

ORIGINAL
RECEIVED

NOV 02 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1307602

Verma Tedder, Employee Claimant, Appellant,

vs.

Darlington County Community Action Agency, Employer,
and State Accident Fund, Carrier, ... Respondents.

RECORD ON APPEAL
VOLUME ONE

Stephen J. Wukela
Wukela Law Firm
Attorney for Appellant
SC Bar No. 68351
PO Box 13057
Florence SC 29504
843-669-5634

G. Murrell Smith, Jr., Esquire
Lee, Erter, Wilson, Holler & Smith, LLC
Attorney for Respondents
SC Bar No. 66263
PO Box 580
Sumter SC 29151
803-778-2471

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1307602

Verma Tedder, Employee Claimant, Appellant,

vs.

Darlington County Community Action Agency, Employer,
and State Accident Fund, Carrier, ... Respondents.

**RECORD ON APPEAL
VOLUME ONE**

Stephen J. Wukela
Wukela Law Firm
Attorney for Appellant
SC Bar No. 68351
PO Box 13057
Florence SC 29504
843-669-5634

G. Murrell Smith, Jr., Esquire
Lee, Erter, Wilson, Holler & Smith, LLC
Attorney for Respondents
SC Bar No. 66263
PO Box 580
Sumter SC 29151
803-778-2471

INDEX

ORDERS

Order Denying Motion to Compel dated August 7, 2015.....	1
Order of the Single Commissioner dated November 23, 2015.....	3
Order of the Appellate Panel dated April 20, 2016	22

PLEADINGS

Defendants' Form 21 and letter dated September 5, 2014.....	34
---	----

TESTIMONY

Deposition of Claimant taken on October 30, 2013	36
Deposition of Robert E. Elvington, Jr., MD taken on March 4, 2014	97
Transcript of Proceedings of August 20, 2015	135
Transcript of Proceedings of February 22, 2016	206

OTHER

Claimant's Form 58 delivered on October 16, 2014	232
Hearing Notice dated September 24, 2014 (for October 29, 2014).....	236
Continuance Request dated October 22, 2014.....	237
Continuance Notice dated October 23, 2014.....	238
Email and Form 70 dated February 23, 2015	239
Hearing Notice dated March 5, 2015 (for May 5, 2015)	241
Claimant's Form 58 and cover letter dated April 17, 2015	242
Claimant's APA Submissions pp. 1-153; pp. 181-186 dated April 17, 2015.....	247
Continuance Request dated April 23, 2015	401
Hearing Notice dated May 4, 2015 (for June 17, 2015)	402
Continuance Request dated May 4, 2015	403
Hearing Notice dated May 5, 2015 (for June 18, 2015)	404
Continuance Request dated June 3, 2015	405
Continuance Request dated June 17, 2015	406
Postponement Notice dated June 17, 2015	407
Hearing Notice dated June 23, 2015 (for July 6, 2015).....	408
Hearing Notice dated June 29, 2015 (for August 20, 2015)	409
Defendants' Motion to Compel dated July 27, 2015	410
Claimant's Response to Motion to Compel dated July 29, 2015.....	425

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1307602

Verna Tedder,	)
	)
Claimant,	)
vs.	)
	)
	)
Darlington County Community Action,	)
	)
Employer,	)
	)
State Accident Fund,	)
	)
Carrier,	)
Defendants	)

A Motion regarding the following issue has been received:

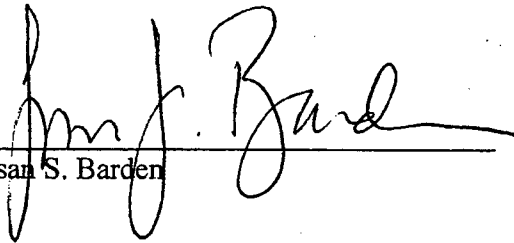
☒ Defendants' Motion to Compel Independent Vocational Examination.

The following disposition of the Motion has been made:

☐ Granted

☒ Denied

**IF CLAIMANT CHOOSES NOT TO SUBMIT TO DEFENDANTS'
EVALUATION, NEITHER PARTY'S VOCATIONAL REPORT WILL BE
CONSIDERED BY THE UNDERSIGNED COMMISSIONER.**



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).

August 7, 2015

By: Kristi Love, Administrative Assistant to Commissioner Barden

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1307602

Verma Tedder,

Employee-Claimant,

vs.

Darlington County Community Action Agency,

Employer,

and

State Accident Fund,

Carrier,

Defendants,

HEARING:

Held in Hartsville, South Carolina on the 20th day of August, 2015.

APPEARANCES:

Claimant represented by Stephen Wukela, Esquire on behalf of The Wukela Law Firm, Post Office Box 13057, Florence, South Carolina, 29504.

Defendants represented by G. Murrell Smith, Jr., Esquire, of Lee, Erter, Wilson, Holler & Smith, LLC, Post Office Box 580, Sumter, South Carolina, 29151.

PURPOSE OF HEARING:

To determine the issues contained in the Forms 21 and 50 and 51, and to determine the compensability of the claim.

OPINION AND AWARD:

Commissioner Susan S. Barden

FILED:

November 23, 2015

ADMINISTRATIVE PROCEDURES ACT SUBMISSIONS

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

APA #	PHYSICIAN/OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA #1	Richard T Ferro, M.D.	McLeod Urgent Care	03/29/13-05/02/13	000001-000019
APA #2		McLeod Regional Medical Center	03/29/13-09/04/13	000020-000028
APA #3		Lowe's Therapy	05/13/13-10/10/13	00029-
APA #4		McLeod Occupational Health	05/21/13-06/04/13	000058-000078
APA #5		Pee Dee Orthopaedic Associates	6/20/13-07/03/14	000079-000120
APA #6	Barbara A. Wright, M.D.	CareSouth Carolina	10/08/13	000121-000123
APA #7		Columbia Rehabilitation Clinic, Inc.	09/12/14	000124-000146
APA #8	J. Adger Brown, Jr. MA, CDMS		09/19/14	000147-000153
APA #9	Payroll Records from Darlington County Community Action Agency		01/06/12-03/29/13	000154-000158
APA #10	Time and Attendance Records from Darlington County Community Action Agency		01/09/12-03/29/13	000159-000180
APA #11	Notice of Award from Social Security Administration		05/05/14	000181-000185
APA #12	Notice of Approval of Disability Retirement from South Carolina Retirement Systems		06/06/14	000186

Submissions by the Employer/Defendant:

APA #	PROVIDER	DATES OF SERVICE	PAGES
1	CareSouth Carolina	08/06/09	1
2	McLeod Urgent Care-Darlington	03/29/13	2-6
3	South Carolina Diagnostic Imaging	05/30/13	7-8
A	Betheau Home Health Care Employee File	-	9-35
B	Deposition of Dr. Robert E. Elvington	03/05/14	36-72
C	Claimant's Payroll Journal & Time and Attendance Reports	-	73-81
	Deposition of Verma Tedder was submitted by Defendant's attorney at the time of the hearing	10/30/13	-

STIPULATIONS

Counsel for both parties at the hearing stipulated to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the hearing notice, Forms 21, as well as any other issues which may timely come before the Commission.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Darlington County, is proper as agreed upon by all parties.
4. The Claimant's average weekly wage is \$325.19, which corresponds to a compensation rate of \$216.80.
5. The Claimant reached maximum medical improvement as of August 26, 2014.
6. The Commission's file, with the exception of self-serving declarations or unstipulated medicals, becomes a part of the record in this case.

STATEMENT OF THE CASE

This matter was before the Commission on the issues outlined in the Employee's Form 50 as well as the Employer's/Carrier's Form 21 and Form 51.

Verma Tedder (hereinafter referred to as "Claimant") alleges that she was injured in the course and scope of her employment with the Darlington County Community Action Agency (hereinafter "employer") on March 29, 2013. The Claimant alleges that while supervising children on the way to the playground, one of the children caused the Claimant to fall to the ground on her left side. The Claimant suffered admitted injuries to her left leg and back. The Claimant took the position that she is permanently and totally disabled. She contended that she is entitled to that finding pursuant to S.C. Code Ann. §42-9-10 because of the combination of her injuries, or alternatively under S.C. Code Ann. §42-9-30(21) in that she has sustained a 50% or greater loss or use of her spine. The Claimant presented a Functional Capacity Evaluation in which she was limited to sedentary or less than sedentary work.

The Claimant also took the position that if the undersigned did not find that she is permanently and totally disabled, then she requested appropriated awards pursuant to S.C. Code Ann. §42-9-30(16) and (21). She contended that she has significant permanent, partial disability beyond those impairment ratings.

The Defendant/Employer contended that the Claimant reached maximum medical improvement as of August 26, 2014. The Defendant/Employer sought an Order allowing them to stop payment of temporary benefits. They also sought a determination of permanency, if any, with regard to back and left knee only. The Defendant/Employer also conceded and acknowledged that there was a left arm/hand injury but believes that injury was resolved without any permanency.

The Defendants denied that the Claimant is permanently and totally disabled. They took the position that the knee and back are scheduled losses pursuant to S.C. Code Ann. §42-9-30(16) and (21).

The Defendants also took the position that pursuant to the medical records there were no restrictions on the Claimant's ability to work. They took the position that Dr. Edwards released the Claimant with no restrictions, and that ultimately Dr. Elvington released the Claimant with no restrictions.

Finally, the Defendants contend that any restrictions set forth in the Functional Capacity Evaluation obtained by the Claimant should be disregarded as that was requested by the Claimant and/or her attorney. The Functional Capacity Evaluation also demonstrated sub-maximal effort.

The Claimant also refused to submit to a Vocational Evaluation scheduled by the Defendants' Vocational Expert. The undersigned issued an Order denying the Defendants' Motion to Compel Independent Vocational Examination but further ruled that if the Claimant chose not to submit to the evaluation, neither party's Vocational Report would be considered by the undersigned. This Order was dated August 7, 2015.

The Claimant continued to refuse to submit to a Vocational Evaluation. The Claimant's attorney requested the undersigned to reconsider the Order. Primarily, the Claimant's attorney argued that the APAs were submitted on April 17, 2015. This is more than four (4) months prior to the hearing. The hearing was continued due to scheduling conflicts. The Defendants did not request a Vocational Evaluation until July 10, 2015, a few weeks prior to the hearing.

The Claimant had been determined to be at maximum medical improvement in August of 2014. There was a delay in having this case set for a hearing after mediation was completed.

Furthermore, there were delays in scheduling the hearing due to the aforementioned scheduling conflicts of the Defendants' attorney.

The Claimant took the position that she had the right to rely on S.C. Code Ann. §42-15-80 and that does not allow for a Vocational Examination to be conducted by the Defendants' attorney. Only independent medical examinations are to be allowed pursuant to that Section.

Conversely, the Defendants took the position that it is inherently unfair to allow a Vocational Examination to be conducted by the Claimant's Vocational Expert and not allow the same of the Defendants' expert. Specifically, due process would allow the Defendants to have an Independent Vocational Evaluation, especially if the Claimant is relying on a vocational report and an expert's opinion in determining whether the Claimant was permanently and totally disabled. The notions of due process and fair play would allow the Defendants to conduct their independent evaluation. Otherwise, the Claimant could argue there is an un-rebutted opinion of a Vocational Expert that indicates the Claimant is permanently disabled.

The Court took this Motion to Reconsider under advisement and advised the parties that the ruling would be provided in the Order.

EVIDENCE OF CASE

The Claimant was the only witness to testify at the hearing. The Claimant is fifty-four (54) years of age and from Darlington, South Carolina. The Claimant has never been married and has one (1) child who is thirty-two (32) years old.

The Claimant graduated from High School at Rosenwald High School in Society Hill, South Carolina. The Claimant also attended Florence-Darlington Tech and received her Associate's Degree in Early Childhood Education.

The Claimant's work history was Galey & Lord which was a textile mill in Society Hill.

She worked on the assembly line for approximately four (4) years.

Thereafter, she began to work with A.O. Smith in McBee, South Carolina. She worked on the assembly line for approximately five (5) years. They produced water heaters at that facility.

Following her employment at A.O. Smith, she worked at Bethea Nursing Home. She was a dietary aide until she began working with the Darlington County Community Action Agency.

She worked at the Darlington County Community Action Agency as an associate teacher. She taught kids how to exercise, supervised playtime, supervised naptime, and helped clean the classroom after the kids departed. The children were approximately three (3) years old that she provided services to in this employment.

She has worked with the Agency since 1997. She has been employed in the same position. Intermittently, she worked with Bethea Nursing Home while still employed with the Agency.

The Claimant testified that the accident occurred on March 29, 2013. She was taking kids to the playground. One of the children ran in front of the Claimant which caused her to trip and fall. The Claimant braced her fall with her hands.

The Claimant then testified that she was treated by Dr. Elvington and he performed surgery on her left knee. She also treated with Dr. Edwards for pain in her lower back.

The Claimant testified that she had injuries to her left arm and hand initially with the accident. However, those resolved over time.

The Claimant testified that her left knee was painful. It had pain running from the feet all the way up to her lower back.

The Claimant testified that she received some restrictions from her Functional Capacity

Evaluation and also alleged that Dr. Elvington gave her restrictions. She believes that she still has restrictions from lifting, stooping, walking, and sitting for a prolonged period of time. She states that it is painful for her to exert any effort. She has pain in her lower back while sitting and pain in her left knee.

The Claimant also testified that she had problems with her right knee as well. However, the right knee was not alleged as part of the claim with this accident. She described that the right knee was "catching."

The Claimant testified that she was on prescription Ibuprofen and Aleve. She also testified that she received Disability Retirement from the South Carolina State Retirement System from her injuries.

The Claimant testified that she enjoyed her job and desired to return. However, she could not return due to the pain. She testified that she was in pain all day from her left knee and lower back.

On cross examination, the Claimant testified that she was truthful when providing information to the doctors at her appointments. She testified that she had a previous knee injury in which Dr. Elvington performed surgery approximately ten (10) to fifteen (15) years ago. She was having some pain in that knee prior to the surgery. She was diagnosed with arthritis and Dr. Elvington advised that surgery was not going to resolve all the pain in her left knee due to her arthritis.

She denied having leg pain and lower back pain prior to this fall. She denied having any back pain other than aches and pains during her tenure with the employer.

There was an application for employment at Bethea Nursing Home filled-out by the Claimant on October 16, 2007 which had a questionnaire. In the questionnaire, the Claimant

circled that she had a history of back problems.

Only July 3, 2014, she visited Dr. Edwards wherein she was released from treatment. She stated that she fully participated in the tests performed by Dr. Edwards. She denied that the records were correct where it stated that she was in “no acute distress,” “rising easily from sitting to standing,” with “hip and knee motion is full and painless,” and “walking normally, gait is normal.” She said all of these descriptions of her condition were not true.

She denied that the cane that was prescribed for her was for the right knee. She claimed that it was for the left knee.

The Claimant also disagreed with Dr. Elvington’s notes from the December 5, 2013 visit. The notes stated that she had good range of motion in her knee and good strength in her left knee.

She also denied the accuracy of the notes from Lowe’s Physical Therapy that she had equal strength in the right and left knees, and that range of motion in right and left knees were also equal.

MEDICAL EVIDENCE

The undersigned reviewed all the medical evidence submitted by the parties including the deposition testimony of Robert E. Elvington, Jr., M.D. dated March 4, 2014.

The Claimant initially treated with McLeod Urgent Care by Dr. Richard T. Ferro. She was treated for bilateral knee pain and left arm pain. She had a contusion to her knee and elbow and forearm. She was instructed to apply ice to areas as needed and return to the Urgent Care in one (1) week for follow-up. There were x-rays taken on that visit to her left knee and right knee. There was no evidence of fracture or dislocation.

On April 4, 2013, the Claimant continued to treat with Dr. Ferro at McLeod Urgent Care. She was complaining of left knee pain radiating into the left hip at the time. She noted her left wrist and forearm were feeling better.

The Claimant again followed-up with McLeod Urgent Care, and saw Dr. Prakash Beeraka on April 11, 2013. At that time, she was complaining of continued left knee pain which was radiating up to her left thigh. Her right knee was about 90% better while her left wrist and left forearm discomfort were about 80% better. Her main complaint was her left knee.

The Claimant followed-up with Dr. Ferro again on April 18, 2013, in which she was continuing to complain of left knee pain. There was another follow-up on May 2, 2013, in which it was noted that her left wrist and right knee pain had resolved. She was still having left knee and leg discomfort which radiates into her left hip. At that time, she was referred to physical therapy with Lowe's Physical Therapy.

The Claimant was eventually referred to McLeod Occupational Medicine where she saw Dr. Peter Hyman. Her first visit was on May 21, 2013, where she complained of left knee pain and back pain. An MRI of her lumbar spine and left knee were ordered. The MRI of the left knee was performed on May 30, 2013. Margaret Lee, M.D. noted there the posterior horn of the lateral meniscus was torn from its posterior tibial attachment, but it remained attached to the prominent thickened meniscomfemoral ligament. The Carrier denied the MRI of the lumbar spine.

The Claimant then presented again on June 4, 2013 for her appointment with Dr. Hyman. At that point due to her MRI, Dr. Hyman discontinued physical therapy and referred her to Pee Dee Orthopaedics.

The Claimant's first appointment with Pee Dee Orthopaedics was on June 25, 2013. She was treated by Dr. Robert E. Elvington, Jr. Her complaints were status post-knee surgery ten

(10) to fifteen (15) years ago and pain all over her body. She described the accident to Dr. Elvington, and he diagnosed her with a medial meniscus tear in the left knee with mild degenerative joint disease in the left knee.

Dr. Elvington noted in this visit that they discussed arthroscopic surgery for the medial meniscus. However, he stated "I doubt this will completely improve her pain due to the previous arthritis that was already in the knee before the injury in March. But it should help."

The Claimant then saw Dr. Elvington on August 8, 2013 with the chief complaint of a right knee injury. She complained of medial side pain. Her pain was worse on weight bearing and she was ambulating with the use of a cane at this appointment.

Dr. Elvington noted that she was also diagnosed with a medial meniscus tear to her left knee and arthroscopy was recommended. She advised Dr. Elvington that her current right knee symptoms are similar to her left knee symptoms. Dr. Elvington diagnosed a medial meniscus tear to the right knee and right knee degenerative disease.

A right knee MRI was performed on August 27, 2013. This MRI demonstrated a tri-compartment degenerative arthritis most marked in the patellofemoral joint with osteochondral defects in both the medial and lateral femoral condyles and marked osteophytic changes anterior femoral condyles and posterior patella.

The Claimant underwent surgery on September 4, 2013 to repair her left medial meniscus tear. There were no complications with the surgery.

The Claimant's first follow-up visit was on September 12, 2013. Her sutures were removed at this visit and she was scheduled for physical therapy at Lowe's Physical Therapy two (2) times a week for four (4) weeks. Dr. Elvington returned her to work with no prolonged walking or standing, climbing, stooping or crawling and no lifting or carrying greater than ten

(10) pounds. Dr. Elvington stated that they would address the patient's right knee symptoms at a later date.

The Claimant's next visit was on October 24, 2013. This was the Claimant's six (6) week follow-up for the left knee arthroscopy. She was using a cane at that time, and said she was doing well regarding her knee. Her range of motion was improving. She was to continue her physical therapy for the left knee two (2) times a week for four (4) more weeks.

Dr. Elvington also noted that her right knee continued to be painful. The MRI revealed a medial meniscus tear. Dr. Elvington recommended arthroscopy of the right knee with a partial medial meniscectomy. This would be scheduled after Workers' Compensation approval. Her restrictions were continued on that date.

On March 6, 2014, the Claimant was evaluated by Dr. W. S. Edwards for low back pain. The Claimant reported that her low back pain and pain in her legs were ongoing since the injury of March 29, 2013. Prior to the injury in March of last year, she advised Dr. Edwards that she did not have leg pain or low back pain. Dr. Edwards performed x-rays that showed severe degenerative changes bilaterally in the hips. No apparent degenerative changes of the SI joints. There was also narrowing of the L2-L3 and L5 S1 disc spaces, mild narrowing of the L3 L4 and L4 L5 disc spaces. Dr. Edwards recommend an MRI of the lumbar spine to better assess compressive pathology.

