idiopathic fall, which it was based on the testimony known about the fall.. However, the Crosby case is probably the best evidence for why the Commissioner erred in this case by not finding this case compensable. In Crosby, the Court of Appeals painstakingly established the difference between the two types of injuries. One where there was an unwitnessed and purely unexplained accident, and the other where there was an idiopathic fall or in other words while there were witnesses there was absolutely no cause for the fall or there was a cause for the fall

that was unrelated to the work; i.e. a physical medical injury.

Crosby sets out the proposition as follows:

"Unexplained fall cases may be classified into two (2) main categories: (1) those in which the fall is unwitnessed or was purely unexplained; and (2) those in which the evidence established that the fall, while unexplained had an apparent lack of work connection, the implication arising that the fall resulted from some pre-existing physical condition . . . the present case is the later." Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 254 at 257 (S.C. App. 1998).

While most of the unexplained fall cases have come from situations where the employee died and dies before he has the opportunity to relate the occurrence, our Supreme Court, as does Professor Larsen, notes that the presumption as to unexplained injury applies in cases like Mr. Turner's case because the reason that no one knows what happened is:

"first there were no witnesses and;

second Mr. Turner as a result of the injuries sustained has absolutely no memory of what occurred."

The Claimant would submit that the Defendants cannot establish one thread of evidence in the Record that would differentiate this case from all of the cases involving an, "accidental type injury" type case which have all applied the unexplained death or injury presumption nor from the Circuit Court's ruling in Daniel C. Windham v. Sears Roebuck & Co. (attached as Exhibit "A"). What would have this Commission decided had Mr. Turner died from his injuries? The gentleman in the Owens case was found dead with a

gunshot wound (accidental type injury) which looked like an apparent suicide but yet there was no conclusive evidence that it was and the Court applied the unexplained death presumption that he could have died accidentally. The same thing is true in the Jake case where Mr. Jake was found naked in the water dead, and the cause of death drowning (accident not physical condition) next to the equipment he was responsible for operating. The same is true for every other case that has applied the unexplained death or injury presumption. There was simply no explanation (ex. physical condition) for the death other than that the injured worker (as was Mr. Turner) was at a place he was required to be and was doing the duties of his job and an unexplained accident occurred at the time and place where his employment reasonably required him to be. There was no evidence of an injury resulting from a physical medical condition. As the Court stated in Crosby in reference to both the facts in that case and in the case of Bagwell and Miller, the evidence establishes that while the occurrence was unexplained there was an, "apparent lack of work connection and the implication of some pre-existing physical condition arose." There is absolutely no indication of any pre-existing physical condition in this case. There is simply an unexplained injury because there were no witnesses. (Remember in Bagwell, Miller, and Crosby there were witnesses to the facts of the injury). Based on this, the Claimant would respectfully

submit that the Hearing Commissioner erred as a matter of law by not applying the unexplained injury and death presumption to the facts of this case. The Claimant would respectfully request that the Full Commission reverse the Decision of the Hearing Commissioner and grant the Claimant benefits.

II. THE HEARING COMMISSIONER HAS PREVIOUSLY BEEN ORDERED AND THE COMMISSION HAS PREVIOUSLY BEEN ORDERED TO APPLY THE UNEXPLAINED DEATH PRESUMPTION IN A CASE IDENTICAL TO THE FACTS OF THIS CASE.

Where the Hearing Commissioner made specific Findings of Fact: that the Claimant had absolutely no memory of the day of or any of the events surrounding the alleged accident nor of the day after the alleged accident (Findings of Fact number 9); and that, "The alleged accident was unwitnessed" (Findings of Fact number 10 and number 11), the Hearing Commissioner erred as a matter of law by failing in her duty and responsibility as a Commissioner pursuant to her Oath of Office to apply the law of the State of South Carolina and thus erred by failing to apply the unexplained injury or death presumption as applied by our Appellant Courts as specifically established by the Supreme Court that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, 196 S.C., 12 S.E.2d, 839 (1941). Jake v. Jones, 240 S.C. 574, 126 S.E.2d, 721 (1962).

The Commission has been specifically ordered to apply this presumption previously in an undisputed, factual evidence case involving an unwitnessed fall and where there was no evidence of a physical condition/induced injury in the case of Daniel C. Windham v. Sears Roebuck & Co., Docket No. 2007-CP-21-1391, Order of the Honorable Thomas A. Russo, dated February 20, 2008. When the Commission failed to apply the presumption on Remand, the Circuit Court then applied the presumption to the identical undisputed facts in its subsequent Order in that case and in the Order of the Honorable Thomas A. Russo, April 6, 2010 Judge Russo held :

"Therefore it is Ordered, based on the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed facts, Mr. Windham is determined to have sustained injury by accident arising out of in the course of his employment as a Matter of Law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for the entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED."

III. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY BASING HER DECISION ON CONJECTURE, SPECULATION AND INNUENDO BASED ON THE UNDISPUTED FACTS AND EVIDENCE.

In addition to the undisputed factual findings that the accident was unwitnessed and that the Claimant had absolutely no memory of the accident, the other undisputed facts in evidence comes from his co-worker Mr. Paul Barnette and establishes as

uncontested/undisputed facts that the Claimant did not complain of any headaches, he was not complaining of any dizziness nor had he complained of any ill feeling at all and had no complaints of even feeling unusual in any way on the day of the accident. His testimony specifically was:

Q: So would it be fair to say that at all times from seven o'clock that morning until he moved the truck at whatever time it was - - -

A: Between 2:30 and somewhere. I know our time is on our deposition.

Q: And he had no complaints of headache?

A: No.

Q: No complaints of dizziness?

A: No.

Q: No complaints of feeling ill?

A: No.

Q: Any complaints of feeling unusual?