An MRI was performed on April 4, 2014. L3-L4, L4-L5 and L5-S1 show a desiccation and loss of normal water content. There is no disc herniation nor spinal stenosis.

A follow-up appointment with Dr. Edwards was conducted on April 17, 2014. Dr. Edwards found that the study demonstrates no lumbar stenosis or other abnormality. At this time, she was diagnosed with mechanical low back pain secondary to lumbar spondylosis and chronic

lumbar strain/sprain. She was given a course of physical therapy.

The Claimant again followed up with Dr. Edwards on July 3, 2014. Dr. Edwards performed a focused exam in which he noted “pleasant female in no acute distress. Rises easily from sitting to standing. Decreased lordosis. Reluctant to reverse lordosis with forward flexion. Returns upright with muscular dysrhythmia. Motor strength in the lower extremities is 5/5. Reflexes 2+ and symmetric. Hip and knee motion is full and painless. Peripheral pulses full. No dermatomal paresthesias. No sciatic stretch signs. No long tract findings. Gait is normal. Uses a cane on the right side for support.”

At this visit, Dr. Edwards stated “patient was reassured that there is no evidence of underlying compressive pathology or instability that would require surgical intervention. Use of good body mechanics and careful lifting techniques are emphasized. She is at maximum medical improvement and has a 5% impairment of her spine based on her industrial injury. No specific restrictions are necessary. She is discharged.”

The next record contained from Pee Dee Orthopaedic Associates is an addendum by Dr. Elvington dated August 26, 2014. At that time, Dr. Elvington states that the “patient is at maximum medical improvement. From the range of motion documented by the physical therapist and that she is status post knee arthroscopy and partial medial meniscectomy patient would have a permanent physical impairment rating of 3% of the left knee.”

The Claimant’s attorney arranged a Functional Capacity Evaluation by Columbia Rehabilitation Clinic, Inc. This evaluation was performed by Tracy Hill, P.T. The results of the Functional Capacity Evaluation performed indicated that the Claimant can meet the demands of limited sedentary to limited light work. The Functional Capacity Evaluation also demonstrated “a 5-position handgrip test was performed, and graphed results did not resemble a bell-shaped

curve indicating submaximal effort. Coefficients of variation at position 2 of the right hand were above 15% indicating submaximal effort. Waddell's evaluation of non-organic signs was negative."

The physical therapist also noted "although she was noted to perform inconsistently during handgrip testing, she was noted to have difficulty with material handling, kneeling, squatting, treadmill testing, and stairclimbing. She was noted to be more comfortable sitting versus standing/walking and it is recommended she avoid standing/walking for more than 35 minutes at a given time."

FINDINGS OF FACT

THEREFORE, after careful review and in consideration of all evidence presented, including weighing the credibility and believability of the witness who testified, through personal observation of demeanor and character, the preponderance of the evidence supports the following Findings of Fact:

1. Claimant injured her back, left knee, and left arm/hand in an admitted accident on March 29, 2013. Note: Based upon Defendants' Form 58 (listing the admitted body parts, including the "right arm and hand") and our discussion at the pre-hearing conference, the record was opened with the statement that Claimant injured her right arm. However, multiple medical records show that it was actually the left arm that was injured.
2. Claimant's left arm/hand injury resolved (Claimant's APA #1, page 14; testimony of Claimant).
3. Claimant has an unrelated right knee meniscal tear, for which medical records state that she requires surgery as recommended by Dr. Elvington. As of the date of the hearing, there is no evidence that Claimant has undergone the right knee surgery to repair the tear (Deposition of Dr. Elvington, pages 19, 28-29, and 33-35).
4. Claimant is 54 years of age (testimony of Claimant).
5. Claimant is a high school graduate. She also has a 2-year associate's degree in early childhood education (testimony of Claimant; Claimant's Deposition, page 10; Defendants' APA, Exhibit A, page 35).

6. Claimant's prior employment includes work as a cook, work in a textile mill, work on an assembly line, and work as a dining room aide in a nursing home (testimony of Claimant; Claimant's Deposition, pages 12-15; Defendants' APA, Exhibit A, pages 16-17).
7. Claimant's job with Employer is described as teacher's aide/assistant teacher/associate teacher for 3-year olds, a job Claimant held for approximately 16 years. Although the length of Claimant's job tenure is impressive and weighs in her favor, it is not dispositive (testimony of Claimant; Claimant's Deposition, page 22; Claimant's APA #3, pages 32 and 37; Claimant's APA #4, page 59; Claimant's APA #5, pages 79 and 83).
8. Claimant has a prior workers' compensation claim involving her right knee, for which an impairment rating was assigned and for which Claimant received a settlement. Claimant also has a prior personal injury lawsuit involving her back for which she also received a settlement (Claimant's Deposition, pages 15-21, 31, 46-49, and 53).
9. Because of the left knee injury in issue, Claimant underwent arthroscopic knee surgery—a partial medical meniscectomy (Deposition of Dr. Elvington, pages 8-9; Claimant's APA #2, pages 21 and 23-24; Claimant's APA #5, pages 91, 95, and 113).
10. Prior to the surgery to repair the torn meniscus in Claimant's left knee, Claimant's gait was "mildly antalgic." I give this record great weight, as Claimant ambulated laboriously into and of the hearing room with a cane that, contrary to Claimant's testimony, no doctor prescribed. There is no prescription for a cane contained in the medical records; nor do the narrative records document a recommendation for a cane; the records only speak to Claimant's presentation with a cane at medical appointments (*e.g.*, Claimant's APA #1, pages 7, 13, and 15; *See also* Claimant's APA #5, pages 87, 97, and 105).
11. As to the spine, the authorized treating orthopedist found that Claimant's back (a) pain is "not well localized to any anatomic site," and (b) had no spasm during clinical exam. Claimant has 5/5 motor strength in her lower extremities. I give great weight to this evidence (Claimant's APA #5, page 105).
12. The authorized treating orthopedist interprets Claimant's MRI of the spine as showing (a) no stenosis or other abnormality, (b) "no serious pathology," (c) no compressive pathology; (d) no need for surgical intervention or invasive treatment; and (e) no need for restrictions. I give this evidence great weight. Dr. Edwards diagnosed a lumbar sprain/strain, and noted, at least at one visit, that Claimant's **gait was "normal."** By contrast, Claimant laboriously ambulated in and out of the hearing room with a cane (Claimant's APA #5, pages 110-111).
13. For her spine, Claimant was treated conservatively (not even an injection). In fact, Claimant saw the treating orthopedist only 4 times before being released at maximum medical improvement (medical evidence in its entirety).
14. Claimant worked within restrictions up until the date of her knee surgery. Claimant completed a form prior to the knee surgery in which she stated that she did not need any

accommodations or job modifications (Claimant's Deposition, pages 25-26; Claimant's APA #3, page 32; Claimant's APA #4, page 58).

15. Claimant reached maximum medical improvement on August 26, 2014 (Claimant's APA #5, pages 111 and 113).
16. The authorized treating physicians assigned a 3% impairment rating for the knee, and a 5% whole person impairment rating for the spine. Impairment ratings are never in and of themselves dispositive, but in this case I find them compelling and more persuasive than Claimant's testimony (Claimant's APA #5, pages 111 and 113).
17. Claimant is under no restrictions for her back (Claimant's APA #5, page 111).
18. As to the restrictions for the knee, I considered the nature of the surgery (an **arthroscopic partial meniscectomy**) and the fact that Dr. Elvington wrote in September 12, 2013, that Claimant "will slowly *resume normal activities*" regarding her left knee. As of December 5, 2013, Claimant had an unrelated right knee meniscal tear awaiting surgery, so the restrictions still pending as of December 5, 2013, are not persuasive as to the left knee. Further, even Claimant admitted at her deposition that **bilateral knee pain in part keeps her from working**. It may be Claimant's unrelated right knee that results in her use of a cane, but I do not find the cane was prescribed for Claimant's post-surgical left knee or mild back condition (Claimant's APA #5, pages 92-93, 96-97, 99-100, and 113; Claimant's Deposition, page 51; Deposition of Dr. Elvington, pages 13-14).
19. Claimant did not make a good witness on her own behalf, a finding I base on my observations of her demeanor and on the delivery of her testimony. I further note:
 - (a) that at the hearing before the undersigned--perhaps because Claimant originally pled a right knee injury--Claimant denied any prior right knee problems (hearing transcript, pg. 32, lines 22-23); by contrast, at her deposition, Claimant (i) described a prior workers' compensation right knee injury, (ii) named the attorney who represented her in the right knee workers' compensation case, (iii) admitted receiving a right knee impairment rating, and (iv) admitted that she received settlement for her right knee workers' compensation injury;
 - (b) Claimant's testimony that her knee pain runs up to her low back was not believable; and
 - (c) Claimant completed and/or signed a form in which she denied any prior workers' compensation claims or impairment ratings.(testimony of Claimant; observations of the undersigned; Claimant's Deposition, pages 15-20 and 53; *See also* Defendants' APA #2, page 2, referring to a prior right knee x-ray; Claimant's APA #4, page 59).
20. Claimant obtained her own FCE from Tracy Hill, the conclusion of which is not

persuasive, and which is in fact invalid: even Hill notes that (a) Claimant's handgrip testing did not result in a bell-shaped curve (which is particularly compelling since this is a knee and back case), indicating **sub-maximal effort**; and (b) Claimant repeatedly self-limited throughout/actually terminated testing (Claimant's APA #7 in its entirety).

21. I did not consider Claimant's vocational report (Claimant's #8), as Claimant refused to submit to Defendants' vocational evaluation. I fully considered the time lag before Defendants requested a vocational evaluation, but given Claimant's myriad credibility issues, the undersigned is not inclined to reward Claimant's unwillingness to submit to a vocational evaluation for Defendants. Claimant's APA #8 is therefore proffered, but not considered by the undersigned.
22. Defendants may stop payment of temporary benefits.
23. Defendants to receive credit from date the Form 21 was received by the Commission-- September 8, 2014.
24. PPD to knee pursuant to Section 42-9-30(16): 10%. This award is based upon a 3% impairment rating, and the nature of the surgery (an arthroscopic partial meniscectomy).
25. PPD to spine pursuant to Section 42-9-30(21) for Claimant's non-surgical lumbar strain/sprain: 8%
26. This is not a believable Claimant.
27. As to future medicals, Dr. Edwards did not recommend any, and therefore no future medicals are ordered for the back. For the knee, Claimant takes prescription strength Ibuprofen and Aleve (testimony of Claimant).
28. Claimant's average weekly wage is \$325.19, yielding a compensation rate of \$216.80 (stipulation of the parties).

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act and S.C. Code Ann. §42-1-10 *et seq* that:

1. Under §42-1-130, the Claimant was a covered employee at the time in question.
2. Under §42-1-140, the Defendant was a covered employer under the Act.
3. Under §42-1-160, Claimant's average weekly wage is \$325.19 with a resulting compensation rate of \$216.80.

4. §42-9-210 is applicable when determining when a Carrier is entitled to credit for overpayment of temporary disability benefits.
5. Claimant's request to reconsider the Order excluding the Claimant's Vocational Report dated August 7, 2015 is hereby denied. Claimant's unwillingness to submit to a Vocational Evaluation for the Defendant causes the undersigned not to consider the Vocational Report contained in Claimant's APA #8.
6. The Claimant suffered a 10% permanent partial disability to her knee pursuant to §42-9-30(16).
7. The Claimant suffered an 8% permanent partial disability to her spine pursuant to §42-9-30(21).
8. Defendants may terminate temporary total benefits and shall receive credit for the overpayment from the date the Form 21 was received by the Commission, September 8, 2014 pursuant to §42-9-210.
9. Pursuant to S.C. Code Ann. §42-1-120 the Claimant is not permanently and totally disabled.

AWARD

IT IS HEREBY ORDERED that the Claimant suffered an injury to her spine, left knee, left arm and left hand by accident rising out and in the course and scope of her employment on March 29, 2013. Claimant's left hand injury resolved.

IT IS FURTHER ORDERED that the Claimant reached maximum medical improvement on August 26, 2014.

IT IS FURTHER ORDERED that the Claimant is entitled to and award of 10% permanent partial disability to the left knee pursuant to §42-9-30(16) and is, there entitled to 19.5 weeks of benefits.

IT IS FURTHER ORDERED that the Claimant is entitled to an award of 8% permanent partial disability to her spine pursuant to §42-9-30(21) and is, therefore entitled to 24 weeks of benefits.

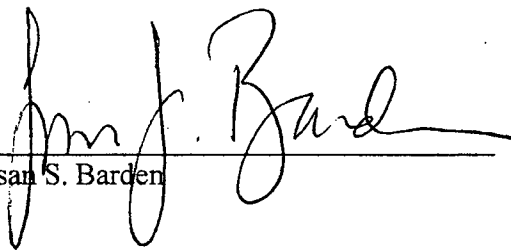
IT IS FURTHER ORDERED that Claimant's request for future medical treatment for the back is denied.

IT IS FURTHER ORDERED that the Defendants are entitled to receive credit for temporary benefits paid to the Claimant from September 8, 2014 to present.

IT IS FURTHER ORDERED that the Defendants may stop temporary total benefits.

IT IS FINALLY ORDERED that the Claimant is not permanently and totally disabled pursuant to §42-9-10.

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).
November 23, 2015

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. 1307602

VERMA TEDDER, EMPLOYEE,
CLAIMANT/APPELLANT/RESPONDENTS
-V-
DARLINGTON COUNTY COMMUNITY ACTION AGENCY, EMPLOYER,
AND
STATE ACCIDENT FUND, CARRIER,
DEFENDANTS/RESPONDENTS/APPELLANT

Appellate Panel Review held in Columbia,
South Carolina on February 22, 2016 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

April 20, 2016.

APPEARANCES:

Claimant/Appellant/Respondent represented by Stephen J. Wukela
Esquire, of Florence, South Carolina

Defendants/Respondents/Appellant represented by G.
Murrell Smith, Jr., Esquire of Sumter,
South Carolina

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Bardon on August 20, 2015 in Hartsville, South Carolina. On November 23, 2015, the Hearing Commissioner issued the following Order:

IT IS HEREBY ORDERED that the Claimant suffered an injury to her spine, left knee, left arm and left hand by accident rising out and in the course and scope of her employment on March 29, 2013.

IT IS FURTHER ORDERED that the Claimant reached maximum medical improvement on August 26, 2014.

IT IS FURTHER ORDERED that the Claimant is entitled to and award of 10% permanent partial disability to the left knee pursuant to §42-9-30(16) and is, there entitled to 19.5 weeks of benefits.

IT IS FURTHER ORDERED that the Claimant is entitled to an award of 8% permanent partial disability to her spine pursuant to §42-9-30(21) and is, therefore entitled to 24 weeks of benefits.

IT IS FURTHER ORDERED that Claimant's request for future medical treatment for the back is denied.

IT IS FURTHER ORDERED that the Defendants are entitled to receive credit for temporary benefits paid to the Claimant from September 8, 2014 to present.

IT IS FURTHER ORDERED that the Defendants may stop temporary total benefits.

IT IS FINALLY ORDERED that the Claimant is not permanently and totally disabled pursuant to §42-9-10.

AND IT IS SO ORDERED.

Within the statutory period, Claimant filed an application for review in the case setting forth her reasons, copies of which were furnished to all interested parties prior to oral argument presented to the Appellate Panel on February 22, 2016.

All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

By appeal, Claimant respectfully submitted the following:

1. Did the Single Commissioner err as a matter of fact and conclusion of law in failing not find the Claimant was totally and permanently disabled pursuant to S.C. Code Ann. '42-9-10;
2. Did the Single Commissioner err as a matter of fact and conclusion of law in refusing to admit or consider the Claimant's APA No. 8, the report of Vocational Expert, J. Adger Brown, Jr.;
3. Did the Single Commissioner err as a matter of fact and conclusion of law in failing to find the Claimant suffered from permanent restrictions as a result of the accident;
4. Did the Single Commissioner err as a matter of fact and conclusion of law in finding that the Functional Capacity Evaluation performed by Columbia Rehabilitation Clinic was invalid and in failing to consider such evaluation;
5. Did the Single Commissioner err as a matter of fact and conclusion of law in finding the Claimant was not credible;
6. Did the Single Commissioner err as a matter of fact and conclusion of law in awarding the Defendants credit from the date the Form 21 was received by the Commission;

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50, review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown

therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

The case was heard by Commissioner Barden in Hartsville, South Carolina. The Claimant was a teacher's aide for 16 years with the Darlington County Community Action Agency. She sustained an admitted injury on March 29, 2013 when, while supervising young children on the way to the playground, one of the children caused the Claimant to fall to the ground on her left side.

The Claimant was initially seen by McLeod Urgent Care (APA #1, P. 1-19), and underwent a course of physical therapy (APA #3, P. 29-38), and thereafter saw McLeod Occupational Health (APA #4, P. 58), from which she was referred to Pee Dee Orthopaedics. (APA #4, P. 73).

The Claimant was initially seen at Pee Dee Orthopaedics by Dr. Robert Elvington, who diagnosed a medial meniscus tear of the left knee (APA #5, P. 83), and ultimately performed left knee arthroscopy and partial medial meniscus meniscectomy on September 4, 2013 (APA #5, P. 91).

The Claimant continued to follow up with Dr. Elvington following the surgery. During this time she continued to complain of a right knee injury which Dr. Elvington eventually opined via his Deposition of March 4, 2014, was not related to her admitted injury of August 29, 2013. (Defendants' APA #7).

Claimant continued the post-operative visits with Dr. Elvington and a course of physical therapy with Lowes Physical Therapy. (Claimant's APA #3). Dr. Elvington found that the Claimant was at maximum medical improvement on August 26, 2014. Dr. Elvington stated "from the range of motion documented by the physical therapist and that she is status post knee

arthroscopy and partial meniscus meniscectomy, patient would have a permanent physical impairment rating of 3% to the left knee." Dr. Elvington did not place any restrictions on this August 26, 2014 addendum.

The Claimant maintains that a December 5, 2013 record signed by Dr. Elvington on the same date provided permanent work restrictions including but not limited to no prolonged walking, no climbing, no stooping or crawling and no lifting or carrying greater than 10 lbs. There is no mention of these restrictions in the August 26, 2014 Addendum which determined she was at maximum medical improvement.

The Claimant testified at the Hearing that she was not aware of any restrictions or instructions that she could not return to work after her August 26, 2014 visit with Dr. Elvington. (Trial Transcript Page 60, lines 1-8).

The Claimant was concomitantly seen at Pee Dee Orthopaedics in regards to her low back pain. Dr. W. S. Edwards, Jr. concluded on July 3, 2014 "patient was reassured there is no evidence of underlying compressive pathology or instability that would require surgical intervention. Use of good body mechanics and careful lifting techniques are emphasized. She is at maximum medical improvement and has a 5% impairment of her spine based on her industrial injury. No specific restrictions are necessary. She is discharged." (APA #5, P. 111)

The Claimant's attorney referred her for a Functional Capacity Evaluation that was performed on September 12, 2014 by Tracy Hill, PT of Columbia Rehabilitation Clinic, Inc. Importantly, it was noted by Tracy Hill "a five position hand grip test was performed and graph results did not resemble a bell-shaped curve indicating sub-maximum efforts. Coefficients of variation at position 2 of the right hand were above 15% indicating sub-maximal effort Wydell's Evaluation of non organic signs was negative." Also in reviewing the report, it was apparent

that the Claimant repeatedly self-limited throughout the testing. She was actually the one who was terminating the testing. (Claimant's APA #7).

The Claimant also had performed a Vocational Evaluation by J. Adger Brown on September 19, 2014. These results were excluded due to the Claimant's refusal to submit to an evaluation by the Defendants' vocational expert.

FINDINGS OF FACT

Based upon the documentary evidence, submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant injured her back, left knee, and left arm/hand in an admitted accident on March 29, 2013. *NOTE: BASED UPON DEFENDANTS' FORM 58 (listing the admitted body parts, including the "right arm and hand") AND THE DISCUSSION AT THE PRE-HEARING CONFERENCE, THE SINGLE COMMISSIONER OPENED THE RECORD WITH THE STATEMENT THAT CLAIMANT INJURED HER RIGHT ARM; no one corrected her. DURING HER REVIEW OF THE EVIDENCE AFTER THE HEARING, I noted (A) THE FIRST and subsequent MEDICAL RECORDS (e.g., Claimant's APA #1, pages 1-2, 7, and 9-10; Claimant's APA #3, page 33; Claimant's APA #4, page 60) STATE THAT IT WAS CLAIMANT'S LEFT ARM THAT WAS INJURED, AND (B) ATTORNEY SMITH AND CLAIMANT DISCUSSED THE LEFT ARM INJURY AT CLAIMANT'S DEPOSITION--SEE PAGE 52 of Claimant's Deposition. THEREFORE, THE TRANSCRIPT WILL CONTAIN AN ERROR IN THE SINGLE COMMISSIONER'S SUMMATION OF THE PARTIES' RESPECTIVE POSITIONS.*
2. Claimant's left arm/hand injury resolved (Claimant's APA #1, page 14; testimony of Claimant).
3. Claimant has an unrelated right knee meniscal tear, for which medical records state that she requires surgery as recommended by Dr. Elvington. As of the date of the hearing, there is no evidence that Claimant has undergone the right knee surgery to repair the tear (Deposition of Dr. Elvington, pages 19, 28-29, and 33-35).
4. Claimant is 54 years of age (testimony of Claimant).
5. Claimant is a high school graduate. She also has a 2-year associate's degree in early childhood education (testimony of Claimant; Claimant's Deposition, page 10; Defendants' APA, Exhibit A, page 35).

6. Claimant's prior employment includes work as a cook, work in a textile mill, work on an assembly line, and work as a dining room aide in a nursing home (testimony of Claimant; Claimant's Deposition, pages 12-15; Defendants' APA, Exhibit A, pages 16-17).
7. Claimant's job with Employer is described as teacher's aide/assistant teacher/associate teacher for 3-year olds, a job Claimant held for approximately 16 years. Although the length of Claimant's job tenure is impressive and weighs in her favor, it is not dispositive (testimony of Claimant; Claimant's Deposition, page 22; Claimant's APA #3, pages 32 and 37; Claimant's APA #4, page 59; Claimant's APA #5, pages 79 and 83).
8. Claimant has a prior workers' compensation claim involving her right knee, for which an impairment rating was assigned and for which Claimant received a settlement. Claimant also has a prior personal injury lawsuit involving her back for which she also received a settlement (Claimant's Deposition, pages 15-21, 31, 46-49, and 53).
9. Because of the left knee injury in issue, Claimant underwent arthroscopic knee surgery—a partial medical meniscectomy (Deposition of Dr. Elvington, pages 8-9; Claimant's APA #2, pages 21 and 23-24; Claimant's APA #5, pages 91, 95, and 113).
10. Prior to the surgery to repair the torn meniscus in Claimant's left knee, Claimant's gait was "mildly antalgic." We give this record great weight, as the Single Commissioner observed the Claimant ambulate laboriously into and of the hearing room with a cane that, contrary to Claimant's testimony, no doctor prescribed. There is no prescription for a cane contained in the medical records; nor do the narrative records document a recommendation for a cane; the records only speak to Claimant's presentation with a cane at medical appointments (e.g., Claimant's APA #1, pages 7, 13, and 15; See also Claimant's APA #5, pages 87, 97, and 105).
11. As to the spine, the authorized treating orthopedist found that Claimant's back (a) pain is "not well localized to any anatomic site," and (b) had no spasm during clinical exam. Claimant has 5/5 motor strength in her lower extremities. We give great weight to this evidence (Claimant's APA #5, page 105).
12. The authorized treating orthopedist interprets Claimant's MRI of the spine as showing (a) no stenosis or other abnormality, (b) "no serious pathology," (c) no compressive pathology; (d) no need for surgical intervention or invasive treatment; and (e) no need for restrictions. I give this evidence great weight. Dr. Edwards diagnosed a lumbar sprain/strain, and noted, at least at one visit, that Claimant's gait was "**normal**." By contrast, the Single Commissioner observed the Claimant laboriously ambulated in and out of the hearing room with a cane (Claimant's APA #5, pages 110-111).
13. For her spine, Claimant was treated conservatively (not even an injection). In fact, Claimant saw the treating orthopedist only 4 times before being released at maximum medical improvement (medical evidence in its entirety).
14. Claimant worked within restrictions up until the date of her knee surgery. Claimant

completed a form prior to the knee surgery in which she stated that she did not need any accommodations or job modifications (Claimant's Deposition, pages 25-26; Claimant's APA #3, page 32; Claimant's APA #4, page 58).

15. Claimant reached maximum medical improvement on August 26, 2014 (Claimant's APA #5, pages 111 and 113).
16. The authorized treating physicians assigned a 3% impairment rating for the knee, and a 5% whole person impairment rating for the spine. Impairment ratings are never in and of themselves dispositive, but in this case we find them compelling and more persuasive than Claimant's testimony (Claimant's APA #5, pages 111 and 113).
17. Claimant is under no restrictions for her back (Claimant's APA #5, page 111).
18. As to the restrictions for the knee, I considered the nature of the surgery (an **arthroscopic partial meniscectomy**) and the fact that Dr. Elvington wrote in September 12, 2013, that Claimant "will slowly *resume normal activities*" regarding her left knee. As of December 5, 2013, Claimant had an unrelated right knee meniscal tear awaiting surgery, so the restrictions still pending as of December 5, 2013, are not persuasive as to the left knee. Further, even Claimant admitted at her deposition that **bilateral knee pain in part keeps her from working**. It may be Claimant's unrelated right knee that results in her use of a cane, but we do not find the cane was prescribed for Claimant's post-surgical left knee or mild back condition (Claimant's APA #5, pages 92-93, 96-97, 99-100, and 113; Claimant's Deposition, page 51; Deposition of Dr. Elvington, pages 13-14).
19. Claimant did not make a good witness on her own behalf, a finding I base on my observations of her demeanor and on the delivery of her testimony. We further note:
 - (a) that at the hearing before the undersigned--perhaps because Claimant originally pled a right knee injury--Claimant denied any prior right knee problems (hearing transcript, pg. 32, lines 22-23); by contrast, at her deposition, Claimant (i) described a prior workers' compensation right knee injury, (ii) named the attorney who represented her in the right knee workers' compensation case, (iii) admitted receiving a right knee impairment rating, and (iv) admitted that she received settlement for her right knee workers' compensation injury;
 - (b) Claimant's testimony that her knee pain runs up to her low back was not believable; and
 - (c) Claimant completed and/or signed a form in which she denied any prior workers' compensation claims or impairment ratings.

(testimony of Claimant; observations of the Single Commissioner; Claimant's Deposition, pages 15-20 and 53; *See also* Defendants' APA #2, page 2, referring to a prior right knee x-ray; Claimant's APA #4, page 59).

20. Claimant obtained her own FCE from Tracy Hill, the conclusion of which is not persuasive, and which is in fact invalid: even Hill notes that (a) Claimant's handgrip testing did not result in a bell-shaped curve (which is particularly compelling since this is a knee and back case), indicating sub-maximal effort; and (b) Claimant repeatedly self-limited throughout/actually terminated testing (Claimant's APA #7 in its entirety).
21. The Single Commissioner did not consider Claimant's vocational report (Claimant's #8), as Claimant refused to submit to Defendants' vocational evaluation. She fully considered the time lag before Defendants requested a vocational evaluation, but given Claimant's myriad credibility issues, the Single Commissioner is not inclined to reward Claimant's unwillingness to submit to a vocational evaluation for Defendants. Claimant's APA #8 was proffered, but not considered by the Single Commissioner.
22. Defendants may stop payment of temporary benefits.
23. The Claimant alleges that the Defendant should be barred by the Doctrine of Laches from receiving a credit to the date the Form 21 was filed. The Hearing was initially scheduled on October 29, 2014. This matter had to be rescheduled since the parties had not mediated pursuant to Resolution 67-1802(A). Mediation was conducted on February 23, 2015. A Hearing was rescheduled for May 5, 2015. The Defendant's attorney had conflicts with subsequent rescheduling until the Hearing of August 20, 2015. All of the requests to reschedule the Hearing by the Defendant were consented to by the Claimant.
24. Defendants to receive credit from date the Form 21 was received by the Commission-- September 8, 2014.
25. PPD to knee pursuant to Section 42-9-30(16): 10%. This award is based upon a 3% impairment rating, and the nature of the surgery (an arthroscopic partial meniscectomy).
26. PPD to spine pursuant to Section 42-9-30(21) for Claimant's non-surgical lumbar strain/sprain: 8%
27. This is not a believable Claimant.
28. As to future medicals, Dr. Edwards did not recommend any, and therefore no future medicals are ordered for the back. For the knee, Claimant takes prescription strength Ibuprofen and Aleve (testimony of Claimant).
29. Claimant's average weekly wage is \$325.19, yielding a compensation rate of \$216.80 (stipulation of the parties).

RULINGS OF LAW

In view of those Findings of Fact and as provided in the South Carolina Code of Laws, **WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS A**

MATTER OF LAW;

1. Under §42-1-130, the Claimant was a covered employee at the time in question.
2. Under §42-1-140, the Defendant was a covered employer under the Act.
3. Under §42-1-160, Claimant's average weekly wage is \$325.19 with a resulting compensation rate of \$216.80.
4. §42-9-210 is applicable when determining when a Carrier is entitled to credit for overpayment of temporary disability benefits.
5. Claimant's request to reconsider the Order excluding the Claimant's Vocational Report dated August 7, 2015 is hereby denied. Claimant's unwillingness to submit to a Vocational Evaluation for the Defendant causes the undersigned not to consider the Vocational Report contained in Claimant's APA #8.
6. The Claimant suffered a 10% permanent partial disability to her knee pursuant to §42-9-30(16).
7. The Claimant suffered an 8% permanent partial disability to her spine pursuant to §42-9-30(21).
8. Defendants may terminate temporary total benefits and shall receive credit for the overpayment from the date the Form 21 was received by the Commission, September 8, 2014 pursuant to §42-9-210.
9. The Claimant has not met the burden of proof to establish that the Defendant's request for overpayment should be barred by the Doctrine of Laches.
10. Pursuant to S.C. Code Ann. §42-1-120 the Claimant is not permanently and totally disabled.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law;

IT IS HEREBY ORDERED that the Claimant suffered an injury to her spine, left knee, left arm and left hand by accident rising out and in the course and scope of her employment on March 29, 2013.

IT IS FURTHER ORDERED that the Claimant reached maximum medical improvement on August 26, 2014.

IT IS FURTHER ORDERED that the Claimant is entitled to and award of 10% permanent partial disability to the left knee pursuant to §42-9-30(16) and is, there entitled to 19.5 weeks of benefits.

IT IS FURTHER ORDERED that the Claimant is entitled to an award of 8% permanent partial disability to her spine pursuant to §42-9-30(21) and is, therefore entitled to 24 weeks of benefits.

IT IS FURTHER ORDERED that Claimant's request for future medical treatment for the back is denied.

IT IS FURTHER ORDERED that the Defendants are entitled to receive credit for temporary benefits paid to the Claimant from September 8, 2014 to present.

IT IS FURTHER ORDERED that the Claimant failed to meet the burden of proof that the Defendant is barred from receiving overpayment of TTD by the Doctrine of Laches.

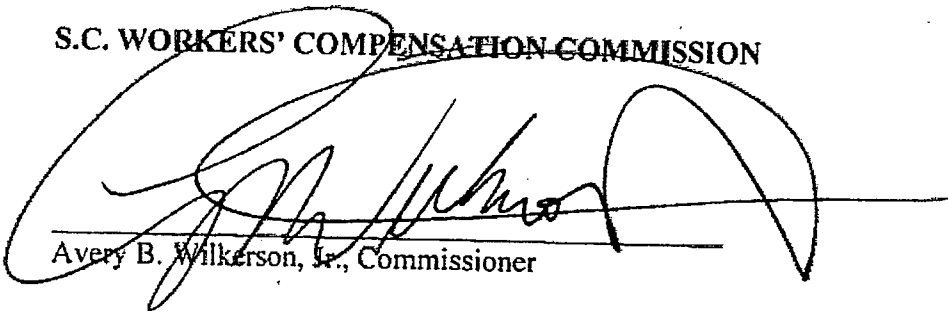
IT IS FURTHER ORDERED that the Defendants may stop temporary total benefits.

IT IS FINALLY ORDERED that the Claimant is not permanently and totally disabled pursuant to §42-9-10.

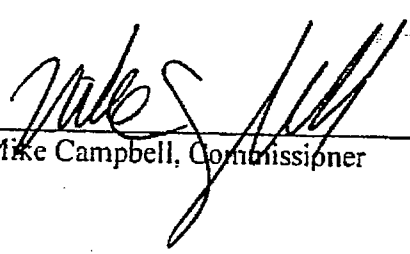
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION

MAJORITY AFFIRMATION:

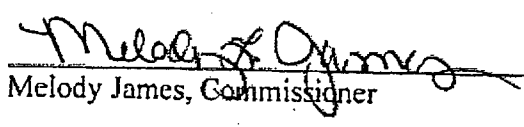


Avery B. Wilkerson, Jr., Commissioner



Mike Campbell, Commissioner

I RESPECTFULLY VOTE TO VACATE:



Melody James, Commissioner

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 Eugenia Hollmon on April 20, 2016

Lee, Erter, Wilson, Holler & Smith, L.L.C.

Jack W. Erter, Jr.
Harry C. Wilson, Jr.†
David C. Holler*†
G. Murrell Smith, Jr.

Attorneys at Law

126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151

Robert W. Brown
Of Counsel

*Licensed in SC, NC & GA

†Certified Family Court Mediator

† Certified Circuit Court Mediator

Telephone: (803) 778-2471

Facsimile: (803) 778-1643

September 5, 2014

Email Address: murrellsmith@leeandmoise.com

Grant Duffield, Interim Director
Judicial Department
S.C. Worker's Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

IN RE: Verma L. Tedder v. Darlington County Community Action Agency
WCC File No.: 1307702
SAF File No.: 2013-0912

Dear Mr. Duffield:

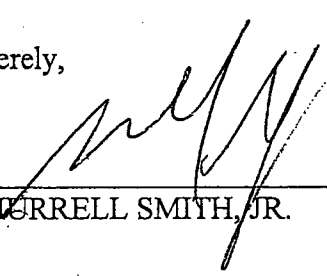
Enclosed herewith for filing, please find the Employer/Carrier's Form 21 in this matter along with the \$25.00 filing fee.

By copy of this letter, I am advising the Claimant's attorney, Stephen Wukela, of my communication with the Commission and serving him with a copy of the same.

If you should have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



G. MURRELL SMITH, JR.

GMSjr:mln

Enc.

cc: Stephen J. Wukela, Esquire
Mee Ling Khor-Gould, SAF # 2013-0912

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737.5675 www.wcc.sc.gov



Employer FEIN #:

Claimant's Name: Verma L. Tedder SSN: [REDACTED] Employer's Name: Darlington County Community Action
 Address: [REDACTED] Address: [REDACTED]
 City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: [REDACTED] State: [REDACTED] Zip: [REDACTED]
 Home Phone: 843-269-1513 Work Phone: [REDACTED] Insurance Carrier: State Accident Fund
 Preparer's Name: G. Murrell Smith, Jr. Law Firm: Lee Law Firm Preparer's Phone #: 803-778-2471

Employer's Request for Hearing 85

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC NO. 1307702

VERMA TEDDER,
Employee,

vs.

DARLINGTON COUNTY COMMUNITY ACTION AGENCY,
Employer,

and

STATE ACCIDENT FUND,
Insurer.

DEPOSITION OF: VERMA L. TEDDER
DATE: October 30, 2013
TIME: 12:33 p.m.
LOCATION: Wukela Law Firm
403 Second Loop Road
Florence, SC
TAKEN BY: Counsel for the Employer/Insurer
REPORTED BY: Christina L. Essi,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR VERMA TEDDER:

3 WUKELA LAW FIRM

4 BY: STEPHEN J. WUKELA

403 Second Loop Road

Florence, SC 29505

(843) 669-5634

swukela@wukelalaw.com

6

ATTORNEYS FOR SCDDSN and STATE ACCIDENT

7 FUND:

8 LEE, ERTER, WILSON, JAMES, HOLLER & SMITH

9 BY: G. MURRELL SMITH, JR.

126 North Main Street

Sumter, SC 29150

(803) 778-2471

murrellsmith@leeandmoise.com

11

12

13

14

15

(INDEX AT REAR OF TRANSCRIPT)

16

17

18

19

20

21

22

23

24

25

1 STIPULATION

2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent waives reading and
9 signing of this deposition.

10 * * * * *

11 VERMA L. TEDDER

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. SMITH:

15 Q. Ms. Tedder, good afternoon. I'm
16 Murrell Smith, and I met you earlier. I'm going to
17 take your deposition about this workers'
18 compensation case. I'm sure your lawyer has kind
19 of told you the ground rules; let me go over them a
20 little bit with you.

21 The rules of civil procedure which
22 govern our conduct here at these depositions
23 require me to tell you that once the deposition has
24 begun, you're not allowed to discuss your testimony
25 with anyone. You're placed under oath like you're

1 at trial, and as in a trial, you're not allowed to
2 discuss your testimony until it's concluded. We
3 can take a break at any point during the
4 deposition, we can take as long as you need, just
5 let us know. But if we take a break you, can't
6 discuss your testimony and that includes with your
7 lawyer; and if you do, that's the only time the law
8 let's me ask you what you and your lawyer
9 discussed. So don't put us in that position, okay?

10 A. Okay.

11 Q. If you'll do me a favor -- have you
12 ever given a deposition before?

13 A. Yes.

14 Q. Okay. And you're doing a good job.
15 Say yes or no to answer for me. No uh-huhs and
16 uh-huhs because sometimes -- she's taking down
17 everything you say verbatim and sometimes they look
18 the same, okay?

19 A. Uh-huh.

20 Q. Let me tell you how I do these
21 depositions. I've got an outline and I do it the
22 same with everybody. So I'm going to find out a
23 little bit about who you are, where you're from.
24 I'm not prying into your personal information.
25 This is just what I do for these cases. I'm going

1 to ask you some information about your personal
2 identifying information. I've got your employment
3 records here.

4 I'm sure I've got your social security
5 number and date of birth in here, but I'm going to
6 ask you that anyway while you're under oath and
7 she's going to redact that. It won't be in the
8 record, okay? And the law requires I don't file
9 anything with your social security or your date of
10 birth, so it won't contain your personal,
11 identifying information.

12 I'm going to talk about your job and
13 I'm going to talk about the injury here that
14 occurred with this case, with this accident, and
15 then I'm going to talk about the medical treatment
16 that you've received as a result of this accident,
17 okay?

18 A. Okay.

19 Q. If you don't understand any questions,
20 ask me to repeat it. I'm not trying to trick you
21 or mislead you here. I just want to know about
22 your case. This is my only opportunity to take
23 your deposition and understand what you're alleging
24 here and your injuries that you have as a result of
25 this fall, and so I'm going to make sure I cover

1 everything with you. I'll ask you -- when I'm
2 saying, is there anything else, the only reason I'm
3 asking you that is because I want to make sure
4 you've told me completely and in every detail the
5 problems you're having associated with your injury
6 while you were at work, okay?