A: Not that day. I thought Lee, I - - you know, in the back of my mind, I thought, you know, Lee was back to one hundred percent. I thought Lee was doing 'A Number One' that day."

Deposition Transcript of Paul Barnette, p. 18, ll. 10-25. (Emphasis added).

Considering this and all of the undisputed facts on the day of the accident, the Commissioner's Decision to the contrary is not based on substantial evidence and is the subject of conjecture, speculation and innuendo.

IV. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDINGS OF FACT WHICH ARE THE SUBJECT OF CONJECTURE, SPECULATION AND INNUENDO AND BY APPLYING THOSE FINDINGS IN AN ARBITRARY AND CAPRICIOUS MANNER TO ESTABLISH A FACTUAL BASIS THAT DOES NOT EXIST IN THE RECORD TO DENY THIS CLAIMANT BENEFITS; SPECIFICALLY INCLUDING FINDINGS OF FACT 12, 13, 14, 15, 17, 19, 20, 21, 24, 25.

Webster's: Conjecture - not based on evidence, inference, guesswork. Conjecture - based on whim, impulse.

#12 - Prescribed medication three (3) days before the accident. No statement as to why related to facts of the accident.

#13 - Two (2) days before, Emergency Room and vomiting, no relation established to injury.

#14 - Medical Histories. Fell off ladder, and fell off back of truck. No relationship to facts of the accident and neither relevant or material to issue.

#15 - Witness did not see fall and could only speculate as to cause. Relevancy? Purpose of this finding? Materiality?

#17 - Witness did not see accident and did see Mr. Turner standing on ground. Purpose of finding and relevancy?

#19 - Dispute in Commissioner's opinion was as to whether he fell from a standing position or from steps of truck cab. Wrong as to facts and issues in dispute. Undisputed-injury was not witnessed. Defendants took the position the fall was idiopathic.

Finding is clearly speculation by the Commissioner. Nothing in the Record, statements or evidence to support this Finding.

#24 - There is no known cause of fall. Requirement of known cause is a misstatement of evidence and law.

#25 - Is not a Finding of Fact but is a legal conclusion.

V. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY CHARACTERIZING THE CONTENTIONS OF THE PARTIES AND DISPUTE BETWEEN THE PARTIES IN FINDING OF FACT NUMBER 19 IN AN UNWITNESSED INJURY OR ACCIDENT PRESUMPTION CASE IN AN ERRONEOUS MANNER BY FRAMING THE DISPUTE AS FOLLOWS:

"There is no dispute that Claimant injured his head in the fall, but the dispute is whether the Claimant fell from a standing position or from the steps of the cab."

This is an incorrect statement of the position of the parties, the facts of the case and the undisputed findings that the Commissioner made that this was an unwitnessed injury case in which the Claimant has no memory of what occurred. Further the Defendants' position was that this was an idiopathic fall, not caused by anything at work.

VI. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW AFTER SPECIFICALLY MAKING FINDINGS OF FACT 4, 5, 6, 9, 10 AND 11, BY FAILING TO APPLY UNDER CONCLUSIONS OF LAW 9 AND 10 THE UNEXPLAINED INJURY OR DEATH PRESUMPTION AND BY TRYING TO "FACTUALLY" DISTINGUISH A LEGAL PRESUMPTION UNDER CONCLUSION OF LAW NUMBER 10.

In every unwitnessed death or injury case where the unexplained death or injury presumption must be applied where the injury resulted from a physical injury type cause, our Appellate Courts have applied the presumption without any additional work

related causal relationship, i.e. that the injury was caused by the work. Examples without all citations: Owens v. Ocean Forrest Club, supra, (gunshot wound); Jake v. Jones, supra, (drowning); Eagles v. Golden Cove, 260 S.C. 113 (1973) (bee sting).

Only in cases where the injury and death is caused by a medical condition such as heart attack or thrombosis, have our Courts required a causal connection to the work activities. For example: Packer v. Corbit Canning Co., supra, (heart attack but no proof of electrical shock); Buff v. Columbia Baking Co. 215 S.C. 41, 53 S.E.2d 879 (1949) (heart attack but proof of electrical shock).

In this case the undisputed evidence is that his injury stemmed from an accidental physical type injury, i.e., his fall and there is no evidence that this fall was caused by a medical condition.

VII. THAT THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW IN MAKING FINDING OF FACT 16 THAT:

Finding of Fact #16:

"If Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different"

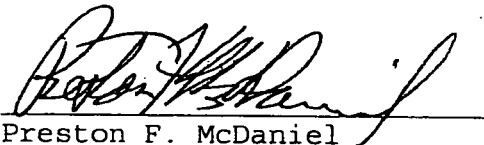
This indicates that the Commissioner's Decision is biased (refused to apply the law) and based on speculation, innuendo and on a set of assumed facts not in evidence and is therefore outside of the evidence in the Record as it adds an additional element to the

burden of proof in an unexplained death or injury case; i.e. from steps vs. ground level. That difference is an, "assumption" of fact necessary to proof and is legal error.

CONCLUSION

For all the foregoing reasons, the Decision of the Hearing Commissioner should be reversed and the Claimant awarded benefits based on the uncontested, undisputed facts that this was an unwitnessed injury that arose out of and in the course of the Claimant's employment and under that presumption there being no question that this was an accidental injury under the facts involved, the Commission must award benefits or remand for a de novo hearing with the application of the unwitnessed injury presumption to be applied.

Respectfully submitted,



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for the Appellant

June 26, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
Docket No.: ~~2007-CP-21-1391~~

2009 1001

DANIEL C. WINDHAM,)
)
Employee/Claimant/Appellant,)
)
v.)
)
SEARS ROEBUCK & CO.,)
)
Employer, and)
)
SELF-INSURED/SEDWICK CMS, TPA,)
)
Carrier,)
)
Respondents.)