7 A. Okay.

8 Q. With that being said, give me your full
9 name, please, ma'am.

10 A. Verma Lee Tedder.

11 Q. All right. You're going to have to
12 speak up just a little bit for me. Lee is L-E-E or
13 L-E-I-G-H?

14 A. L-E-E.

15 Q. L-E?

16 A. L-E-E.

17 Q. All right, L-E-E. And is Tedder your
18 married name?

19 A. Maiden name.

20 Q. All right. What name do you go by?

21 A. Verma.

22 Q. What's your social security number,
23 Ms. Tedder?

24 A. XXX-XX-3090.

25 Q. All right. And how old are you?

1 A. 52.
2 Q. What's your date of birth?
3 A. XX-XX-XXXX.
4 Q. And where are you residing right now?
5 A. 130 Lumber Road, Society Hill.
6 Q. What road?
7 A. Lumber.
8 Q. Spell that for me.
9 A. L-U-M-B-E-R.
10 Q. Okay. That's what I thought. And
11 that's in Society Hill?
12 A. Yes.
13 Q. All right. How long have you lived
14 there?
15 A. About 10 years.
16 Q. Are you from Society Hill originally?
17 A. No. Darlington.
18 Q. Okay. Did you move there so you
19 wouldn't get speeding tickets from Society Hill?
20 A. No.
21 Q. Do they still run speed traps there all
22 the time?
23 A. Yes.
24 Q. Are you married?
25 A. No.

1 Q. Have you ever been married?

2 A. No.

3 Q. Do you have any children?

4 A. One.

5 Q. How old is your child?

6 A. 29.

7 Q. Boy or girl?

8 A. Boy.

9 Q. And does he live with you?

10 A. Yes.

11 Q. Is he dependent upon you for support?

12 A. No.

13 Q. Does he have his own job?

14 A. Yes.

15 Q. Where does he work?

16 A. Spanky's Auto Body. He has his own

17 business.

18 Q. Is that the only person that resides

19 with you, your son?

20 A. My mom is with me now.

21 Q. Okay. And how old is your mom?

22 A. 68.

23 Q. 68?

24 A. Uh-huh.

25 Q. Okay. And I take it she's retired?

1 A. Yes.

2 Q. Does she have social security coming
3 in?

4 A. Yes.

5 Q. And she's not dependent upon you for
6 support, is she?

7 A. No.

8 Q. All right. You said you grew up in
9 Darlington, in the city of Darlington or Darlington
10 County?

11 A. Darlington County.

12 Q. All right. Where did you grow up in
13 Darlington County?

14 A. Darlington -- by the Darlington
15 airport.

16 Q. Okay. I've got to ask that question
17 because you all have got Darlington Proper and then
18 you've got Hartsville and then you've got Society
19 Hill, and you have other little towns around
20 Darlington County too, don't you?

21 A. Uh-huh.

22 Q. And where did you go to high school?

23 A. Rosenwald in Society Hill. Rosenwald
24 in Society Hill.

25 Q. Spell that.

1 A. R-O-L-W-A-R-O-D [as spoken].
2 Q. Did you graduate?
3 A. Yes.
4 Q. What year did you graduate?
5 A. 1979.
6 Q. And you have any education beyond high
7 school?
8 A. Florence-Darlington Tech.
9 Q. Did you get any degrees from there?
10 A. I have a certificate.
11 Q. For what?
12 A. Early childhood.
13 Q. When did you receive that?
14 A. 2011.
15 Q. All right. Any other certifications or
16 vocational classes that you've been to?
17 A. No.
18 Q. Have any special licenses?
19 A. No.
20 Q. Are you right-handed or left-handed?
21 A. Right.
22 Q. And do you have any military
23 experience? Been in the military?
24 A. No.
25 Q. Have you ever been arrested for

1 anything in your life?

2 A. No.

3 Q. You don't think you'd be working at the
4 Head Start if you were arrested, would you?

5 A. No.

6 Q. Okay. Any type of training you've had,
7 either on-the-job training or anything, before you
8 started working at Darlington County Community --
9 it's Darlington Community Action Corporation, isn't
10 it?

11 A. It's -- I had training at Tech.

12 Q. Okay. For the early childhood?

13 A. Early childhood.

14 Q. Anything else beyond that?

15 A. No.

16 Q. All right. I want to walk with you
17 through your employment history, okay, kind of
18 starting with your first job when you graduated
19 from high school, and take me up to -- how long did
20 you work at Darlington Community Action?

21 A. Almost -- this year, it'll be almost,
22 what, I think about 20 years.

23 Q. About 20 years?

24 A. Uh-huh.

25 Q. So you've been there for a long time?

1 A. Yes.

2 Q. Before Darlington, the first job out of
3 high school, tell me what that was.

4 A. T-cross [as spoken] restaurant.

5 Q. What kind of restaurant?

6 A. T-cross restaurant.

7 Q. T-cross?

8 A. Uh-huh.

9 Q. And how long did you work there?

10 A. About two years.

11 Q. What did you do for them?

12 A. I was a cook.

13 Q. Okay. And were you ever injured on the
14 job there?

15 A. No.

16 Q. Did you ever file any workers'
17 compensation claims?

18 A. No.

19 Q. Any employment-related claims?

20 A. No.

21 Q. Why did you leave there?

22 A. I got hired on at Welders in Cheraw.

23 Q. Welders, W-E-L-D-E-R-S?

24 A. Yes.

25 Q. What is that?

1 A. It's a plant.
2 Q. Is it still there?
3 A. No.
4 Q. What did you do there?
5 A. I was on an assembly line.
6 Q. How long did you stay there?
7 A. About six weeks.
8 Q. All right. Why did you leave there?
9 A. The job ended.
10 Q. Ma'am?
11 A. The job ended.
12 Q. Job ended?
13 A. Yes.
14 Q. Temporary job?
15 A. Yes.
16 Q. Okay. Ever injured there?
17 A. No.
18 Q. File a workers' compensation claim?
19 A. (Moves head back and forth.)
20 Q. File any type of employment-related
21 claim?
22 A. No.
23 Q. Okay. Where did you go after that?
24 A. Bethea nursing home.
25 Q. What did you do at Bethea nursing home?

1 A. Dietary.

2 Q. Where is the Bethea nursing home?

3 A. In Darlington.

4 Q. Okay. Is it still there?

5 A. Yes.

6 Q. Where in Darlington is it?

7 A. I don't know the address.

8 Q. Okay. And how long did you stay there?

9 A. Oh, about five years.

10 Q. Who was your supervisor there?

11 A. Verma Bulletin.

12 Q. Okay. And what years are we talking

13 about? I don't expect the exact years. The '90s,

14 '80s?

15 A. Well, I've been there twice, but the

16 last time I been there was in the -- in the '80s.

17 Q. And why did you leave there the first

18 time?

19 A. It was only temporary.

20 Q. Okay. When you said you worked there

21 for five years, was that for both times you worked

22 there five years or just the first time?

23 A. That was the first time.

24 Q. Okay. A five-year temporary job was a

25 long temporary job, wasn't it?

1 A. Yeah.

2 Q. And were you ever injured on the job
3 there?

4 A. Yes.

5 Q. All right. And that was during this
6 first time with --

7 A. The last time.

8 Q. The last time?

9 A. Uh-huh.

10 Q. When did you go back to Bethea nursing
11 home?

12 A. In 2000--and -- I think it was like
13 2010. Something like that. 2009 or '10.
14 Something like that.

15 Q. Okay. Was that in addition to being at
16 the community action place?

17 A. Yeah.

18 Q. Second job?

19 A. Yes.

20 Q. Okay. What did you do on the second
21 stint there?

22 A. Dietary.

23 Q. Did you work at nights or what?

24 A. Night.

25 Q. And you were injured during the 2010

1 employment with them?

2 A. Yes.

3 Q. Are you still working for Bethea?

4 A. No.

5 Q. Before you were injured in this
6 accident -- I believe it was in May of this year is
7 when you were injured; is that right?

8 A. March.

9 Q. Were you working at Bethea nursing
10 home?

11 A. No.

12 Q. Okay. You already quit that job?

13 A. Yes.

14 Q. Tell me about the workers' comp, what
15 year was that comp case; do you know?

16 A. I think it was like 2010. My father
17 died in 2011. I think it was 2010 or something
18 like that.

19 Q. Is that what you gave a deposition for?

20 A. Uh-huh.

21 Q. Uh-huh means yes?

22 A. Yes.

23 Q. Okay. And tell me about that accident.
24 How did you get injured there?

25 A. There was ice and water on the floor.

1 Q. And you fell?

2 A. Yes.

3 Q. Slipped and fell?

4 A. Slipped and fell.

5 Q. Okay. And what did you injure?

6 A. The right -- the right sides -- the
7 right knee.

8 Q. Right knee?

9 A. Uh-huh.

10 Q. All right. Did they accept the
11 workers' compensation claim?

12 A. Yes.

13 Q. And did they send you for medical
14 treatment?

15 A. Yes.

16 Q. Where did you get medical treatment?

17 A. I went to McLeod.

18 Q. McLeod where, in Florence?

19 A. Uh-huh. Yes.

20 Q. And who did you see at McLeod, the
21 emergency room, Occupational Health?

22 A. The emergency room at first and then I
23 went to Occupational Health.

24 Q. Did you go see an orthopedist?

25 A. Dr. Ervin.

1 Q. And Dr. Ervin, Dewey Ervin, over there
2 at Pee Dee Orthopaedics?

3 A. Uh-huh. Yes.

4 Q. Okay. What did Dr. Ervin do for you?

5 A. He did the x-rays, MRI, and he treated
6 the knee.

7 Q. What did he find was wrong with it?

8 A. He just told me that it had a lot of
9 inflammation and it was swollen.

10 Q. Did you have surgery on that knee?

11 A. No.

12 Q. Did anyone recommend surgery on that
13 knee?

14 A. No.

15 Q. Did you have a lawyer in this workers'
16 compensation claim?

17 A. Yes.

18 Q. Who was your lawyer?

19 A. Danny Vega.

20 Q. And that's over there with Chappell and
21 Arden and Smith?

22 A. Yes.

23 Q. In Columbia?

24 A. Yes.

25 Q. I think they've got a Florence office

1 too, don't they?

2 A. Yes.

3 Q. Did you all go to a hearing?

4 A. No.

5 Q. Did you all settle the case?

6 A. Yes.

7 Q. And did you have an -- what did you
8 allege was injured in that accident?

9 A. Just the right knee.

10 Q. The right knee?

11 A. Uh-huh.

12 Q. Okay. And how much did you get paid at
13 the end of the case; do you recall?

14 A. 12,000.

15 Q. 12,000?

16 A. Uh-huh.

17 Q. Did Dr. Ervin give you an impairment
18 rating to your knee?

19 A. Yes.

20 Q. Do you recall what rate and percentage
21 he gave you to your knee?

22 A. Huh-uh.

23 Q. Do you recall what you settled for on
24 the rate and percentage to your knee?

25 A. Huh-uh.

1 Q. What do you think was wrong with your
2 knee? What were the problems you were
3 experiencing?

4 A. I don't know.

5 Q. Were you able to walk, or it hurt?

6 A. Yes, when I walked, it hurt. And
7 bending.

8 Q. Okay. And did it hurt afterwards,
9 after you finished treatment with Dr. Ervin?

10 A. About a month or two later.

11 Q. Were you still having problems with
12 your right knee before you were injured in this
13 accident?

14 A. No.

15 Q. Had your right knee completely healed?

16 A. Yes.

17 Q. And in your deposition, did you tell
18 them you were having problems or limitations with
19 your right knee?

20 The person who --

21 A. Yes.

22 Q. -- did what I'm doing, did you --

23 A. Yes.

24 Q. -- tell them -- did they ask you
25 whether you thought they were permanent problems

1 you had?

2 A. No.

3 Q. Okay. Do you know who defended that
4 case? Do you know the lawyer's name who took your
5 deposition?

6 A. No.

7 Q. Have you ever filed any other workers'
8 compensation claims besides that one?

9 A. No.

10 Q. And I think we were talking about
11 Bethea nursing home and your first time there for
12 about five years. When you left, where did you go
13 from there?

14 A. I was working at Darlington Community
15 Action Agency.

16 Q. Okay. So you left Bethea nursing home
17 for Darlington County Community Action?

18 A. Yes.

19 Q. And you've been there ever since?

20 A. Ever since.

21 Q. Have you ever been injured while you
22 were at Darlington County Community Action?

23 A. No.

24 Q. Have you had the same position there
25 the entire time?

1 A. Yes.

2 Q. Okay. What's your job there?

3 A. Associate teacher.

4 Q. What does an associate teacher do?

5 A. I work with the kids, ride the bus,
6 clean.

7 Q. And your lawyer has made me do all of
8 this work on figuring out what your job is and how
9 you're paid and all that, and I understand we've
10 got some unusual working conditions over here, that
11 you basically work during the school year; is that
12 right?

13 A. Yes.

14 Q. Okay. What's the school year at
15 Darlington County Community Action?

16 A. We normally go in -- we get out in May
17 and go back in August.

18 Q. So you worked from August to May,
19 essentially?

20 A. Yes.

21 Q. And then you do not work during the
22 summer months that school is not in session --

23 A. No.

24 Q. -- is that right?

25 A. No.

1 Q. Okay. And at that point, my
2 understanding is they place you on unemployment; is
3 that correct?

4 A. Yes.

5 Q. And so you receive unemployment from
6 the times you're not working during the summer?

7 A. Yes.

8 Q. And is that still the case of what you
9 all do now?

10 A. Yes.

11 Q. Okay. I know the employment security
12 commission was reformed and that was one of the
13 issues that they had, was people who were getting
14 temporarily laid off drawing benefits. But you're
15 still drawing them when you're unemployed even
16 though they've changed the laws and created a new
17 department of employment and workforce?

18 A. Yes.

19 Q. Did you draw it this summer?

20 A. Yes.

21 Q. Okay. How do you -- do they sign you
22 up or do you go and sign up for it?

23 A. They sign us up.

24 Q. Okay. And that's been the way it's
25 worked for the 20 years you've been there?

1 A. Yes.

2 Q. And they only pay you from May -- or,
3 from August to May, the school year, right?

4 A. Yes.

5 Q. They don't pay you anything over and
6 above the unemployment compensation you draw during
7 the summer, do they?

8 A. No.

9 Q. All right. As a result of the -- you
10 were injured in May of this year; is that right?

11 A. March.

12 Q. March, I'm sorry. But you worked on
13 and off until May, didn't you?

14 A. Yes.

15 Q. And then were you at work the last day
16 of school?

17 A. Yes.

18 Q. During the summer, is that when you got
19 your surgery to the left knee, or you got that --

20 A. September the 4th.

21 Q. Okay. I was thinking it was August,
22 but September. So you were able to -- did a doctor
23 place you out of work from the time you got out of
24 school until the time you had surgery?

25 A. He gave me restrictions.

1 Q. What restrictions did he give you?

2 A. No bending, no stooping, no climbing.

3 Q. And did you have those restrictions
4 before you got out of school?

5 A. Yes.

6 Q. And they accommodated your restrictions
7 while you were at school?

8 A. No.

9 Q. Did you -- and maybe I'm not sure when
10 you were working. But you fell in March, right?

11 A. Yes.

12 Q. And did you work until May?

13 A. Yes.

14 Q. Okay. And you had those restrictions
15 and you were still working?

16 A. Yes.

17 Q. And so you had the same restrictions
18 while you were working that you had up until your
19 surgery; is that right?

20 A. Yes.

21 Q. Okay. And so you continued to work
22 with those restrictions?

23 A. Yes.

24 Q. All right. And they paid you?

25 A. Yes.

1 Q. And they accommodated your job in
2 whatever manner over there, didn't they, with those
3 restrictions?

4 A. Yes.

5 Q. I mean, did they -- I mean, I know
6 you're having some discomfort answering that, so
7 I'm trying to understand what they didn't do to
8 accommodate your --

9 A. The only thing they didn't -- I didn't
10 do was ride the bus.

11 Q. But they didn't make you ride the bus,
12 did they?

13 A. Yes, it was in my job description to
14 ride the bus.

15 Q. And so did you ride it?

16 A. Once.

17 Q. But they still paid you and let you
18 come to work even though you couldn't ride the bus?

19 A. Yes.

20 Q. Okay. So during the summertime that
21 you were not employed, did you miss any income from
22 them that you normally would get?

23 A. No.

24 Q. Did you have any other jobs that you
25 normally did during the summer that you couldn't do

1 because of these work restrictions?

2 A. No.

3 Q. How much time until school started this
4 year in August or September, how much time did you
5 miss from work as a result of this fall in March?

6 A. I missed two -- two weeks and some days
7 because I would have to go to the doctor and
8 therapy.

9 Q. How did you get compensated for the
10 time that you were away from work for those two
11 weeks and days? Would you take sick leave or would
12 you --

13 A. I had sick leave.

14 Q. Okay. Did you use your sick leave?

15 A. Yes.

16 Q. Did you get any checks from the State
17 Accident Fund like you're getting now?

18 A. No.

19 Q. And so you were compensated your full
20 salary rather than two-thirds of your salary?

21 A. Yes.

22 Q. Okay. Did they tell you that you had
23 the choice to take sick leave or file a workers'
24 compensation claim?

25 A. No.

1 Q. Did anyone contact you about the
2 workers' compensation check you could get during --

3 A. No.

4 Q. -- those two weeks?

5 A. No.

6 Q. Was it two weeks straight or was it two
7 weeks on and off?

8 A. It was two weeks straight.

9 Q. Okay. How much were you getting paid
10 then, at the time you were injured?

11 A. From --

12 Q. From Darlington Community Action.

13 A. \$402.

14 Q. That's gross?

15 A. No, that's every two weeks.

16 Q. That's the take-home every two weeks?

17 A. Uh-huh.

18 Q. Uh-huh means yes?

19 A. Yes.

20 Q. Were you paid by the hour or were you
21 just paid a salary; do you know?

22 A. By the hour.

23 Q. How much were you paid by the hour; do
24 you know?

25 A. 8.61.

1 Q. How long had you been paid \$8.61 before
2 this injury?

3 A. Every since -- when I went back in
4 August.

5 Q. Okay. So the year prior to this
6 injury, were you still making \$8.61?

7 A. Yes.

8 Q. How many hours a week would you work?

9 A. Seven and a half.

10 Q. Seven and a half?

11 A. Uh-huh. Yes.

12 Q. Is that a full-time job?

13 A. Yes.

14 Q. Did you get benefits with that?

15 A. Yes.

16 Q. Did you get health insurance?

17 A. Yes.

18 Q. Have any retirement?

19 A. Yes.

20 Q. So retirement through the state?

21 A. Yes.

22 Q. Okay. So you're part of the state
23 retirement system?

24 A. Yes.

25 Q. Have you filed any disability claims

1 with the state retirement system?

2 A. No.

3 Q. Are you on any short-term disability or
4 long-term disability now?

5 A. No.

6 Q. We have something called Form 20s which
7 show us how much you were paid each quarter before
8 this accident. And just looking at this, the
9 quarter ending 12/31/2012, you made \$3,900 -- okay,
10 I've got it figured out. It's because you don't
11 work -- some of these quarters you didn't work
12 during the summers, right?

13 A. Right.

14 Q. And then the quarter ending June 30th,
15 you didn't work during the month of June, right?

16 A. No, we don't work during the month of
17 June.

18 Q. Okay. Who is your supervisor at your
19 job right now?

20 A. You mean, at the main office? Edna
21 Pettigrew.

22 Q. What is her role there?

23 A. She's the center supervisor.

24 Q. The what?

25 A. Center supervisor.

1 Q. Center supervisor?

2 A. Uh-huh.

3 Q. And I'm not familiar with Darlington
4 Community Action, but is there a number of
5 campuses, branches, buildings around, or is it in
6 one place?

7 A. Yes.

8 Q. What, is it in one place or is it --

9 A. It's just one place.

10 Q. Where is that? Where is it located?

11 A. It's on Washington Street in
12 Hartsville.

13 Q. Okay. All right. And other than this
14 fall and the one at the nursing home, Bethea
15 nursing home, you've had no other injuries while at
16 work?

17 A. No.

18 Q. Filed any other workers' compensation
19 claims?

20 A. No.

21 Q. Okay. Are you familiar with the policy
22 of reporting work-related injuries to your
23 employer?

24 A. No.

25 Q. Okay. Who did you report this injury

1 to?

2 A. Don Hall and Edna Pettigrew.

3 Q. And is this the only time you've had
4 any falls or work-related problems, injuries --

5 A. Yes.

6 Q. -- at Darlington Community Action?

7 A. Yes.

8 Q. And I think this happened on March 29th
9 of 2013; is that right?

10 A. Yes.

11 Q. What day of the week was that; do you
12 know?

13 A. No.

14 Q. Okay. Tell me what happened.

15 A. I was taking the kids to the playground
16 and one of the kids ran in front of me.

17 Q. All right. Speak up a little bit.
18 She's got to hear you.

19 A. I was taking the kids to the playground
20 and one of the kids ran in front of me and I
21 stumbled and fell.

22 Q. You stumbled and what?

23 A. Fell.

24 Q. How did you fall?

25 A. I fell down on my knees.

1 Q. Fell forward?

2 A. Yes.

3 Q. Just went down on your knees?

4 A. Yes.

5 Q. Did you --

6 A. And I tried to brace myself when I fell
7 over.

8 Q. Brace yourself for what?

9 A. When I went down on my knees, I tried
10 to brace myself to keep my face from hitting.

11 Q. With your hands?

12 A. Yes.

13 Q. Did the torso of your body go to the
14 ground or you just landed on your knees?

15 A. Torso hit the ground.

16 Q. Did it hit the ground or did your --

17 A. Yes.

18 Q. -- arms keep you up?

19 A. It hit the ground.

20 Q. Okay. So you didn't do a face-plant,
21 but you ended up going where your body was flat on
22 the ground?

23 A. Yes.

24 Q. Okay. Where did this happen on the
25 playground?

1 A. In the parking lot.

2 Q. Is the parking lot asphalt, gravel,
3 dirt, what?

4 A. Rocks, gravel. I guess with rocks.

5 Q. Did anyone witness it besides the
6 children? Any other coworkers witness this?

7 A. No.

8 Q. Did you feel pain when this happened or
9 did you just get up and go about your business?

10 A. I felt pain and I couldn't get up.

11 Q. What time did that happen?

12 A. It'd probably been about 9:30 or 9:45.
13 Something like that.

14 Q. Okay. And where were you feeling pain
15 when it first happened?

16 A. Both knees and all up on the thigh
17 part, and this -- up on the wrist.

18 Q. All right. When you say thigh part,
19 what do you mean?

20 A. From all up in here.

21 Q. On your hip?

22 A. Yes, into the hip part and the crease.

23 Q. And you're pointing, going into your
24 back?

25 A. Yes.

1 Q. Okay. How did you get up off the
2 ground?

3 A. The supervisor and another coworker
4 helped me up.

5 Q. Where did they take you?

6 A. Into the office, into her office.

7 Q. What did they do at that point? Did
8 they take you to the hospital or somewhere to be
9 seen?

10 A. Yes. My brother came and picked me up.

11 Q. Your brother came and picked you up?

12 A. Uh-huh.

13 Q. And where did you go?

14 A. Urgent Care.

15 Q. And that was over in --

16 A. Darlington.

17 Q. -- Darlington?

18 That's the McLeod Urgent Care?

19 A. Yes.

20 Q. Did you work at all after you fell?

21 A. No.

22 Q. And what did they do for you at McLeod
23 Urgent Care that you recall?

24 A. Dr. Ferro, he gave me an x-ray. He did
25 x-rays.

1 Q. And that was Dr. Ferro that saw you?

2 A. Yes.

3 Q. What did he take x-rays of?

4 A. He took x-rays of both of the knees and
5 the hand, the wrist.

6 Q. What did you tell him was hurting that
7 day?

8 A. I told him from my lower back down, all
9 the way down to my feet was hurting.

10 Q. Did you go the same day to Dr. Ferro,
11 3/29?

12 A. Yes.

13 Q. I seem to be missing that report. Let
14 me see. Let me back up. Nothing is in order.

15 Did you tell him your back was hurting
16 on that first visit?

17 A. Yes.

18 Q. You did?

19 A. Yes.

20 Q. Okay. Did he take x-rays of your back?

21 A. No.

22 Q. And then you continued to follow up
23 with him?

24 A. Yes.

25 Q. What did he do for you throughout this?

1 I know he saw you a few times. Did he give you
2 medication?

3 A. He gave me medication.

4 Q. All right. And then he referred you
5 out to some physical therapy?

6 A. Yes.

7 Q. And where did you get that physical
8 therapy?

9 A. Lowe's.

10 Q. What did they do for you at physical
11 therapy?

12 A. They did the ice and stim and they did
13 the stretching and I had to do the heel lift and
14 the knee bends.

15 Q. Okay. Did that provide you any help or
16 relief?

17 A. No.

18 Q. And then how did you end up at McLeod
19 Occupational Health? Did the workers' comp -- why
20 did you go back to Dr. Ferro?

21 A. Dr. Ferro sent me to Dr. Hyman.
22 Dr. Hyman sent me to Occupational Health.

23 Q. Okay. What did Dr. Hyman do for you?

24 A. He redid the x-ray and had the MRI
25 done.

1 Q. What did he do the MRI of?

2 A. The left knee.

3 Q. Did you tell him your right knee was
4 hurting?

5 A. Yes.

6 Q. What did he say about the right knee?

7 A. They told me that they was focusing on
8 the left at the time.

9 Q. Did you ever tell them your right knee
10 got better?

11 A. No.

12 Q. And I saw that Dr. Hyman ordered an MRI
13 of your back. You were complaining of your back to
14 him; is that right?

15 A. Yes.

16 Q. And did you complain of your back to
17 Dr. Ferro?

18 A. Yes.

19 Q. I didn't see anything in the records.
20 What did Dr. Ferro tell you about your back?

21 A. He just told me -- he said that he
22 would talk to someone about it.

23 Q. Did you complain every time you went in
24 to see him about the back?

25 A. Yes.

1 Q. Was there a visit that you would've
2 told him your back was fine or that you didn't
3 complain of back problems?

4 A. No.

5 Q. So every visit you saw Dr. Ferro, you
6 would've complained of back problems?

7 A. Yes.

8 Q. Have you reviewed his medical records?

9 A. No.

10 Q. Okay. Do you know whether he put those
11 in the medical records?

12 A. No.

13 Q. And I mean the complaints about the
14 back pain in the medical records.

15 A. Yeah.

16 Q. And what would he say when you would
17 tell him your back was hurting? What did he tell
18 you to do about it?

19 A. He just told me to take the medication
20 because I know every time I'd go in, he said to
21 take the medication.

22 Q. Okay. And I saw Dr. Hyman ordered an
23 MRI of your back and then the State Accident Fund
24 denied it. Did he talk to you about the MRI being
25 denied?

1 A. No.

2 Q. Did he talk to you about how -- about
3 reviewing the Urgent Care notes and not noticing
4 any complaints of back pain? Did he ever mention
5 anything --

6 A. No.

7 Q. -- to you about that?

8 A. No.

9 Q. Okay. And when you were treating with
10 him, he obviously did an MRI of your left knee?

11 A. Yes.

12 Q. And then you were referred to Pee Dee
13 Orthopaedics?

14 A. Yes.

15 Q. To Dr. Elvington?

16 A. Yes.

17 Q. And what's your understanding of what
18 was wrong with your knee?

19 A. He told me that I had contusions and
20 bruises and he also told me I had cartilage and
21 ligaments torn.

22 Q. What was the first thing you said?

23 A. Contusions.

24 Q. Contusions, okay.

25 A. Uh-huh.

1 Q. And what was his recommendation to you,
2 surgery?

3 A. Yes.

4 Q. Did you tell him your back was hurting?

5 A. Yes.

6 Q. It says you had, in reviewing his
7 notes, that you had knee surgery 10 to 15 years
8 ago?

9 A. Yes.

10 Q. Where was that?

11 A. At McLeod.

12 Q. And what was that for?

13 A. It was -- I'm not sure.

14 Q. Was it left knee surgery or right knee?

15 A. Yes, left.

16 Q. Okay. Did you get injured? Did you
17 fall or something?

18 A. No.

19 Q. Who did that surgery?

20 A. Dr. Ervin.

21 Q. And that was different from the
22 workers' compensation --

23 A. Yes.

24 Q. -- case you had?

25 A. Yes.

1 Q. What was your understanding of what was
2 wrong with your knee before?

3 A. He told me I had some -- some kind of
4 bone disease.

5 Q. Were you having knee pain before your
6 fall?

7 A. No.

8 Q. And not having any in your left knee?

9 A. No.

10 Q. And you had some bone disease, as you
11 called it. Was it arthritis that Dr. Ervin told
12 you about at some point?

13 A. Yes.

14 Q. All right. Were you having any
15 problems with your knee or from the arthritis?

16 A. No.

17 Q. Would you ever take any medications for
18 your knee?

19 A. No.

20 Q. Did you have a primary care doctor that
21 you would go to?

22 A. Yes.

23 Q. Who was that?

24 A. Dr. Barbara Wright.

25 Q. Where is she?

1 A. Society Hill.
2 Q. Is she in a practice?
3 A. Yes.
4 Q. Like Carolinas or McLeod?
5 A. CareSouth.
6 Q. How long had you been seeing her?
7 A. About five or six years or more.
8 Q. How about before that, who would you go
9 see?
10 A. I wasn't going to any doctors. I
11 wasn't going to any doctors.
12 Q. Have you ever been hospitalized before?
13 A. No.
14 Q. Other than childbirth.
15 A. That's all.
16 Q. And you had surgery on your knee
17 before?
18 A. Yes.
19 Q. Any other surgeries besides childbirth
20 surgeries?
21 A. To the right wrist.
22 Q. Who did that?
23 A. Dr. Hassler.
24 Q. What was that for?
25 A. In Hartsville. I had a cyst.

1 Q. Do you have any chronic medical
2 conditions, high blood pressure, diabetes,
3 anything --

4 A. Yes.

5 Q. What do you have?

6 A. High blood pressure and diabetes.

7 Q. All right. Who treats your diabetes?

8 A. Dr. Barbara.

9 Q. How long have you been diagnosed with
10 diabetes?

11 A. Just this year.

12 Q. Okay. Are you on medication for the
13 diabetes?

14 A. Yes.

15 Q. Injections or oral medication?

16 A. Pills.

17 Q. Besides for the diabetes, are you on
18 any other medication?

19 A. Blood pressure medicine.

20 Q. And is that all the medication that you
21 take other than some pain medication now?

22 A. Yes.

23 Q. How did -- you had surgery in
24 September. How is your knee doing now? The left
25 knee.

1 A. Oh. Not too good.

2 Q. What's the problem with the left knee
3 now?

4 A. Still having a lot of pain and there's
5 a lot of swelling.

6 Q. Are you going to PT right now?

7 A. Yes.

8 Q. Who are you seeing for PT?

9 A. Lowe's.

10 Q. Okay. And they haven't discharged you
11 yet, have they?

12 A. No.

13 Q. And how about your right knee? Tell me
14 about that. Dr. Elvington ordered an MRI of your
15 right knee?

16 A. Yes.

17 Q. And I see -- I think I got something in
18 the mail either Friday or Monday, he has
19 recommended surgery on your right knee, right?

20 A. Right.

21 Q. What did he tell you is the reason
22 you're having surgery?

23 A. He said the same thing that happened to
24 the left knee, the cartilage and ligaments are
25 torn.

1 Q. And what's the same thing that happened
2 to the left knee?

3 A. That's what I said, the cartilage and
4 the ligaments are torn.

5 Q. All right. Tell me about your back.
6 What problems are you having with your back?

7 A. The lower back is -- I have pain in the
8 back. I can't bend.

9 Q. Have you ever had back problems before?

10 A. Yes.

11 Q. Where have you had back problems
12 before, from what?

13 A. From an accident about 20 years ago.

14 Q. Where was that?

15 A. Excuse me?

16 Q. Where did you get in the accident?

17 A. In Darlington.

18 Q. Tell me about that accident.

19 A. I was making a left turn and a car ran
20 into the left door.

21 Q. And what medical treatment did you
22 receive from that accident?

23 A. Treatment for the lower back and the
24 left shoulder and neck.

25 Q. Who gave you -- which doctors gave you

1 treatment?

2 A. Dr. Browning.

3 Q. Dr. -- who?

4 A. Browning.

5 Q. Where is Dr. Browning?

6 A. He's in Florence.

7 Q. What type of doctor is he?

8 A. (No verbal response.)

9 Q. Was he a chiropractor or --

10 A. No. He was a regular doctor.

11 Q. Okay. What did he do for you?

12 A. He gave me treatments.

13 Q. Heat treatments or --

14 A. I had to wear a TENS unit. It's called
15 a TENS unit and it gives electrical shocks to the
16 body.

17 Q. Okay. Where was Dr. Browning's office?

18 A. I don't know.

19 Q. Did you have a lawyer for that case?

20 A. Yes.

21 Q. Who was your lawyer?

22 A. Tony Floyd.

23 Q. Is he in Florence?

24 A. Hartsville.

25 Q. And did you have to file suit in that

1 case?

2 A. Yes.

3 Q. Did you all go to trial?

4 A. No.

5 Q. You settled without trial?

6 A. Yes.

7 Q. Did you give a deposition like you're
8 doing here today?

9 A. Yes.

10 Q. Okay. Who was the insurance company
11 that had the other guy's car?

12 A. I don't know.

13 Q. Okay. Did you file suit in Hartsville?

14 A. Yes.

15 Q. I mean, in Darlington County.

16 A. Yes.

17 Q. Okay. The person that hit you, did
18 they live in Darlington County?

19 A. No.

20 Q. Where did they live?

21 A. North Carolina.

22 Q. Okay. Did you see any other doctors
23 for back pain other than Dr. Browning?

24 A. No.

25 Q. Have you had any other back problems

1 since this accident 20 years ago?

2 A. No.

3 Q. Did your back problems eventually
4 resolve or were you still having problems with your
5 back after the accident?

6 A. The car accident?

7 Q. Yes, ma'am.

8 A. Not really, no.

9 Q. Would you ever take any medications for
10 your back?

11 A. No.

12 Q. Did they do any imaging studies, MRIs,
13 x-rays, or anything for your back, back then for
14 this accident?

15 A. I think he did an MRI.

16 Q. Okay. Did you do any other -- have you
17 had any other MRIs, CT scans, or x-rays on your
18 back since the automobile accident other than
19 what's involved in this -- you haven't had any in
20 this case, have you?

21 A. No, no.

22 Q. Okay. Have you had any x-rays, CTs, or
23 MRIs of your back since the car accident 20 years
24 ago?

25 A. No.

1 Q. Have you ever been to a doctor
2 complaining of back pain other than this car
3 accident you told me about 20 years ago?

4 A. No.

5 Q. What is wrong with your back? I mean,
6 is it painful? Describe to me the pain you're
7 having, where it is.

8 A. It's painful. It goes from the lower
9 back all the way down into my hips, on down to my
10 feet.

11 Q. And you said you can't bend. What
12 other problems are you having because of your back?

13 A. When I'm walking it hurts. Like when I
14 do a lot of walking or standing.

15 Q. Okay. Have you seen any doctors for
16 your back other than the folks at McLeod and Pee
17 Dee Orthopaedics?

18 A. Dr. Barbara.

19 Q. Okay. And she's been treating you.
20 Was she treating you before the accident?

21 A. No.

22 Q. She's been treating you since this
23 accident?

24 A. I went to her once.

25 Q. What did she do for you?

1 A. Right now I'm waiting for her -- she's
2 supposed to be trying to get me an MRI.

3 Q. Okay. Has she prescribed you any
4 medication for your back?

5 A. No.

6 Q. Has she prescribed you any physical
7 therapy for your back?

8 A. No.

9 Q. Are you able to work right now, in your
10 opinion?

11 A. No.

12 Q. What's preventing you from working,
13 what body parts?

14 A. From the back, lower back, all the way
15 down to in my knees.

16 Q. Would you ever complain about back
17 pains at work prior to this fall?

18 A. No.

19 Q. Tell me about your right knee. What
20 limitations or problems are you having with your
21 right knee?

22 A. It has a lot of swelling all down in
23 the feet, and bending, and it's like -- feels like
24 a buckle -- it's got a buckle to it.

25 Q. Any other problems with your right knee

1 other than that?

2 A. No.

3 Q. All right. Are you having problems
4 walking with it?

5 A. Yes.

6 Q. And any other -- your left wrist, how
7 is that doing right now? You injured your left
8 wrist in this, didn't you?

9 A. Yes.

10 Q. Is that better?

11 A. Yes.

12 Q. Okay. Any problems with it at all?

13 A. It hurts down in the fingers and the
14 fingers gets numb.

15 Q. Okay. Any other injuries you had as a
16 result of this accident, or fall?

17 A. No.

18 Q. So if I understand, you've got problems
19 with your left wrist, your back, and your right and
20 left knee; is that correct?

21 A. Right.

22 Q. Okay. No other problems anywhere else?

23 A. No.

24 Q. And you did not have these pains in
25 your back or knee prior to this accident?

1 A. No.

2 Q. And has Dr. Barbara referred you to any
3 other doctors --

4 A. No.

5 Q. -- besides getting an MRI?

6 A. No.

7 Q. And you're currently out of work with
8 restrictions from Dr. Elvington, right?

9 A. Yes.

10 Q. Okay. Besides this car wreck 20 years
11 ago, have you been in any other car wrecks in which
12 you've claimed to be injured?

13 A. No.

14 Q. Have you filed any claims with any
15 insurance company for any other injuries that you
16 may have sustained? Slip-and-falls --

17 A. No.

18 Q. Okay. Besides suing in the car wreck
19 case, have you ever sued anybody for anything else?

20 A. Just Bethea nursing home when I fell at
21 Bethea.

22 Q. Okay. The workers' compensation case.

23 A. Yeah.

24 Q. All right. I think the rest of the
25 stuff probably relates to your permanency, and if

1 we get there we'll include on that. But the
2 injuries, have you told me everywhere you're having
3 pain right now as a result of this fall on
4 March 29th, 2013?

5 A. Yes.

6 Q. Okay. And you told me all the pain and
7 problems you're having with your knees and back
8 right now, and wrist?

9 A. Yes.

10 Q. Okay.

11 A. From the lower back all the way down in
12 my hips to my feet.

13 Q. And you've been complaining of back
14 pain since you fell?

15 A. Yes.

16 Q. Did you tell the supervisor you were
17 having back pain when you fell?

18 A. Yes.

19 Q. Okay. And specifically at work, who
20 did you tell you were having back pain and knee
21 pain and wrist pain to?

22 A. Don Hall.

23 Q. Okay. And you told him that you were
24 having pain in both knees --

25 A. Yeah.

1 Q. -- back and --

2 A. Yes.

3 Q. Okay. All right. Have you understood
4 all of my questions?

5 A. Yes.

6 Q. Have you given me truthful responses?

7 A. Yes.

8 Q. Do you want to change anything?

9 A. No.

10 MR. SMITH: Thank you for your time.

11 MR. WUKELA: I have a couple. Murrell,
12 I'm looking at Page 24 of my APA.

13 EXAMINATION

14 BY MR. WUKELA:

15 Q. Ms. Tedder, you just testified that
16 when you saw Dr. Ferro, you told him about your
17 back pain.

18 A. Yes.

19 Q. Okay. Dr. Ferro referred you to
20 physical therapy?

21 A. Yes.

22 Q. And you went to Lowe's Physical
23 Therapy -- the first note I have is May the 13th of
24 2013?

25 A. Yes.

1 Q. And when you went there, you talked to
2 a physical therapist, Ms. Franks?

3 A. Toni.

4 Q. Toni Franks?

5 A. Yes.

6 Q. Okay. And she indicates on her note a
7 history, March the 29th, fell on side of knee, hurt
8 B knee -- I guess that means both -- and L wrist.
9 And it says care of -- I assume that means care
10 of -- L knee worse than right. Is that what you
11 told her?

12 A. Yeah.

13 Q. Okay. It goes on to say pain starts
14 on -- pain starts LB on L and goes down leg and
15 into foot, little toe numb. I assume that means
16 starts low back on left and goes down leg into foot
17 with the little toe numb?