ORDER

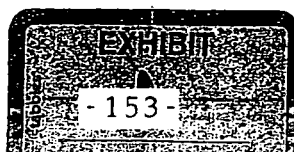
2010 APR -7 PM 3:29
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

This matter came to be heard by me on February 23, 2010 on the basis of an appeal filed by Mr. Windham the Claimant/Petitioner in this Court from the Decision of South Carolina Workers' Compensation Commission. Originally, Mr. Windham had appealed a Decision of the Commission dated July 17, 2007 and received by him on August 20, 2007, which was remanded by this Court to the Commission to apply the unexplained injury and death presumption to this case. He now appeals from the Decision after Remand dated April 28, 2009 and received by him by mail on April 29, 2009. Mr. Windham was represented at the Hearing by Preston F. McDaniel, Esquire of the Richland County Bar. The Defendants/Respondents were represented at the hearing by Ms. Allison C. Nussbaum, Attorney at Law, of the Charleston County Bar.

CERTIFIED A TRUE COPY

Connie Reel-Shearin
CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.



A procedural history in this matter is necessary to an understanding of the decision of this Court at this time based on the law that is applicable in this matter. Originally, when this matter came before the Hearing Commissioner, the facts were not in dispute. Mr. Windham was a salesman for Sears, Inc. and was inside the Sears auto store working on the floor at the time that the accident occurred. A manager had been brought in to train Mr. Windham, who had recently been made a floor salesman, and his manager and the person that had been brought in for training purposes were not present on the floor at the time that the event occurred which lead to his injuries. It was agreed that there were no witnesses to the event that lead to his injuries. The undisputed facts are that Mr. Windham was found behind the sales counter at a place that his duties required him to be, unconscious and with severe injuries to the front of his head. Upon examination at the Emergency Room, he was found to have not only fractures of the front of his skull but also a large lump on the back of his skull. There was an overhang or computer ledge that stuck out from the counter where Mr. Windham was found laying approximately underneath the edge of this overhand at the time he was discovered injured. The medical evidence establishes that he was taken by ambulance to the hospital where the treating neurosurgeon, Dr. James J. Brennan, performed numerous hours of surgery upon him to repair the severe fractures that he had to his skull and the epidural hematoma and subarachnoid hemorrhage in his

brain, all resulting from the accident. Mr. Windham upon waking up and after recovery has absolutely no memory of what transpired in reference to the time of the incident. He remembers going to work that morning and being on the sales floor but then has absolutely no memory as to what occurred at the time of the incident/accident. The medical records consisted of the medical records at the emergency room and hospital, the treatment records of the neurosurgeon and a questionnaire that was completed by the neurosurgeon for the Claimant. Dr. Brennan, the treating neurosurgeon, in the Questionnaire stated that there was no history of epilepsy or any type of seizure disorder in Mr. Windham; there was no history of seizure disorder of any type in his family; and there was no history of any alcohol or drug use by him at the time that the accident occurred. It was his opinion that the Claimant suffered from an acute right epidural hematoma with acute left diffuse subarachnoid hemorrhage, mild subdural hemorrhage, all most likely secondary to the injury from the fall. He further stated that based on his observation of the Claimant's skull and brain during surgery that he made absolutely no findings during surgery and there was no evidence of any aneurysm or other brain lesion or problem that pre-existed the fall that could have caused the accident. The only other evidence in the Record were the facts Mr. Windham was found lying on the floor next to the computer ledge, that in addition to the severe injuries to the front of his head, there was a bump/lump on the back of his head and the fact that a

customer had fallen in this same area, counter, of the store close to the time of Mr. Windham's accident.

It is important to the decision of this Court to note that the Defendants placed a Memorandum in the Record at the Hearing and took the position that the decision in Crosby v. Wal-Mart, Inc., 330 S.C. 489, 499 S.E.2d 253 (S.C. App. 1998), which is a witnessed idiopathic fall case which applied the idiopathic fall line of cases should be applied to the facts in this case. Mr. Windham took the position at the Hearing that this was an unwitnessed accident and that the unexplained death and injury presumption should be applied as established by the Supreme Court in the case of Owens v. Ocean Forrest Club, 196 S.C. 97, 12 S.E.2d 839 (1941).

The Hearing Commissioner denied the claim applying the decision in Crosby, supra, and on appeal to the Full Commission; the Full Commission affirmed the decision of the Hearing Commissioner. This matter was appealed by Mr. Windham to this Court on the basis that the Commission had committed legal error by applying the idiopathic fall line of cases instead of applying the unexplained injury and death presumption principle and the line of cases that have applied the presumption to unwitnessed injury situations.

On appeal, in reversing the Commission's Decision, this Court noted that unlike Crosby wherein Ms. Crosby had complete and total recall of the incident where she fell and there were witnesses to her fall as there were in all of the idiopathic fall line of cases

and where there was testimony that there was absolutely no connection between the fall and the work activity, in this case there simply were no witnesses and Mr. Windham had no recall or memory of specifically what occurred at the time of the incident. This Court noted that in Crosby, the Crosby Court specifically set out in its Opinion that in reference to unexplained falls that the cases deciding those types of injuries could be classified into two categories. The first category being where the fall was unwitnessed and was purely unexplained. The second category involves that line of cases, which are truly idiopathic fall cases. In all of those cases, the Court of Appeals noted that there were witnesses and there was testimony that there was no connection to the work activity with the implication being from the evidence that the fall arose out of some pre-existing physical condition. In reference to the first category, the Crosby Court specifically held that our Courts have always applied the unexplained injury and death presumption to unwitnessed injury situations.

Based on this Court's review of the law and the undisputed facts in this case, this Court remanded this case to the Commission, "to apply the unexplained injury and death presumption to the facts of this case as created by our Supreme Court in the case of Owens v. Ocean Forest Club, Inc., supra, . . .". The Court further remanded the case for the Commission to, "take such action as it deems appropriate to review the Record and apply the unexplained death or injury presumption to the facts of this case."

It is the opinion of this Court that the Commission did not follow this Court's directive on Remand.

As noted, it has been the position of the Defendants from the outset of this case as a matter of law that the Commission and the Court should apply the idiopathic fall line of cases and not the unexplained death or injury presumption line of cases.

On remand, the Commission heard this matter before a three-member appellate panel. The only insight this Court has as to actual findings that were made by the appellate panel are contained in a letter from the Judicial Director to Counsel for the Defense asking Counsel to prepare a proposed Order and Decision for the Full Commission panel. The only finding that the Commission actually made is set out in that letter and that is that the Commission found that the Claimant was not injured while performing a duty of his employment and that he had not proven that he was performing any duty related to work at all when this unwitnessed fall occurred. It had been admitted by the Defendants and it was agreed that Mr. Windham had reported to work and was at work at a time and place his duties required him to be and that he was performing his duties as a salesperson on the sales floor at his employer's place of business during normal business hours at the time that the incident occurred. Those cursory findings and notes resulted in Counsel for the Defendants preparing and submitting an 11 page Order containing a Statement of the Case, an Evidentiary Summary, a section entitled "Discussion", a section entitled

"Findings of Fact" which consist of almost 3 pages of Findings of Fact and 2 pages under a section entitled "Conclusions of Law" and then the Decision of the Commission. The Petitioner as part of his the appeal submitted to the Court that the Commission disregarded the previous Order directing the Commission to apply the unexplained injury or death presumption in this matter. He also submitted that he knows of no other situation wherein a panel of Commissioners or Judges on appeal who are required to review the facts and evidence and make consensus findings as to the facts and evidence and law that applies, where a party is allowed to write that consensus opinion. He submitted that the procedure followed by the Commission not only violates the Commission Rules but also would be akin to the South Carolina Court of Appeals or Supreme Court hearing a case and then allowing a party to write the Order on behalf of the Court without any direction of the Court as to what the specific Findings of Fact and Conclusions of Law are that were made by the Court Panel members. The Court takes note of the Commission's own Regulations wherein Commission Regulation 67-709(E) (2) provides that as part of the Appellate Panel hearing decision making process:

"The Commissioners, together, shall agree upon a modification if any and record their Findings of Fact and Conclusions of Law on a Vote Sheet."
(Emp. add.)

The Petitioner cites case law of which the Court is aware that the duty of making factual findings is the responsibility of the

Commission and that the Commission's factual findings are binding upon appeal as the fact-finding body. The Court takes notice of the case of Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (S.C. App. 1991) wherein like this case the Appellate Panel on appeal had modified the decision of the Hearing Commissioner and on appeal to the Court, the Court of Appeals noted specifically that the Panel had made only conclusory Findings of Fact which were in fact insufficient under law and in violation of the their responsibility to make detailed Findings of Fact, Rulings of Law and decisions on all the issues presented as required by our statutory law. In Baldwin, the Court remanded the case to the Commission to make detailed and definite Findings of Fact based upon the evidence which are sufficient to enable the reviewing Court to determine whether the findings of fact are supported by the evidence and whether the law had been properly applied. There is no question from a review of the ruling of the Commission on Remand that they violated their own Regulations and the previous decisions of our appellate courts and that the actual findings made by the Commission are conclusory findings of fact and conclusions of law.

Based on a review of the Record and the previous Order of this Court, this case should be remanded to the Commission again to apply the legal presumption and define coverage for the Petitioner. Due to the passage of time and the Commission's failure to follow the Court's previous directive, this Court orders that coverage be

found in favor of the Petitioner. In support of this Decision, the Court notes where the facts are undisputed, compensability of a particular event as an accident within the purview of the Workers' Compensation Act is a question of law to be decided by the Court. On admitted or established facts, questions of whether an accident is compensable is a question of law and it is not an invasion of the fact finding responsibility of the Workers' Compensation Commission on the part of the Court to make a legal decision based on those facts. Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977); Jordan v. Dixie Chevrolet, Inc., 218 S.C. 73, 61 S.E.2d 654 (1950).

The following legal principles apply in this case. An injury occurs in the course of employment if it happens within the period of employment at a place where the employee reasonably may be in the performance of his duties while performing those duties. Baggott v. Southern Music, Inc., 330 S.C. 1, 496 S.E.2d 852 (1998). Further, South Carolina case law recognizes a presumption that when an employee is found injured or dead at a place where his employment reasonably requires him to be, the injury or death is presumed to have arisen out of and in the course of the employment. Davis v. By-Pass Auto Parts, Inc., 304 S.C. 75, 403 S.E.2d 133 (S.C. App. 1991).

I have applied these legal principles to the undisputed facts in this case which specifically include the fact that Mr. Windham who is employed as a salesman was found on the sales floor during

the regular hours of operation of his employer at his employer's place of business performing his duties which were those of being a sales person on the sales floor of the employer when he was found behind the sales counter place where his job duties required him to be. The medical evidence establishes there was no evidence of any seizure disorder of any type or any physical finding upon surgery that would explain or give rise to an inference that there was some pre-existing condition that resulted in his apparent fall. In addition, the evidence establishes that he not only had severe injury resulting in hemorrhages in his brain and numerous fractures of his skull on the front part of his skull but that he had a large lump on the back of his head. There is no evidence of any alcohol or drug use at the time of the incident and there is absolutely nothing to explain or give rise to an unrelated cause or event unrelated to his job duties as being the cause of his injury. Therefore, applying the unexplained death presumption to these undisputed facts, the undisputed evidence establishes that the presumption should be applied and that the employee should be awarded benefits based on the presumption that his injuries arose out of and in the course of and as a result of his employment duties with his employer.