18 A. Yes.

19 Q. Did you describe that to her?

20 A. Yes.

21 Q. All right. Now, on Page 26 of the APA,
22 Murrell, it looks like Ms. Franks then wrote a note
23 to Dr. Ferro. Did you know she had written a note
24 to Dr. Ferro?

25 A. Yes.

1 Q. Did she tell you she was going to?

2 A. Yes.

3 Q. And in that note she says I'm writing
4 to advise you that I evaluated your patient today,
5 while -- she says Vernas, but it's Verma.

6 A. It's Verma.

7 Q. Yeah. She says Verma earlier, though.
8 Knee symptoms were consistent for a knee contusion.
9 She presented with additional signs that showed a
10 possible low back involvement. The patient states
11 that she's having pain that runs from her left LB
12 to her knee in occasion to her foot, parenthesis,
13 where her small toe can become numb.

14 That's what you told her?

15 A. Yes.

16 Q. And then it also goes on to say that
17 your left lower extremity was hypertensive compared
18 to the right. And she said she recommends you --
19 that Dr. Ferro consider adding treatment of the low
20 back to the claim so that we can address all of the
21 deficits noted.

22 Now, did you have another visit with
23 Dr. Ferro after that May 13th physical therapy
24 visit?

25 A. No.

1 Q. Okay. What's the next thing that
2 happened?

3 A. I went to Dr. Hyman.

4 Q. How did you know to go to Dr. Hyman?

5 A. Dr. Ferro referred me.

6 Q. All right. And how did you become
7 aware of that?

8 A. Dr. -- I had went to take him a note
9 and they told me that he wasn't -- wouldn't be able
10 to see me and that he already had referred me to
11 Dr. Hyman.

12 Q. Okay. Now, you carried that note to
13 Dr. Ferro?

14 A. Dr. Ferro.

15 Q. And in Dr. Ferro's note -- and I'm
16 looking at Page 18 of the APA -- there's a notation
17 on here at the bottom in handwriting that says Pete
18 Hyman. Who wrote that; do you know?

19 A. No.

20 Q. The note that you took him didn't have
21 that on it?

22 A. No.

23 Q. Okay. The note you took him looks like
24 this, which is --

25 A. Yes.

1 Q. -- Page 26?

2 A. Yes.

3 Q. And then when you took him that note,
4 did you talk to Dr. Ferro?

5 A. Yes.

6 Q. And what did he say to you?

7 A. He told me there was nothing else he
8 could do, so he was going to refer me to Dr. Hyman.

9 Q. And when you took him that note, did
10 you describe to him the back pain that --

11 A. Yes.

12 Q. -- was noted in the physical
13 therapist's note?

14 A. Yes.

15 Q. So then he referred you to Hyman. Then
16 the next time you see a doctor, it's Dr. Hyman?

17 A. Yes.

18 MR. WUKELA: Okay. That's all I've
19 got.

20 MR. SMITH: No follow-up.

21 (The deposition concluded at 1:35 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Christina L. Essi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 30th day of October, 2013 at Columbia, Richland County, South Carolina.

Christina L. Essi,
Registered Professional Reporter
My Commission expires
October 24, 2021

I N D E X

	Page	Line
STIPULATION	3	1
VERMA L. TEDDER	3	11
EXAMINATION	3	13
BY MR. SMITH		
EXAMINATION	55	13
BY MR. WUKELA		
CERTIFICATE OF REPORTER	60	1

E X H I B I T S

(No Exhibits Proffered)

In The Matter Of:
Verma Tedder vs
Darlington County Comm. Action, et al

Robert E. Elvington Jr MD
March 4, 2014



A. William Roberts, Jr. and Associates
We're About Service...Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

Original File Elvington_Jr_MD_Robert_E_-_140304.TXT

Min-U-Script®

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

VERMA TEDDER,
Employee/Claimant,

vs. WCC NO. 1307702

DARLINGTON COUNTY COMMUNITY
ACTION AGENCY,
Employer,

and

STATE ACCIDENT FUND,
Carrier/Defendants.

COPY

DEPOSITION OF: ROBERT E. ELVINGTON, JR., M.D.

DATE: March 4, 2014

TIME: 4:56 p.m.

LOCATION: Pee Dee Orthopaedic Associates, P.A.
901 E. Cheves Street, Suite 100
Florence, SC

TAKEN BY: Counsel for the Employer/Carrier

REPORTED BY: BONNIE L. SABADOS
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR EMPLOYEE:

3 WUKELA LAW FIRM
4 BY: PATRICK J. McLAUGHLIN
403 Second Loop Road
5 Florence, SC 29505
(843) 669-5634
6 patrick@wukelalaw.com

7 ATTORNEYS FOR EMPLOYER AND INSURER:

8 LEE, ERTER, WILSON, JAMES,
9 HOLLER & SMITH
10 BY: G. MURRELL SMITH, JR.
126 North Main Street
11 Sumter, SC 29150
(803) 778-2471
murrellsmith@leeandmoise.com

12
13
14 (INDEX AT REAR OF TRANSCRIPT)
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STIPULATIONS

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; and that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

ROBERT E. ELVINGTON, JR., M.D.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. SMITH:

Q Dr. Elvington, my name is Murrell Smith, and I met you earlier. And I represent Darlington County Community Action Agency and the State Accident Fund in regards to this Workers' Compensation case and with Verma Tedder.

And Ms. Tedder was a patient of yours; is that correct?

A That's correct.

Q All right. And was the first time you saw her in 2013?

A Correct.

4

1 Q And she was previously a patient of your
2 practice's before that?

3 A That's correct.

4 Q And from the records you reviewed, I believe
5 you told us earlier, she was a patient of Dr. Irvin's?

6 A Yes, sir.

7 Q In 2008?

8 A Yes, sir.

9 Q And what was that from? What was the reason
10 she visited Dr. Irvin in 2008?

11 A Apparently she had had an injury at that time
12 and injured her right shoulder in June of 2008. And at
13 some point she saw him for her knee.

14 Q Okay. And then she was initially referred to
15 you in 2013 by whom?

16 A I believe Peter Hyman who was in occupational
17 health.

18 Q And when you saw her -- well, let me back up.
19 We've done a few of these together. I'm sure
20 you've done many of them.

21 Just for the record, tell us your educational
22 background and your medical training please.

23 A Got my BS degree in biology in pre-med at the
24 Citadel, 1988. And then got my medical degree at
25 Medical University of South Carolina in Charleston in

1 '93. And then orthopedic surgery residency in '98, was
2 board certified in 2001, somewhere in there.

3 Q Okay. And you practice at Pee Dee Orthopedics
4 since that time?

5 A I have except I took an extra six months did
6 an extra -- some training in New York, and then
7 practiced in Charleston for three years, and then came
8 back.

9 Q And you're board certified?

10 A Correct.

11 Q And in orthopedic surgery?

12 A Yes, sir.

13 Q And you treat patients with knee injuries
14 often; is that correct?

15 A That's correct.

16 Q Do you do sports medicine? What's your --

17 A Sports medicine and joint replacements. I do
18 mainly shoulders and knees is what I do.

19 Q That's generally when I depose you it's with a
20 shoulder or knee.

21 A Right, exactly.

22 Q All right. And so you have been qualified
23 as an expert by the Court before?

24 A Yes, sir.

25 Q Okay. And you've given opinions concerning

6

1 patient's conditions related to Workers' Compensation
2 accidents?

3 A Yes, sir.

4 Q Okay. And in that regard, these opinions you
5 hold today, will they be to a reasonable degree of
6 medical certainty?

7 A Yes.

8 Q Okay. All right. Now, back to the case. You
9 first saw Ms. Tedder on -- what is the first visit? Why
10 don't you tell us that.

11 A June 25th, 2013.

12 Q And she was referred to you by Dr. Hyman?

13 A That's correct.

14 Q And what was her complaints on that time?

15 A She said knee pain after injury for three
16 months. Works as a teaching assistant. She was taking
17 children to the playground. She tripped over one of the
18 children that ran in front of her. Complains of
19 swelling, difficulty walking and standing.

20 Q Okay. And did she describe the mechanism of
21 the injury to you?

22 A She just said she tripped over a child.

23 Q Okay. And she was complaining of what type of
24 pain at that time?

25 A Didn't really give a type. States that she

1 has pain. She has, from what I documented, mild
2 grinding and popping.

3 Q In which knee?

4 A The left knee.

5 Q Okay. At that time, in her first visit, did
6 she mention anything about your right knee?

7 A She did not.

8 Q Okay. And I believe when she appeared on the
9 first visit, she had already had an MRI performed?

10 A That's correct.

11 Q Of the left knee?

12 A Correct.

13 Q What did the MRI show of the left knee?

14 A Basically a tear in the lateral meniscus
15 possibly, and then a tear in the medial meniscus.

16 Q Okay. And did it show some degenerative
17 changes in her left knee?

18 A Yes.

19 Q And did she have chondromalacia in her left
20 knee?

21 A Yes.

22 Q And tell me what chondromalacia is.

23 A It's kind of degenerative process in the knee
24 where the cartilage that lines the end of the bone
25 starts to kind of flake off, get a little rough. It's

8

1 not worn down to the bone yet, but it's just kind of
2 very early stages of arthritis.

3 Q What was the age of Ms. Tedder when she came
4 to see you?

5 A At that time, she was 52.

6 Q And she had some marked degenerative changes
7 in her left knee when she came to see you on that first
8 visit?

9 A Yeah, what I stated it was mild degenerative
10 arthritis in all three compartments of the knee.

11 Q Okay. And the three compartments of the knee,
12 describe to me what you mean by that.

13 A Between the knee cap and thigh bone, and
14 between the thigh bone and the shin bone on the inner
15 part, and the thigh bone and shin bone on the outer
16 part. So there are three different spaces.

17 Q And you decided to perform surgery?

18 A Yes.

19 Q And what type of surgery, arthroscopic
20 procedure?

21 A It's arthroscopic, two little holes in the
22 knee. A little TV camera, out-patient type procedure.

23 Q All right. In reviewing your operative
24 report, tell us what you saw in her left knee during
25 that operation.

1 A I don't think I have a copy of that. Do you
2 have a copy of that?

3 Q Yes, sir. I'll give that to you.

4 A I don't know why I don't. We found meniscus
5 tear as we expected. And I expected also some of the
6 chondromalacia that we discussed behind the knee cap and
7 also in the inner part of the knee between the thigh
8 bone and the shin bone.

9 Q Okay. And so you repaired the meniscus?

10 A) Correct.

11 Q And then I think you scraped the
12 chondromalacia, is that a proper term?

13 A Essentially tried to smooth it off.

14 Q Smoothed it?

15 A Scraping is just another term.

16 Q Pretty good for someone without a medical
17 degree.

18 A Absolutely. That's what they say in the
19 office all the time.

20 Q Following that procedure, she came back to see
21 you; is that correct?

22 A Yes.

23 Q And her first post-op visit was on what date?

24 A September 12, 2013. She didn't have her
25 surgery until September 4th.

10

1 Q Okay. I'm sorry. I get confused by your
2 records sometimes. It says addendum up there 8/24.

3 All right. So September 4th, 2013.

4 A Next day was 9/12 for that knee.

5 Q All right. I know I'm having a hard time
6 following. Where is the date of service on that record?

7 A It's gonna be right there. Well, right there.
8 Because what happened is she saw me for the right knee
9 before the surgery on her left knee.

10 Q Okay.

11 A So this would be that first post-op visit.
12 What would have happened is wait for Workmen's Comp
13 approval. Then they call in and say it's okay. And
14 then we call her back and give her a date. So she would
15 not have seen me personally before the surgery. She
16 would have seen my nurse and done all the pre-op stuff.

17 Q So the visit here on -- that's the first visit
18 you had following the surgery?

19 A Yes, sir.

20 Q Okay.

21 A I did her approximately the week before. Saw
22 me the week after for taking the stitches out.

23 Q All right. At that time, did she complain of
24 any right knee pain at that visit?

25 A Not at that visit.

1 Q Okay.

2 A I can't tell you exactly. She may or may not
3 have. At the end of that note, it said: We will
4 address the patient's right knee symptoms at a later
5 date. So.

6 Q Okay. Do you recall what right knee symptoms
7 you're referring to in that --

8 A She had seen me previously before the surgery,
9 after the left knee first visit in August 8th, 2013 for
10 the right knee.

11 Q Okay.

12 MR. McLAUGHLIN: Page 69 of the APA.

13 THE WITNESS: When you have these two
14 different problems, two different incidents, it really
15 gets confusing. It confuses me too.

16 Q I'm switching back and forth.

17 A Correct.

18 Q So you saw her before for the right knee
19 before the surgery on the left knee.

20 A Correct.

21 Q All right. And the right knee, tell me what
22 she described to you when she came to visit you on
23 August 8th of 2013; is that correct?

24 A That's correct.

25 Q Okay.

12

1 A At that time, she states that she injured her
2 knee while at work on the above date, which is
3 3/29/2013. Well, assuming that's the correct date.
4 When she fell in the parking lot. She continued to have
5 medial side knee pain since the injury. Complains of
6 swelling, snapping, and popping of the knee. Pain is
7 worse on weight bearing. She's ambulating with the use
8 of a cane.

9 Q She didn't complain of that pain to you during
10 the first visit?

11 A I have no record of it. So.

12 Q Just for the record, if somebody complains of
13 pain in a right knee or left knee, you generally record
14 that, don't you?

15 A Yes.

16 Q Okay. You need to record your records to
17 accurately reflect the complaints and subjective and
18 objective findings of the patients; is that right?

19 A Correct.

20 Q That's something you routinely do in the
21 normal course of your practice?

22 A Yes.

23 Q Okay.

24 A Especially if it was related to some of the
25 same incidents.

1 Q Yes, sir. And so the first visit, she did not
2 complain of any right knee pain.

3 A No, sir.

4 Q And that visit again was on what date?

5 A The first time?

6 Q Yes, sir.

7 A June 25th, 2013.

8 Q Then she came in about a month and a half
9 later and complained of right knee pain?

10 A Correct.

11 Q All right. I think you ordered an MRI at that
12 time?

13 A I did.

14 Q All right. And were you able to eventually
15 review that MRI?

16 A I did. I think the next time I saw her was
17 10/24/2013. Addressed her left knee because it was post
18 surgery. And then right knee continues to be painful.
19 Her right knee MRI was again reviewed. She does have a
20 medial meniscus tear. Recommended arthroscopy with
21 medial meniscectomy.

22 Q The right knee, you have a copy of that MRI
23 report?

24 A I do.

25 Q And that was performed here at your office; is

14

1 that correct?

2 A Down the street. We have one down the street.
3 Yeah..

4 Q Okay. And that report, what were the findings
5 of her knee in that MRI? What is the date of that MRI?

6 A August 27, 2013.

7 Q And tell me what the findings were.

8 A Track department degenerative arthritis, most
9 marked in the tibiofemoral joint with osteo chondro
10 defects -- I'm just gonna read it out if that's okay.

11 Q Yes, sir.

12 A In both the medial and lateral femoral
13 condyles and marked osteophytic changes. Anterior
14 femoral condyles and posterior patella. And then tear
15 posterior horn medial meniscus and small joint effusion.

16 Q All right. Again, degenerative changes in the
17 right knee?

18 A Correct.

19 Q Okay. And also a meniscus tear in the right
20 knee?

21 A Correct.

22 Q And now, meniscus tears, Doctor, those can be
23 from acute injuries; is that right?

24 A Correct.

25 Q And they also can be degenerative in nature,

1 correct?

2 A Correct.

3 Q All right. And so in regards to this, the
4 mechanism of the fall is important for you to determine
5 whether it's acute or whether it's degenerative, isn't
6 it?

7 A Correct.

8 Q And generally tell me how someone would tear
9 their meniscus in an acute injury?

10 A I wish it were cut and dried, but normally
11 it's more of a weight bearing, twisting injury, like
12 stepping in a hole, playing soccer, that kind of thing.
13 Or I've had folks stand up from a chair, feel a pop, and
14 it tears. From an acute type of injury, if that's what
15 you're asking.

16 Q Right. It's generally planting and twisting
17 the knee; is that correct?

18 A Usually. It doesn't come from just moving
19 around in bed normally.

20 Q And then you have degenerative meniscal
21 injuries too, don't you?

22 A Correct.

23 Q And that's someone could stand up for no
24 reason at all, and all of a sudden they have a slight
25 tear and feel a pop?

16

1 A They can do it without an injury, essentially.

2 Q And so in regards to Ms. Tedder, did she tell
3 you she heard a pop or anything when she fell?

4 A From my history, she didn't say anything about
5 that.

6 Q Okay. And then in that regard also, when
7 someone falls on their knees, that generally doesn't
8 cause a meniscal tear, does it?

9 A No, I can't tell you that cause it can cause
10 that.

11 Q So if someone fell forward and just landed on
12 their knees, that can cause a meniscal tear?

13 A Yes. Cause the thing is you're hitting the
14 femur or the bone which shifts on the shin bone which
15 can cause stress on the meniscus.

16 Q Okay. And now we have the benefit of
17 Ms. Tedder was a patient of yours or of your practice a
18 few years before; is that correct?

19 A Correct.

20 Q All right. And Dr. Irvin treated her for her
21 right knee; is that right?

22 A Yes.

23 Q And y'all have an MRI of that knee back from
24 2008; is that correct?

25 A That's correct.

1 Q And that MRI showed what?

2 A Mild degenerative changes in the medial
3 compartment and in the patella femoral compartment. No
4 joint effusion or meniscal tears. Partial discoid
5 lateral meniscus is noted.

6 Q All right. What's the partial discoid lateral
7 meniscus?

8 A Sometimes it means nothing as far as symptoms
9 goes, but it's where the meniscus looks like a circle or
10 a ring, and when you're born -- before you're born it's
11 all solid and no hole in the middle, like a doughnut but
12 there is no hole with the doughnut. But then as you
13 form, the hole forms in the middle of it. Some people
14 don't form that hole, and it's called discoid, like a
15 disc essentially. So but MRI sometimes it can be a
16 little off.

17 Q Okay. And you don't have the benefit of
18 having the images with you today, do you?

19 A No.

20 Q Okay. So in regards to this, when you look at
21 her left knee and her right knee, both of them showed
22 degenerative changes; is that right?

23 A That's correct.

24 Q And you had a chondromalacia in both knees?

25 A Correct.

18

1 Q And you had a meniscus tear in both knees?

2 A Correct.

3 Q Okay. Do you have an opinion as to whether
4 this injury, this meniscus tear of the right knee is
5 related to her fall of March -- I think it was
6 March 19th; is that right, 2013?

7 A It would be difficult for me to say it's from
8 that injury unless she came in with a complaint within
9 just a short time after that injury. So.

10 Q So as you sit here today, to a reasonable
11 degree of medical certainty, can you say that the
12 meniscus tear to the right knee is more likely than not
13 related to her fall of March -- let me get this date
14 correct. Give me a second. Okay.

15 A Yours is worse than mine.

16 Q Can we take one second break?

17 (Off-the-record conference.)

18 BY MR. SMITH:

19 Q So back to rephrase my question. In regards
20 to the right meniscus tear, Dr. Elvington, do you have
21 an opinion as to a reasonable degree of medical
22 certainty that more likely than not is related to her
23 fall of March 29th, 2013?

24 A I would not say that.

25 Q Okay. So is it fair to say that the injury --

1 the fall of March 29th, 2013, more likely than not --
2 well, that's a bad question. I'm about to ask a double
3 negative. I don't mean to confuse you on that.

4 But it is your opinion that the right meniscal
5 tear is not related to the fall of March 29, 2013 to a
6 reasonable degree of medical certainty?

7 A I'll say that just preface it saying unless
8 she had a complaint just within a week or two from that
9 injury, I can't say it was from that.

10 Q All right. Fair enough. That's all the
11 questions I have.

12 EXAMINATION

13 BY MR. McLAUGHLIN:

14 Q Doc, Murrell lied to me. I'm gonna have to do
15 a little bit of work here for Steven.

16 I'm gonna hand you one of the APA in this.
17 The reason why I'm gonna do it because it's got other
18 medical records which I don't know if you've seen or
19 not.