THEREFORE IT IS ORDERED based upon the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed

facts, Mr. Windham is determined to have sustained injury by accident arising out of and in the course of his employment as a matter of law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for an entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED.

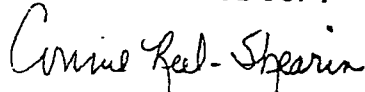


Honorable Thomas A. Russo
CIRCUIT COURT JUDGE
Twelfth Judicial Circuit

 , 2010

FILED
2010 APR - 7 PM 3:29
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

CERTIFIED A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1204039

WILLIAM LEE TURNER,

Employee,

Claimant,

vs.

SAILA CONSTRUCTION,

Employer,

AND

OLD REPUBLIC GENERAL INSURANCE
CORPORATION C/O GALLAGHER
BASSETT SERVICES, INC.

Carrier,

Defendants.

RESPONDENTS' BRIEF

A hearing in this matter was held on February 4, 2014. The Single Commissioner by Order dated April 14, 2014 found that the Claimant failed to meet his burden of proof to show that he had a compensable injury by accident arising out of and in the course and scope of his employment. Further, the Single Commissioner found that the Claimant is not entitled to an award for temporary total disability benefits nor is he entitled to payment of medical treatment for his alleged accident.

Thereafter, the Claimant filed a Form 30 Request for Commission Review on April 28, 2014. The Claimant presented eleven (11) questions for review which are listed below.

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference; and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a Matter of Law by failing to apply the unexplained injury and death presumption to this claim.

3. That where the Hearing Commissioner made specific Findings of Fact: that the Claimant had absolutely no memory of the day before, the day of or any of the events surrounding the alleged accident nor of the day after the alleged accident (Findings of Fact number 9); and that, "The alleged accident was unwitnessed" (Findings of Fact number 10 and number 11), the Hearing Commissioner erred as a matter of law by failing in her duty and responsibility as a Commissioner pursuant to her Oath of Office to apply the law of the State of South Carolina and thus erred by failing to apply the unexplained injury or death presumption as applied by our Appellant Courts as specifically established by the Supreme Court that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, 196 S.C., 12 S.E.2d, 839 (1941). Jake v. Jones, 240 S.C. 574, 126 S.E.2d, 721 (1962).

The Commission has been specifically ordered to apply this presumption previously in an undisputed, factual evidence case involving an unwitnessed fall in the case of Daniel Windham v. Sears Roebuck and Company, Docket No. 2007-CP-21-1391, Order of the Honorable Thomas A. Russo, dated February 20, 2008. When the Commission failed to apply the presumption on Remand, the Circuit Court then applied the presumption to the undisputed facts in its subsequent Order in the matter of Daniel C. Windham v. Sears Roebuck and Company, Docket No. 2009-CP-21-1001, Order of the Honorable Thomas A. Russo, April 6, 2010 holding:

"Therefore it is Ordered, based on the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed facts, Mr. Windham is determined to have sustained injury by accident arising out of in the course of his employment as a Matter of Law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for the entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED."

4. That the Hearing Commissioner erred as a matter of law by basing her Decision on conjecture, speculation and innuendo wherein the undisputed facts in evidence, in addition to the undisputed factual findings that the accident was unwitnessed and that the Claimant had absolutely no memory of the accident, comes from his co-worker Mr. Paul Barnette and establishes as uncontested/undisputed facts that the Claimant did not complain of any headaches, he was not complaining of any dizziness nor had he complained of any ill feeling at all and had no complaints of even feeling unusual in any way on the day of the accident. His testimony specifically was:

Q. So would it be fair to say that at all times from seven o'clock that morning until he moved the truck at whatever time it was - - -

A. Between 2:30 and somewhere. I know our time is on our deposition.

Q: And he had no complaints of headache?

A. No.

Q: No complaints of dizziness?

A: No.

Q: No complaints of feeling ill?

A. No.

Q: Any complaints of feeling unusual?

A. Not that day. I thought Lee, I - - you know, in the back of my mind, I thought, you know, Lee was back to one hundred percent. I thought Lee was doing 'A Number One' that day."

Deposition Transcript of Paul Barnette, p. 18, 11. 10-25. (Emphasis added).

Considering this and all of the undisputed facts on the day of the accident, the Commissioner's Decision to the contrary is not based on substantial evidence and is the subject of conjecture, speculation and innuendo.

5. That the Hearing Commissioner erred as a matter of law in her Order and specifically under her Findings of Fact and Conclusions of Law by failing to apply a fundamental construction principle of the Act which is that:

"Workers Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of uncertainties of trial and suit for damages, to cast on industry in which they are employed a share

of the burden resulting from industrial accidents and to prevent burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."

6. That the Hearing Commissioner erred as a matter of law by making Findings of Fact which are the subject of conjecture, speculation and innuendo and by applying those Findings in an arbitrary and capricious manner to establish a factual basis that does not exist in the Record to deny this Claimant benefits; specifically including Findings of Fact 3, 12, 13, 14, 15, 17, 19, 20, 21, 24, 25.

7. That the Hearing Commissioner erred as a matter of law by characterizing the contentions of the parties and dispute between the parties in Finding of Fact number 19 in an unwitnessed injury or accident presumption case in an erroneous manner by framing the dispute as follows:

"There is no dispute that Claimant injured his head in the fall, but the dispute is whether the Claimant fell from a standing position or from the steps of the cab."

This is an incorrect statement of the position of the parties, the facts of the case and the undisputed findings that the Commissioner made that this was an unwitnessed case in which the Claimant has no memory of what occurred.

8. That the Hearing Commissioner erred as a matter of law after specifically making Findings of Fact 4, 5, 6, 9, 10 and 11, by failing to apply under Conclusions of Law 9 and 10 the unexplained injury or death presumption and by trying to "factually" distinguish a legal presumption under Conclusion of Law number 10.

9. That the Hearing Commissioner erred as a matter of law in making Finding of Fact 16 that:

"If Barrette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different . . ."

This indicates that the Commissioner's Decision is biased and based on speculation, innuendo and on a set of assumed facts not in evidence and therefore outside of the evidence in the Record; and it adds an additional element to the burden of proof.

10. That the Hearing Commissioner erred as a matter of law by failing to apply the concept of circumstantial evidence to the facts of this case.

11. That the Hearing Commissioner erred by applying in fact the wrong burden of proof.

STATEMENT OF THE CASE

The Claimant alleges that on April 19, 2012 he sustained a compensable injury to the head and thoracic spine while in the course and scope of his employment with Defendants. The Claimant contends that he is entitled to medical treatment for the injuries sustained in the alleged incident as well as temporary total disability benefits from April 20, 2012 – January 1, 2013. Defendants' position is that the Claimant did not suffer from a compensable injury pursuant to S.C. Code Ann. Section 42-1-160 which requires that an injury both arise out of and in the course and scope of his employment. Further, Defendants position is that the Claimant's alleged injuries were a result of an idiopathic fall and thus not compensable pursuant to the South Carolina Workers' Compensation Act.

ARGUMENTS

I. THE SINGLE COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION IN THIS CASE

Appellant contends that the Single Commissioner erred as a matter of law by failing to apply the unexplained death or injury presumption to this case. In particular, Appellant argues that the Single Commissioner should have found his injury compensable pursuant to Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941). The Court in Owens stated that there's a natural presumption that one charged with the performance of a duty and injured while performing such duty or found injured at a place where his duty may have required him to be is injured in the course of and as a consequence of the employment.

However, Appellant's interpretation of this case is flawed. Though the Owens case establishes that one found injured on the job is presumably injured during the course of employment, it does not establish that both elements found in South Carolina Code Ann. Section

42-1-160 have been met.

S.C. Code Ann. Section 42-1-160 defines an injury as meaning only an injury by accident arising out of and in the course of employment. South Carolina case law further expands on this definition by indicating that both parts of the statute requiring an injury to arise out of and in the course of employment must exist simultaneously before a court will allow recovery. Grant v. Grant Textiles, 372 S.C. 196, 641 S.E.2d 869. See also Nicolson v. S.C. Dept. of Social Services, 405 S.C. 537, 748 S.E.2d 256 (arising out of employment and in the course of employment as used to define a compensable injury under the Workers' Compensation Law, are not synonymous; rather both parts must exist simultaneously before recovery is allowed).

Thus by applying the definition of an accident the Appellant must meet his burden of proof to show that he suffered an injury by accident which 1) arose out of and 2) in the course of his employment.

An injury arises *in the course of employment* within the meaning of this section when it occurs within the period of employment, at a place where the employer reasonably may be in the performance of his duties and while he is fulfilling those duties or engaged in doing something incidental thereto. Johnson v. Merchants Fertilizer Co., 198 S.C. 373, 17 S.E.2d 695. The evidence submitted before the Single Commissioner is undisputed that the Claimant was at work on the date of the alleged incident. Further, testimony from the Claimant, Paul Barnette and David Bolden all establish that the Claimant was at a place where he would reasonably be in the performance of his duties. Therefore, the Claimant met one prong of S.C. Code Ann. Section 42-1-160 which established that he had an accident *in the course of his employment*.

The Single Commissioner need not apply the presumption found in Owens, because when the Claimant was found injured on the job he satisfied his burden of proof that the alleged

injury occurred in the course of his employment.

However, as indicated above, the Claimant must meet the two pronged test set forth in S.C. Code Ann. Section 42-1-160. The Claimant failed to establish that the incident *arose out of his employment*. An injury arises out of employment when there is apparent to the rational mind, upon consideration of all circumstances a causal relationship between conditions under which the work is to be performed and the resulting injury. Nicholson v. S.C. Department of Social Services, 405 S.C. 537, 748 S.E.2d 256. This is largely a question of fact for the Workers' Compensation Commission. Id.

The Appellant relies on the court's opinion in Packer v. Corbett Canning Co., 238 S.C. 431, 120 S.E.2d 398 to establish that the Claimant suffered from a compensable work related accident due to the unexplained death or injury presumption. Respondents maintain that the Appellant's reliance on Packer is misplaced. In Packer, the decedent was found on a wet concrete floor alongside an electrical cord after an electrical storm. Expert testimony revealed that the decedent was not electrocuted and further showed that had scars from a recent heart attack. Though the Court cited the natural presumption as found in Owens to indicate that the decedent was found where the performance of his duties required him to be, the Court also stated that the presumption may not be availed to establish the incident of accident. Id. at 438. The Court found that even though the decedent was found on the job, there was no accident which caused his death.

Much like the Packer case, the Appellant was found on the ground and there were no witnesses to the accident. However, a presumption cannot be applied to establish that an incident arose out of his employment. The Appellant has the burden of proving facts that will bring his injury within the workers' compensation law and such an award must not be based on surmise,

conjecture or speculation. Jennings v. Chambers Dev. Co., 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999). Therefore, without meeting his burden of proof, to show both an injury that arose out of his employment and an injury in the course of his employment, the Appellant did not have a compensable injury pursuant to S.C. Code Ann. Section 42-1-160.

II. THE SINGLE COMMISSIONER DID NOT ERR IN FAILING TO APPLY THE UNEXPLAINED DEATH OR INJURY PRESUMPTION AS CLAIMANT'S FALL WAS IDIOPATHIC IN NATURE, THEREFORE NON-COMPENSABLE UNDER THE SOUTH CAROLINA WORKERS' COMPENSATION ACT

The Appellant failed to meet his burden of proof to show that he suffered from a compensable injury which both arose out of and in the course of his employment. The Single Commissioner did not need to apply the unexplained death or injury presumption as the facts were not in dispute that the Claimant was injured in the course of his employment.