20 A Probably not. I never had that luxury.

21 Q That's right.

22 A I always get like surprised when I come to the
23 deposition.

24 Q That's right. I'm gonna hand it to you, and
25 I'm gonna go ahead and hand it to you with it open to

20

1 page 1 of the APA. And Doctor, it's my understanding
2 these are the records as you can see from McLeod
3 Physician Associates on March 29th, 2013 which would be
4 the date of the incident. And if you look at under
5 reason for appointment, on that first record with Dr.
6 Ferro, it looks like that Ms. Tedder complained of
7 bilateral knee pain; isn't that correct?

8 A Yes.

9 Q Okay. And then if you turn to page 2 of that
10 record as well.

11 A Yes.

12 Q And if you would take a few moments there to
13 look at the history of present illness, and then down at
14 the bottom of that page under musculoskeletal, take a
15 few minutes to review those, and let me know when you
16 finish, and I'll ask you a question or two about that.

17 A Okay.

18 Q Okay. And certainly under the history of
19 present illness, when she first visited with Dr. Ferro,
20 she describes tripping over a child at work and falling
21 on her knees, plural; isn't that right? And I'm reading
22 under the history of present illness, knee shins. On
23 page 2 of the APA?

24 A I'm sorry.

25 Q Yes, sir.

1 A On her knees.

2 Q And then it also says she is complaining of
3 pain in these areas; is that right? And requesting
4 x-rays of her knees, once again plural; is that correct?

5 A Yes.

6 Q All right. And then down under
7 musculoskeletal, Dr. Ferro put down that she had -- I
8 always mess this word up, antalgic gait?

9 A Antalgic.

10 Q Antalgic gait?

11 A Uh-huh.

12 Q And could you explain what that means for me?

13 A It's a lump.

14 Q In other words, somebody is walking as if
15 they're in pain?

16 A It hurts to put weight on the particular
17 extremity, so you take weight off of it.

18 Q Yes, sir. And then right after that, it says:
19 Obvious knee pain bilaterally; is that correct?

20 A This is on the --

21 Q Right there under musculoskeletal, right after
22 he says antalgic gait.

23 A Okay, yes.

24 Q And then later on in that same section: On
25 examination of both her knees, she has a tenderness of

22

1 her patella; is that correct?

2 A Let's see.

3 Q It's about halfway down that paragraph.

4 A Yes.

5 Q Okay. And so when Mr. Smith was just asking
6 you, Doc, you know, what would you need to be able to
7 say whether or not this right knee is related, I notice
8 that you told him: Well, I would have to know if there
9 was a complaint that had happened. Now, I took you to
10 be saying at the time of pain with the right knee.

11 Would that type -- would the complaints
12 referenced in that record, would that have an affect on
13 your opinion?

14 A It helps. I think what is -- let me go back.
15 When you look at his exam that she has normal Lachman's
16 anterior and posterior drawer testing, which is more of
17 a ligament test. Then modified McMurray's testing
18 bilateral. McMurray's is a test for like meniscus
19 tears. And she also is complaining more of anterior
20 pain or knee cap pain which is a different area. So
21 it's harder for me to say still that she complained of a
22 meniscus type symptoms.

23 Q Yes, sir. And Doc, once again, you know, I'm
24 kind of covering this today, and I went through and
25 looked through these records for the first time today.

1 And basically I'll tell you what happens. And we can
2 turn through them and look. You notice as she goes
3 through this treatment that the right knee begins to
4 improve, and that's reflected over the visit that she
5 has April 4th, 2013, which is page 6 of the APA.

6 A Okay.

7 Q You can see right there under the reason for
8 appointment. Right knee feels better. Still complains
9 of pain to left knee, and it radiates into left hip.
10 That pattern continues on through the visit on
11 April 11th, 2013, which is on page 9 of the APA. Once
12 again, if you look at that follow-up work related injury
13 to her knees, plural. And continuing to experience left
14 knee pain. And then there's still some continuation
15 talk about, you know, radiating pain. You'll note in
16 that same -- on that page, her right knee is about
17 90 percent better. So at least on February 11th which
18 is, you know, I guess getting close to about two weeks
19 out from the date, she's still suffering some right knee
20 pain, at least according to the records; is that right?

21 A That's correct.

22 Q And Doc, my understanding of the positioning
23 of this case as it has gone through, it was originally
24 looked at as the left knee was the issue. Then as
25 things went on, there was a problem with the back that

24

1 developed as well.

2 A Okay.

3 Q It's my understanding that at this point in
4 time, the position is the left knee is an admitted
5 injury, and the back is admitted injury. And obviously
6 what we're here today taking your depo for is to find
7 out whether the right knee is admitted.

8 MR. SMITH: Object to the form.

9 BY MR. McLAUGHLIN:

10 Q My understanding is is that when someone has
11 pain in their left knee and in their back, is that gonna
12 cause them to put more weight on their right leg?

13 A Well, with antalgic gait, yeah, possibly.

14 Q Okay. And if over the course of beginning in
15 March 29, 2013, and up until when she comes in to see
16 you for the first time which is June 25th, 2013,
17 she had -- the problems she had were with her left knee
18 and her back, would it be reasonable to assume she was
19 putting more weight and stress on her right leg?

20 A I can assume that, but I don't know for sure.

21 Q Certainly if we look at -- let's see, if you
22 will turn to page 56 of the APA, this is my
23 understanding a record from when she was seen at McLeod
24 Occupational Health. And if you look down in the
25 treatment rendered part of that, I guess it's like about

1 the next to last sentence down there. She states that
2 both her knees and thighs hurt this weekend.

3 So at least the records reflect that on
4 6/4/2013, she was complaining of pain in both knees; is
5 that right?

6 A That's correct.

7 Q Okay. And then, of course, she comes in to
8 see you on 6/25/13, which is page 66 in that record, and
9 you noted that she had difficulty with walking and
10 standing; is that right?

11 A What page again?

12 Q Yes, sir. Page 66. It's your June 25th, 2013
13 note.

14 A Okay. Say it one more time.

15 Q Sure. When she first came in to see you then,
16 even though she was complaining -- her chief complaint
17 to you at that time was left knee pain. But you also
18 noted that she had difficulty with walking and standing;
19 is that right?

20 A That's correct.

21 Q Doctor, assuming those records are right, and
22 my summary of the records we didn't look at were right
23 to you, would that seem to be that she is complaining of
24 problems with her legs throughout the entire course of
25 treatment here?

26

1 A Yes.

2 Q Okay. And would those types of problems
3 affect your opinion of whether or not the right knee
4 issues she's having today were caused by this fall?

5 A I don't have the luxury of seeing her during
6 that time unfortunately. I'm going on somebody else's
7 notes.

8 Q And I understand that, but assuming those are
9 right --

10 A Dr. Hyman stated she had thigh and knee pain.
11 It's hard to know if it's all thigh -- I mean if it's
12 from the knee or if it's from any pinched nerve in her
13 back from her back injury. It's kind of hard for me to
14 know that unfortunately. I can't give you a great
15 answer on that with medical certainty. So no, I can't.

16 Q Well, if one of the things you said you need
17 to know about would be like whether or not she had had
18 right knee complaints in close proximity to the actual
19 date of the incident.

20 A Right.

21 Q We know that now that she did have those
22 complaints; is that correct?

23 A Sure.

24 Q We know those complaints -- they continued for
25 awhile past that first injury. They seemed to resolve.

1 And then they popped back up before she came back to see
2 you; is that right?

3 A Correct.

4 Q Assuming these records are correct.

5 A Correct.

6 Q All right. And we know that in the interim
7 that she did have two injuries that are related to this,
8 which are the left knee and the back.

9 A Correct.

10 Q And we know that those types of injuries can
11 put more stress on her right knee, correct?

12 A Correct.

13 Q All right. Knowing all that and assuming
14 those facts are true, can you say most probably to a
15 reasonable degree of medical certainty that the
16 March 29th incident caused the right knee problem she's
17 having today?

18 A Again, I got to preface all of this.

19 Q Yes, sir.

20 A She had the injury. Complained of pain in
21 both knees at the time. She had arthritis in both knees
22 at the time. She got better, 90 percent better in that
23 right knee. So I mean she had 10 percent still some
24 issue. Most of the time I think she exacerbated her
25 arthritis which is definitely, you know, she even had

28

1 back in '08 with Dr. Irvin. Usually if you have a
2 meniscus tear, you're not gonna get 90 percent better.
3 You're gonna stay painful to the point that it's gonna
4 require more intervention earlier on. Still I can't say
5 that I think -- I think there's a better chance that she
6 developed the meniscus tear over that period of time.
7 Not necessarily at the time of injury. Cause I can't
8 tell you unless Dr. Hyman had gotten an MRI of both at
9 the time. I can't say.

10 Q Well, we know that, in fact, when you were
11 explaining to Murrell how meniscus tears happen. We
12 know that increased weight and stress on the knee can
13 cause a meniscus tear, right?

14 A That's hard -- I get this unfortunately every
15 other week. You know, did putting extra weight on it
16 cause this. I can't say that.

17 Q And I wrote down the quote when you were
18 talking to Murrell. You said weight bearing -- it can
19 happen from a weight bearing and twisting type injury.

20 A Correct.

21 Q And if she's got -- if her gait is changed
22 because she has left knee problems, and she has back
23 problems that are admitted from this injury, is it not
24 reasonable to assume that those injuries caused her to
25 put more weight on the knee?

1 A Yes. And I could say it could have caused it.
2 I just can't tell you that more than 50 percent
3 likelihood that it did, if that makes sense. But yes,
4 that is a reasonable way of it causing it.

5 Q Yes, sir. Well, if the meniscus injury was a
6 pop, would you hear it pop? The injury you found on her
7 right knee, would she have felt or heard that injury?

8 A No, not necessarily. Sometimes you can feel
9 it.

10 Q Yes, sir.

11 A But you don't always hear it. Patients will
12 complain about hearing it, but that's not normal. I'll
13 tend to see more of a feel than they do a hearing. And
14 they don't always feel a pop right away. You can have
15 people twist and then within a day or so they start
16 feeling more pain. It's not always within the second.
17 I've had people say well, I felt okay when I fell on the
18 sidewalk, and then that night and the next day I started
19 having pain in it. And it's the meniscus tear. That's
20 easier to associate. But no, you don't have to have a
21 pop.

22 Q Give me one second, Doctor.

23 A Sure.

24 Q Doc, I just passed you back the APA. I turned
25 it to page 24. It's my understanding this looks like a

30

1 record from Lowe's Physical Therapy dated, I guess,
2 5/13/2013; is that correct?

3 A That's correct.

4 Q All right. And certainly at this point in
5 time, it appears that they're noting that the patient
6 was in fact when she would stand have to shift weight
7 onto her right leg; is that correct? I'm looking down
8 at the observations at the very bottom of the page.

9 A Correct. That's true.

10 Q Okay. And so certainly at least that would be
11 over a month out from the incident that she is visibly
12 putting more pressure on that right knee; is that
13 correct?

14 A That's correct.

15 Q All right. Doc, does that change your
16 opinions at all -- be able to change your opinion to
17 where you could say more likely than not that the
18 incident caused the right knee problems?

19 A I think it increased her pain. I just can't
20 say it caused the tear in her meniscus.

21 Q Did it make her more susceptible to the right
22 knee injuries?

23 A It may make her more susceptible. That, you
24 know, especially with the exacerbation of her arthritis,
25 yes.

1 Q Okay. That's about all I think I can get.

2 EXAMINATION

3 BY MR. SMITH:

4 Q Just ask you one follow-up question. Make
5 sure I understand this.

6 From Dr. Ferro's visit, the first visit that
7 Mr. McLaughlin showed you over there, you said that
8 there were tests that he performed. One of them was
9 negative that generally shows a meniscus injury. I
10 think that was number one, page 1. Just go back to the
11 first page.

12 A Yeah, it's on that history of present
13 illness -- no, the exam. It was the McMurray's test.
14 Which again, they're kind of screening tools. They're
15 not perfect. You can have a meniscus tear with a
16 negative McMurray's. But that's one of the ways we use
17 to test for meniscus tear.

18 Q And throughout Dr. Ferro's records, she's
19 always had negative McMurray's test; is that correct.

20 A Have to look for it. Yes. Correct.

21 Q And as you noted in there, there was a
22 90 percent improvement in regards to the right knee; is
23 that right?

24 A Correct.

25 Q And generally when you have meniscus tear, I

32

1 think you said earlier, you may not feel it immediately,
2 but eventually the pain gets worse from the instability
3 in the meniscus; is that correct?

4 A Correct.

5 Q Okay. And there is no notations in there of
6 increased right pain in Dr. Ferro's -- right knee pain
7 in Dr. Ferro's reports, are there?

8 A Correct.

9 Q Okay. That's all the questions I have. Thank
10 you, Doctor.

11 EXAMINATION

12 BY MR. McLAUGHLIN:

13 Q One question. Let me ask you, if you turn
14 like to page 7 of that APA, Doctor.

15 A Yep.

16 Q And that musculoskeletal section where I
17 assume this is really the same thing you had read from
18 the first visit. She has a normal Lachman's anterior
19 and posterior drawer test and modified McMurray's
20 testing bilaterally. The next sentence: She is normal
21 lower from the muscle strength testing, but has
22 discomfort of palpation over anterior patella.
23 Consistent with patella contusions.

24 A Yes.

25 Q What does that mean?

1 A That means she is painful over the front of
2 her knee. And from what we see, normally if it's a
3 meniscus tear, it's gonna be on the inner aspect of the
4 knee and not the front side of the knee.

5 Q And that would appear to be from those notes,
6 that's on both knees still when Dr. Ferro was making
7 those notes, correct?

8 A I would guess so. He didn't specifically
9 state that. But yes, I would guess so. I'm gonna
10 assume so.

11 Q It certainly looks like all -- that he kind of
12 talks about both knees and talks about all the stuff.

13 A Right.

14 Q So the stuff that makes it look like he
15 doesn't find a meniscus thing, certainly would also look
16 like he's saying she's having that pain and palpation on
17 those knees at the time, right?

18 A And I, you know, this is assuming he did
19 palpate the inner aspect of the knee, but it doesn't
20 quite state that, so I can't tell you.

21 Q Yes, sir.

22 A Does that make sense?

23 Q Yes, sir. Assuming that that is that he is
24 testing both knees, and so he's seeing that tenderness
25 to palpation over the right knee, does that allow you to

33

probably to a reasonable degree of medical
that the right knee issue was caused by the

3
4 A No. Just because of where the tenderness is.
5 It's not normally in that particular spot.

6 Q Yes, sir. Having the tenderness where it's
7 pressing, would that make her more susceptible to right
8 knee injury that she is suffering from now?

9 A I think that would cause exacerbation of her
10 arthritis, but I can't say it caused her meniscus tear.

11 Q Yes, sir.

12 A It increased her pain.

13 Q Okay. All right. Can someone's arthritis in
14 a knee getting exacerbated, does that increase their
15 susceptibility to having a meniscus tear?

16 A I don't know.

17 Q Okay.

18 A She has arthritis basically in all three
19 compartments. She strikes her knee, and that usually
20 would probably flare up the arthritis behind her knee
21 cap in that particular compartment.

22 Q Yes, sir.

23 A But I think she's more susceptible with the
24 arthritis. And then if she injures it, yeah, that's a
25 possibility it could cause a meniscus tear. I just

1 can't fully say yeah, I think it did it.

2 Q Okay. Is it more probable that it did than
3 not?

4 A No, I don't think so.

5 Q All right. Thank you, Doctor.

6 MR. SMITH: No more questions. Thank you.

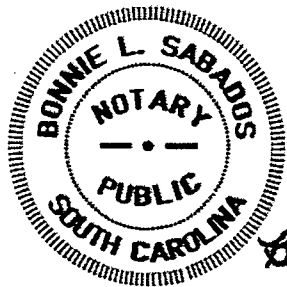
7 (The deposition was concluded at
8 5:40 p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Bonnie L. Sabados, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 10th day of March, 2014, at Conway, Horry County, South Carolina.



Bonnie L. Sabados

Bonnie L. Sabados
Registered Professional
Reporter
My Commission expires
July 8, 2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS/EXAMINATION	Page
ROBERT E. ELVINGTON, JR, M.D.....	3
EXAMINATION	
BY MR. SMITH.....	3
BY MR. McLAUGHLIN.....	19
BY MR. SMITH.....	31
BY MR. McLAUGHLIN.....	32
CERTIFICATE OF REPORTER.....	36

REQUESTED INFORMATION INDEX

Page
(No Information Requested)

E X H I B I T S

Page/Line
(No Exhibits Proffered)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1307602

EMPLOYEE/CLAIMANT: VERMA L. TEDDER
EMPLOYER: DARLINGTON COUNTY COMMUNITY ACTION
INSURER: STATE ACCIDENT FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE
WITHIN HEARING WAS TAKEN ON THE 20TH DAY OF AUGUST, 2015,
COMMENCING AT THE HOUR OF 11:30 A.M., IN HARTSVILLE, SOUTH
CAROLINA, BEFORE THE HONORABLE SUSAN S. BARDEN, ATTENDED BY
COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

STEPHEN J. WUKELA, ESQUIRE, OF THE FIRM
WUKELA LAW FIRM
403 SECOND LOOP ROAD
FLORENCE, SOUTH CAROLINA 29505

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

G. MURRELL SMITH, JR., ESQUIRE, OF THE FIRM
LEE, ERTER, WILSON, JAMES, HOLLER & SMITH, L.L.C.
126 NORTH MAIN STREET
P.O. BOX 580
SUMTER, SOUTH CAROLINA 29150

ATTORNEY FOR THE EMPLOYER/INSURER.

ATTENDING:
EVELYN PATTERSON
VERMA L. TEDDER

I N D E X

PAGE

VERMA L. TEDDER:

DIRECT EXAMINATION BY MR. WUKELA.....	20
CROSS-EXAMINATION BY MR. SMITH.....	42
REDIRECT EXAMINATION BY MR. WUKELA.....	63
CERTIFICATE OF NOTARY PUBLIC.....	71

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

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

6 **BY COMMISSIONER BARDEN:**

7 TODAY'S DATE IS AUGUST 20TH, 2015. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1307602. THIS IS THE CASE OF THE CLAIMANT
10 MS. VERNA -- IS IT VERNA OR VERMA?

11 **BY MS. TEDDER:**

12 VERMA.

13 **BY COMMISSIONER BARDEN:**

14 VERMA. WE'RE GOING TO CORRECT THAT, BECAUSE
15 THE COMMISSION FILE HAS THAT WRONG. I'LL MAKE SURE
16 THEY FIX THAT AS AN "M" INSTEAD OF AN "N." MS.
17 VERMA TEDDER, WHO IS PRESENT TODAY AND REPRESENTED
18 BY ATTORNEY STEPHEN WUKELA VERSUS THE EMPLOYER
19 DARLINGTON COUNTY COMMUNITY ACTION AGENCY AND ITS
20 CARRIER THE STATE ACCIDENT FUND, BOTH OF WHICH ARE
21 REPRESENTED BY ATTORNEY MURRELL SMITH. THE PURPOSE
22 OF TODAY'S HEARING IS TO DETERMINE ISSUES RAISED IN
23 THE DEFENDANTS' FORM 21 REQUEST TO STOP PAYMENT OF
24 TEMPORARY BENEFITS AND TO DETERMINE PERMANENCY, IF
25 ANY, WITH REGARD TO THE BACK AND THE LEFT KNEE. THE

1 PARTIES AGREE AND STIPULATE THAT MS. TEDDER'S
2 AVERAGE WEEKLY WAGE IS \$325.19, YIELDING A
3 COMPENSATION RATE OF \$216.80. THE DATE OF THIS
4 ADMITTED ACCIDENT WAS MARCH 29TH, 2013.

5 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
6 VENUE, OR ANY OTHER ITEMS?