Regardless of the finding that the Claimant was injured in the course of his employment, the Single Commissioner found that the Claimant suffered from an idiopathic fall. An idiopathic fall has been historically defined in South Carolina case law as a ground level fall which neither the fall or the resulting injury bears a special relationship to the work or the conditions under which the claimant is performing his work. Crosby v. Wal-Mart Store, 330 S.C. 489, 499 S.E.2d 253.

In the Crosby case, the claimant suffered from an idiopathic fall in which the court found was non-compensable. The claimant argued on appeal that her case was different than most unexplained falls because there was no medical evidence indicating an internal breakdown which may have caused the fall. Id. at 494. However, the court found that even without this medical evidence her fall was idiopathic as the fall had no connection to her employment. Similar to Crosby, the evidence in the case at hand shows that the Appellant was not suffering from a known medical condition that would have caused his fall and his fall bore no relationship to his

employment. See also Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (claimant suddenly falls while standing) and Miller v. Springs Cotton Mills, 225 S.C. 326, 82 S.E.2d 458 (claimant's knee failed to function for some unknown cause).

The Appellant argues that the Single Commissioner should have applied the proposition set forth by the court in Crosby which outlines two types of unexplained falls: 1) those in which the fall was unwitnessed or was purely unexplained and 2) those in which the evidence established that the fall, while unexplained, had an apparent lack of work connection. In Crosby the Court defines the two unexplained falls with supporting case law. In particular, they state that where the fall is unwitnessed or purely unexplained... and there are no eye witnesses to the occurrence itself, our courts have tended to affirm an award of compensation, **deferring to the fact finding discretion of the commission.** Id. at 496. The last portion of this sentence should be given great emphasis as the Single Commissioner heard testimony, reviewed deposition testimony, reviewed medical evidence, and made the findings of fact, conclusions of law and award.

Appellant contends that since there were no witnesses to the accident and the Appellant doesn't remember what happened his claim should be found compensable. The evidence submitted in this claim fails to show that the Appellant's fall was caused by his employment. Further Respondents would argue that the Appellant's resulting injuries from his fall bore no special relationship to his work or the conditions under which it was performed.

III. THE SINGLE COMMISSIONER DID NOT ERR IN FINDING AS FACT, CONCLUDING AS A MATTER OF LAW, AND ORDERING THAT THE CLAIMANT DID NOT SUFFER FROM A COMPENSABLE INJURY

The Appellant contends that the Single Commissioner erred as a matter of law because she made findings of fact, conclusions of law and ordered that the Claimant did not suffer from a compensable injury. Respondents respectfully disagree and refer to the Hearing Transcript, medical evidence submitted into the record as well as additional evidence submitted pursuant to the Administrative Procedures Act. These specific findings of fact, conclusions of law and award are all based on the Single Commissioner's review of the entire record. "Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore, the Commission determines the weight and credit to be given to the expert testimony." Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999). The Commission is also given discretion to weigh and consider all the evidence, including both lay and expert testimony. Id. at 341, 513 S.E.2d at 847.

The Appellant claims that these specific findings of facts (12, 13, 14, 15, 16, 17, 19, 20, 21, 24, and 25) are irrelevant and speculates that by making these findings, the Single Commissioner's award was based on surmise and conjecture. However, the Single Commissioner made these findings of fact which show a pattern of inconsistencies in the Claimant's case. Further, the Single Commissioner used these findings to note a lack of credibility on the part of the Claimant. Deference should be given to the Single Commissioner as she witnessed the Claimant first hand. "It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion." Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967).

Therefore, Respondents maintain that the Single Commissioner, as the sole fact finder in this claim, weighed the evidence presented before her and made findings of fact, conclusions of law and an award that was not based on surmise or conjecture. Thus, the Order of the Single

Commissioner should be affirmed.

CONCLUSION

For the reasons stated above, this Court should affirm the decision of the Single Commissioner and find that the Appellant's claim is non-compensable pursuant to S.C. Code Ann. Section 42-1-160 as he failed to show that he suffered from an injury by accident which arose out of and in the course and scope of his employment.

Jason W. Lockhart / efi

JASON W. LOCKHART
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
July 21, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1204039

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance
Corporation c/o Gallagher Bassett
Services, Inc., Carrier, ... Respondents.

NOTICE OF APPEAL

Appellant William Lee Turner appeals the Decision and Order of the Hearing Commissioner filed April 14, 2014 and the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel filed on October 10, 2014. Appellant received notice of entry of the Appellate Panel Order via electronic mail only on October 10, 2014. Appellant did not receive notice or a copy of the Order pursuant to SC Code §42-17-60 and/or §1-23-350.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That pursuant to S.C. Code of Laws §42-17-40, the

Claimant/Appellant requested that the Full Commission review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter. Based on the Order issued, the Full Commission erred in that review and Appellant requests a review pursuant to SC Code §1-23-380(4).

2. That the Commission erred as a Matter of Law by failing to apply the unexplained injury and death presumption to this claim.

3. That where the Hearing Commissioner made specific Findings of Fact: that the Claimant/Appellant had absolutely no memory of the day before, the day of or any of the events surrounding the alleged accident nor of the day after the alleged accident (Findings of Fact number 9); and that, "The alleged accident was unwitnessed" (Findings of Fact number 10 and number 11), the Commission erred as a matter of law by failing to apply the unexplained injury or death presumption as established by our Appellant Courts and as applied in the Circuit Court that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, 196 S.C., 12 S.E.2d, 839

(1941). Jake v. Jones, 240 S.C. 574, 126 S.E.2d, 721 (1962).

The Commission had specifically been ordered to apply this presumption previously in an undisputed, factual evidence case involving an unwitnessed fall in the case of Daniel Windham v. Sears Roebuck and Company, Docket No. 2007-CP-21-1391, Order of the Honorable Thomas A. Russo, dated February 20, 2008. When the Commission failed to apply the presumption on Remand, the Circuit Court then applied the presumption to the undisputed facts in its subsequent Order in the matter of Daniel C. Windham v. Sears Roebuck and Company, Docket No. 2009-CP-21-1001, Order of the Honorable Thomas A. Russo, April 6, 2010 holding:

"Therefore it is Ordered, based on the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed facts, Mr. Windham is determined to have sustained injury by accident arising out of in the course of his employment as a Matter of Law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for the entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED."

This is a legal error because the Commission is duty bound to apply the law as dictated by a higher Court until it is changed.

4. That the Commission erred as a matter of law by basing its Decision on conjecture, speculation and innuendo wherein the undisputed facts in evidence, in addition to the undisputed factual findings that the accident was unwitnessed and that the

Claimant/Appellant had absolutely no memory of the accident, came from the Claimant/Appellant's co-worker Mr. Paul Barnette and establishes as uncontested/undisputed facts that the Claimant/Appellant did not complain of any headaches, he was not complaining of any dizziness nor had he complained of any ill feeling at all and had no complaints of even feeling unusual in any way on the day of the accident. His testimony specifically was:

"Q: So would it be fair to say that at all times from seven o'clock that morning until he moved the truck at whatever time it was - - -

A: Between 2:30 and somewhere. I know our time is on our deposition.

Q: And he had no complaints of headache?

A: No.

Q: No complaints of dizziness?

A: No.

Q: No complaints of feeling ill?

A: No.

Q: Any complaints of feeling unusual?

A: Not that day. I thought Lee, I - - you know, in the back of my mind, I thought, you know, Lee was back to one hundred percent. I thought Lee was doing 'A Number One' that day."

Deposition Transcript of Paul Barnette, p. 18, 11. 10-25. (Emphasis added).

Considering this and all of the undisputed facts on the day of the accident, the Commission's Decision to the contrary is not

based on substantial evidence and is the subject of conjecture, speculation and innuendo.

5. That the Commission erred as a matter of law in its Order affirming the Hearing Commissioner's and specifically under the Findings of Fact and Conclusions of Law made by failing to apply a fundamental construction principle of the Act which is that:

"Workers Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of uncertainties of trial and suit for damages, to cast on industry in which they are employed a share of the burden resulting from industrial accidents and to prevent burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."

6. That the Commissioner err as a matter of law by making Findings of Fact which are the subject of conjecture, speculation and innuendo and by applying those Findings in an arbitrary and capricious manner to establish a factual basis that does not exist in the Record to deny this Claimant/Appellant benefits; specifically including Findings of Fact 3, 12, 13, 14, 15, 17, 19, 20, 21, 24, 25.

7. That the Commission erred as a matter of law by characterizing the contentions of the parties and dispute between the parties in Finding of Fact number 19 in an unwitnessed injury

or accident presumption case in an erroneous manner by framing the dispute as follows:

"There is no dispute that Claimant injured his head in the fall, but the dispute is whether the Claimant fell from a standing position or from the steps of the cab."

This is an incorrect statement of the position of the parties, the facts of the case and the undisputed findings that the Commission made that this was an unwitnessed case in which the Claimant/Appellant has no memory of what occurred.

8. That the Commission erred as a matter of law after specifically making Findings of Fact 4, 5, 6, 9, 10 and 11, by failing to apply under Conclusions of Law 9 and 10 the unexplained injury or death presumption and by trying to "factually" distinguish a legal presumption under Conclusion of Law number 10.

9. That the Commission erred as a matter of law in affirming Finding of Fact 16 that:

"If Barrette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different . . ."

This indicates that the Commissioner's Decision is biased and based on speculation, innuendo and on a set of assumed facts not in evidence and therefore outside of the evidence in the Record. It also adds an additional element to the burden of proof.

10. That the Commission erred as a matter of law by failing to apply the concept of circumstantial evidence to the facts of this case.

11. That the Commission erred by applying in fact the wrong burden of proof.

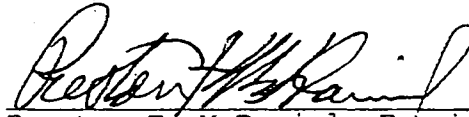
12. That where the Full Commission's only Decision issued on the appeal was, "The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order", the Full Commission erred by issuing an Order drafted by Defense Counsel that added Conclusions of Law that there is no indication in the Record were made by the Commission.

13. That the Full Commission erred as a matter of law in violation of the Administrative Procedures Act, the Workers' Compensation Act and its own Regulations by failing to make detailed Conclusions of Law on the issues presented to it for review.

14. That the Full Commission erred as a matter of law by failing to properly apply the law to the facts of the case.

The above-referenced Exceptions are subject to amendment upon receipt of the Full Commission Transcript.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Claimant/Appellant

November 6, 2014

Other Counsel of Record:

Jason W. Lockhart, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, South Carolina 29211
803-779-2300

Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1204039

William Lee Turner, Employee, ... Appellant,

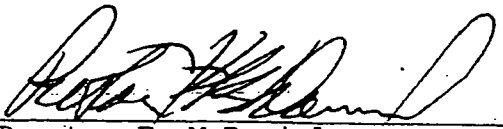
v.

SAIIA Construction, Employer, and
Old Republic General Insurance
Corporation c/o Gallagher Bassett
Services, Inc., Carrier, ... Respondents.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 2014 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 AND also serving a copy upon Jason W. Lockhart, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: November 7, 2014


Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Appellant

PAGE LEFT BLANK
INTENTIONALLY