7 BY MR. WUKELA:

8 WELL, WHEN ---

9 BY COMMISSIONER BARDEN:

10 WELL, WHAT -- WELL, WE DID. IT ---

11 BY MR. WUKELA:

12 WITH THE EXCEPTION OF ONE, COMMISSIONER.

13 BY MR. SMITH:

14 WELL, WE DID HAVE ONE, COMMISSIONER.

15 BY COMMISSIONER BARDEN:

16 YEAH. AND I'M GOING TO LET Y'ALL ELABORATE ON
17 THAT MOMENTARILY.

18 BY MR. WUKELA:

19 YES, MA'AM. I THINK NONE OTHER THAN APA NUMBER
20 EIGHT, COMMISSIONER, WHICH THE CLAIMANT OFFERS AND
21 THE DEFENDANTS CHALLENGE..

22 BY COMMISSIONER BARDEN:

23 OKAY.

24 BY MR. SMITH:

25 OH, YEAH. YES, MA'AM. AND LET ME PLACE ON THE

1 RECORD TOO THAT I AGREE. I ---

2 BY COMMISSIONER BARDEN:

3 YOU DO HAVE A ---

4 BY MR. SMITH:

5 --- APA NUMBER EIGHT, WE OBJECT TO THAT PER
6 YOUR ORDER THAT YOU ISSUED.

7 BY COMMISSIONER BARDEN:

8 AND I WAS GOING TO LET YOU GO THROUGH THAT WITH
9 THAT EXCEPTION, BUT WITH OTHER THAN THAT OBJECTION,
10 DO YOU HAVE ANY OTHER OBJECTIONS?

11 BY MR. SMITH:

12 NO.

13 BY COMMISSIONER BARDEN:

14 _____ OKAY.

15 BY MR. WUKELA:

16 NO, COMMISSIONER.

17 BY COMMISSIONER BARDEN:

18 ALL RIGHT. THANK YOU. WITHOUT OTHER OBJECT,
19 OTHER THAN EIGHT, WHICH I'M GOING TO ALLOW THE
20 PARTIES TO PUT A BRIEF POSITION ON THE RECORD, THE
21 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
22 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND
23 UNSTIPULATED MEDICAL REPORTS.

24 PRIOR TO GOING ON THE RECORD WE HELD A
25 PREHEARING CONFERENCE. IT'S THE POSITION OF THE

1 DEFENDANTS AS THE MOVING PARTY THAT THE CLAIMANT
2 REACHED MAXIMUM MEDICAL IMPROVEMENT AS OF AUGUST
3 26TH, 2014. THE CLAIMANT AGREES THAT SHE HAS
4 REACHED MAXIMUM MEDICAL IMPROVEMENT. THE DEFENDANTS
5 SEEK AN ORDER ALLOWING THEM TO STOP PAYMENT OF
6 TEMPORARY BENEFITS. THEY SEEK A DETERMINATION OF
7 PERMANENCY, IF ANY, WITH REGARD TO THE BACK AND THE
8 LEFT KNEE ONLY. THE DEFENDANTS DO CONCEDE AND
9 ACKNOWLEDGE THAT THERE WAS A RIGHT ARM HAND INJURY,
10 BUT THE DEFENDANTS WOULD CONTEND AND BELIEVE THAT
11 THAT RESOLVED. THE DEFENDANTS BELIEVE THAT THERE IS
12 NO PERMANENT PARTIAL DISABILITY BEYOND THE FIVE
13 PERCENT IMPAIRMENT RATING TO THE BACK OR THE THREE
14 PERCENT IMPAIRMENT RATING TO THE LEFT KNEE, AND IF
15 THERE IS ANY PERMANENT PARTIAL DISABILITY BEYOND
16 THOSE IMPAIRMENT RATINGS, IT WOULD BE STRICTLY DE
17 MINIMIS. THE DEFENDANTS WOULD STRONGLY DENY THAT
18 THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.
19 THE DEFENDANTS BELIEVE THAT THE CLAIMANT CANNOT MEET
20 HER BURDEN OF PROVING THAT SHE IS PERMANENTLY AND
21 TOTALLY DISABLED, AND IF IN FACT I DID FIND THAT SHE
22 -- AND AS FAR AS THE BACK IS CONCERNED AND THE KNEE,
23 THE DEFENDANTS BELIEVE THAT THESE ARE SCHEDULED
24 LOSSES PURSUANT TO SECTION 42-9-30, ITEM 16 AND ITEM
25 21, THAT THERE IS LESS THAN 50 PERCENT LOSS OF USE

1 OF THE BACK. OBVIOUSLY, DEFENDANTS BELIEVE THAT
2 THERE IS NO P.P.D. BEYOND THE IMPAIRMENT RATING,
3 BUT IF I DID FIND THAT THE CLAIMANT DID HAVE GREATER
4 THAN 50 PERCENT LOSS OF USE OF HER SPINE, THE
5 DEFENDANTS BELIEVE THAT THEY CAN SUCCESSFULLY REBUT
6 THE PRESUMPTION THAT SHE'S PERMANENTLY AND TOTALLY
7 DISABLED. THE DEFENDANTS BELIEVE THAT ANY
8 PERMANENCY AWARD SHOULD BE BASED ON THE FACT OF
9 THEIR INTERPRETATION OF THE RECORDS, SO THERE ARE NO
10 RESTRICTIONS. THE DEFENDANTS WOULD CONTEND THAT DR.
11 EDWARDS RELEASED THE CLAIMANT WITH NO RESTRICTIONS,
12 AND ULTIMATELY THAT DR. ELVINGTON RELEASED THE
13 CLAIMANT WITH NO RESTRICTIONS. THE DEFENDANTS WOULD
14 POINT TO MY ATTENTION THE CLAIMANT WHILE SHE DID
15 UNDERGO SURGERY ON HER KNEE, THAT SHE WAS TREATED
16 CONSERVATIVELY FOR HER BACK. AND FINALLY, THE
17 DEFENDANTS WOULD CONTEND THAT ANY RESTRICTIONS AS
18 SET FORTH BY THE F.C.E. OBTAINED BY THE CLAIMANT
19 SHOULD BE DISREGARDED, AS IT IS A F.C.E. THAT WAS
20 REQUESTED BY THE CLAIMANT, AND IT DOES SHOW SUB-
21 MAXIMAL EFFORT. SO THEREFORE, WHILE THE DEFENDANTS
22 ACKNOWLEDGE THAT THE CLAIMANT DOES HAVE IMPAIRMENT
23 RATINGS SUCH THAT SHE WOULD LIKELY BE ENTITLED TO
24 AWARDS FOR THE BACK AND THE LEFT KNEE, THAT THOSE
25 ARE SCHEDULED LOSSES, AND THOSE P.P.D. AWARDS SHOULD

1 BE MINIMAL -- MINIMAL IF ANY BEYOND THE IMPAIRMENT
2 RATINGS.

3 CONVERSELY, IT IS THE POSITION OF THE CLAIMANT
4 THAT SHE IS PERMANENTLY AND TOTALLY DISABLED. SHE
5 WOULD CONTEND THAT SHE IS ENTITLED TO THAT FINDING
6 PURSUANT TO EITHER STATUTORY THEORY, WHETHER THAT BE
7 42-9-10 BECAUSE OF THE COMBINATION OF HER INJURIES,
8 INJURED BODY PARTS INCLUDING HER BACK, HER LEFT
9 KNEE, AND HER RIGHT ARM AND HAND, OR ALTERNATELY,
10 UNDER 42-9-30, ITEM 21, IN THAT SHE HAS SUSTAINED A
11 50 PERCENT OR GREATER LOSS OF USE OF HER SPINE. AND
12 THE DEFENDANTS WOULD -- OR EXCUSE ME. THE CLAIMANT
13 WOULD CONTEND THAT THE DEFENDANTS CANNOT
14 SUCCESSFULLY REBUT THE PRESUMPTION THAT SHE IS
15 PERMANENTLY AND TOTALLY DISABLED. HOWEVER, IF I
16 FIND THAT THE DEFENDANTS DO SUCCESSFULLY REBUT THE
17 PRESUMPTION THAT SHE IS PERMANENTLY AND TOTALLY
18 DISABLED, THE CLAIMANT WOULD STILL CONTEND THAT SHE
19 HAS GREATER THAN 50 PERCENT LOSS OF USE OF HER
20 SPINE, AND THEREFORE, HER AWARD SHOULD BE BASED UPON
21 500 WEEKS. THE CLAIMANT STRONGLY DISAGREES WITH THE
22 DEFENDANTS THAT SHE HAS NO RESTRICTIONS. THE
23 CLAIMANT WOULD CONTEND THAT SHE HAS A TEN POUND
24 LIFTING RESTRICTION AND NO STANDING OR PROLONGED
25 WALKING -- NO PROLONGED STANDING OR WALKING AND SOME

1 OTHER RESTRICTIONS AS WELL BECAUSE OF HER KNEE. AND
2 THE CLAIMANT WOULD FURTHER POINT TO HER F.C.E.,
3 WHICH SHE BELIEVES TO BE A VALID F.C.E., WHICH SHOWS
4 THAT SHE IS LIMITED TO SEDENTARY OR LESS THAN
5 SEDENTARY WORK, AND THEREFORE, THAT THAT ALSO
6 SUPPORTS A FINDING OF PERMANENT AND TOTAL
7 DISABILITY. SHE WOULD POINT TO MY ATTENTION THAT
8 SHE HAS UNDERGONE A KNEE SURGERY, WHICH HAS IMPACTED
9 HER GREATLY, AND THEREFORE, FURTHER EVIDENCE OF THE
10 FACT THAT SHE IS PERMANENTLY AND TOTALLY DISABLED.
11 HOWEVER, IF I FIND THAT SHE IS NOT PERMANENTLY AND
12 TOTALLY DISABLED, SHE REQUESTS APPROPRIATE AWARDS
13 PURSUANT TO SECTION 42-9-30, ITEMS 16 AND 21. THE
14 CLAIMANT WOULD CONTEND THAT SHE HAS SIGNIFICANT
15 PERMANENT PARTIAL DISABILITY BEYOND THOSE IMPAIRMENT
16 RATINGS, AND THAT IMPAIRMENT RATINGS ARE IN NO WAY A
17 REFLECTIVE OR ACCURATE INDICATOR OF HER RESIDUAL
18 CONDITION, AND IMPAIRMENT RATINGS ARE JUST THAT,
19 MERE STARTING POINTS IN DETERMINING PERMANENT
20 PARTIAL DISABILITY AND IN NO WAY DISPOSITIVE. BUT
21 THE CLAIMANT'S PRIMARY POSITION IS THAT SHE IS
22 PERMANENTLY AND TOTALLY DISABLED. ALL RIGHT. AND
23 AT THIS TIME I'M GOING -- THERE IS A VOCATIONAL
24 REPORT THAT HAS BEEN SUBMITTED. I DID ISSUE AN
25 ORDER, AND I'LL HAVE TO LOOK BACK TO SEE WHEN THE

1 DATE OF THAT ORDER WAS. IT LOOKS LIKE IT WAS AUGUST
2 7TH, BECAUSE THE CLAIMANT DENIED THE DEFENDANTS'
3 REQUEST TO SIT FOR A VOCATIONAL EXAMINATION BY THE
4 DEFENDANTS, AND I KNOW THE -- MR. WUKELA, ON BEHALF
5 OF HIS CLIENTS, HAS ASKED ME TO RECONSIDER MY ORDER,
6 AND I AM HOLDING THAT IN ABEYANCE RIGHT NOW, WHICH
7 MAY BE PROBLEMATIC IF MR. SMITH WISHES TO DEPOSE THE
8 VOCATIONAL EXPERT. BUT AT THIS TIME, I'M GOING TO
9 LET EACH OF YOU PUT A POSITION ON THE RECORD, JUST
10 SO IT IS PRESERVED FOR THE RECORD IN THE EVENT OF
11 ANY APPEAL. MR. WUKELA.

12 **BY MR. WUKELA:**

13 THANK YOU, COMMISSIONER BARDEN. YOU'RE QUITE
14 RIGHT, OBVIOUSLY, COMMISSIONER, THAT THE DEFENDANT
15 SOUGHT TO REQUIRE THAT THE CLAIMANT SIT FOR A
16 VOCATIONAL EVALUATION BY THEIR VOCATIONAL EXPERT.
17 THEN THE CLAIMANT OBJECTED TO BEING REQUIRED TO DO
18 SO PURSUANT TO SOUTH CAROLINA CODE 42-15-80 AND TOOK
19 THE POSITION THAT 42-15-80 REQUIRES CLAIMANTS TO
20 SUBMIT TO PHYSICAL EVALUATIONS BY PHYSICIANS OR
21 SURGEONS, BUT THAT A VOCATIONAL EXPERT DOES NOT FIT
22 WITHIN EITHER OF THOSE CATEGORIES. AND THEREFORE,
23 PURSUANT TO 42-15-80, SHE WOULDN'T BE REQUIRED TO
24 SUBMIT TO SUCH AN EVALUATION. AND -- AND YOU'RE
25 OBVIOUSLY QUITE RIGHT, OBVIOUSLY, COMMISSIONER, THAT

1 THE COMMISSION AGREED WITH THAT IN YOUR ORDER.
2 HOWEVER, THE COMMISSIONER ALSO CONCLUDED THAT THE
3 CLAIMANT'S EXHIBIT EIGHT, OR OUR APA EIGHT WOULD BE
4 EXCLUDED AS A RESULT, AND THAT'S THE FINDING THAT WE
5 OBVIOUSLY ASK YOUR HONOR TO RECONSIDER. AND ALSO,
6 JUST BY WAY OF NOTE, I UNDERSTAND IT'S YOUR HONOR'S
7 RULING THAT -- THAT THIS MOTION TO RECONSIDER IS
8 GOING TO BE UNDER CONSIDERATION, AND AS A RESULT,
9 THE PRIOR ORDER IS NOT IMMEDIATELY APPEALABLE, AND
10 WE WOULDN'T BE REQUIRED TO APPEAL THAT, I THINK
11 TOMORROW, WHICH WOULD HAVE NORMALLY BEEN THE APPEAL
12 DEADLINE.

13 BY COMMISSIONER BARDEN:

14 YES, SIR.

15 BY MR. WUKELA:

16 THANK YOU -- THANK YOU, YOUR HONOR.

17 BY MR. SMITH:

18 AND I CONSENT TO THAT.

19 BY COMMISSIONER BARDEN:

20 OKAY. THANK YOU, MR. SMITH.

21 BY MR. WUKELA:

22 THANK YOU.

23 BY COMMISSIONER BARDEN:

24 ALL RIGHT.

25 BY MR. WUKELA:

1 NOW, COMMISSIONER, OUR CONTENTION WITH REGARD
2 TO THE ADMISSION OF OUR APA EIGHT IS FIRST OF ALL,
3 IT'S TIMELY PURSUANT TO THE RULE, AND THAT WE THINK
4 THAT ALONE REQUIRES ITS ADMISSION INTO EVIDENCE. IN
5 FACT, THE RULE REQUIRES THAT -- THAT THE APA BE
6 SUBMITTED 15 DAYS PRIOR TO THE HEARING, AND IT IN
7 FACT WAS SUBMITTED BACK ON APRIL THE 17TH, 2015,
8 WHICH IS NOW MORE THAN FOUR MONTHS BEFORE THE
9 HEARING. THE REASON THAT THERE'S BEEN SO MUCH TIME
10 THAT'S PASSED IS BECAUSE IN FACT THIS CASE HAS --
11 THE SETTING OF THIS HEARING HAS HAD QUITE A LONG
12 HISTORY. THE DEFENDANTS FILED THEIR FORM 21 ON
13 AUGUST THE 25TH, 2014, WHICH IN FIVE DAYS WILL BE
14 ONE YEAR FROM TODAY, AND THE CLAIMANT FILED THEIR
15 BRIEF WITH THE VOCATIONAL REPORT CONTAINED IN APA
16 EIGHT ON APRIL THE 17TH, 2015, WHICH IS OF COURSE
17 MORE THAN FOUR MONTHS PRIOR TO TODAY. THIS HEARING
18 HAS INDEED BEEN RESCHEDULED ON FIVE DIFFERENT
19 OCCASIONS, AND THIS IS THE SIXTH DATE THIS HEARING
20 HAS BEEN SCHEDULED, WHICH IS WHY WE'VE GOT A FORM 21
21 FROM AUGUST OF 2014 AND A HEARING NOW ON THIS 21 ON
22 AUGUST THE 20TH, 2015.

23 BY COMMISSIONER BARDEN:

24 AND I'M JUST GRATEFUL WE'RE HAVING IT TODAY.

25 BY MR. WUKELA:

1 YES, MA'AM. AS IS THE CLAIMANT. HOWEVER, I
2 WOULD POINT OUT THAT THOSE CONTINUANCES WERE
3 ENTIRELY APPROPRIATE, COMMISSIONER. MR. SMITH,
4 OBVIOUSLY IS A MEMBER OF THE LEGISLATURE, AND WE'RE
5 GLAD HE IS. AND HE WAS REQUIRED TO BE IN THE
6 LEGISLATURE DURING A LARGE NUMBER OF THOSE HEARINGS
7 SCHEDULED DATES, AND THEY WERE CONTINUED AS IS
8 ENTIRELY APPROPRIATE, AND AS THE CLAIMANT CONSENTED
9 TO BECAUSE OF THAT OTHER OBLIGATION MR. SMITH HAS.
10 OF COURSE, DURING THAT TIME PERIOD, THE CLAIMANT WAS
11 RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS, AND
12 WE DIDN'T BELIEVE SHE WAS BEING PREJUDICED BY THOSE
13 RESCHEDULINGS, AND WE CERTAINLY CONSENTED TO THEM.
14 HOWEVER, THE POINT REMAINS, COMMISSIONER, THAT THE
15 STATE FUND HAD A YEAR TO OBTAIN A VOCATIONAL REPORT
16 TO LEARN THAT -- THAT THEY WOULD HAVE TO LEARN THE
17 INFORMATION FOR THAT REPORT THROUGH DEPOSITION,
18 WHICH THEY ARE ENTITLED TO DO AND ASK THEIR QUESTION
19 THROUGH DEPOSITION. THEY DIDN'T DO THAT. THEY
20 DIDN'T OBTAIN THE REPORT. THIS CASE WAS RESCHEDULED
21 MANY MANY TIMES, AND THEY DIDN'T DO IT ANY OF THOSE
22 TIMES UNTIL ON THE FIRST OCCASION THEY OBTAINED A
23 VOCATIONAL EXPERT, AND SHE CONTACTED MY OFFICE ON
24 JULY THE 10TH, 2015. AND, COMMISSIONER, AT THAT
25 TIME, ALTHOUGH I WILL RECOGNIZE THAT IT'S COMMON IN

1 OUR -- IN OUR BUSINESS FOR CLAIMANTS TO CONSENT TO
2 VOCATIONAL EVALUATIONS IN SPITE OF THE FACT THAT 42-
3 15-80 DOESN'T REQUIRE THAT THEY DO SO, WE COMMONLY
4 DO THAT BECAUSE WE DON'T WANT TO PUT THE DEFENDANTS
5 THROUGH THE REQUIREMENT OF HAVING TO TAKE A
6 DEPOSITION AND GET THAT INFORMATION THROUGH
7 DEPOSITION. HOWEVER, COMMISSIONER, IN THIS CASE,
8 AND THEN I WILL POINT OUT IT'S THE FIRST TIME I'VE
9 EVER DONE THIS, BUT THIS IS A CASE THAT'S BEEN GOING
10 ON FOR A YEAR, IT'S BEEN RESCHEDULED MANY MANY
11 TIMES, AND AT THE LAST MINUTE IT WAS MY VIEW THAT
12 THE FUND WAS -- WAS TRYING TO DO THIS AND TO -- AND
13 TO SEEK THAT THE CLAIMANT'S AGREEMENT, AND INSTEAD
14 WE INSISTED ON THE COMPLIANCE WITH THE STATUTE. IN
15 SUM, COMMISSIONER, IT'S THE CLAIMANT'S POSITION THAT
16 THE FUND JUST DIDN'T PREPARE THEIR DEFENSES, AS THEY
17 SHOULD HAVE. AND UNFORTUNATELY, I BELIEVE THIS IS
18 THEIR PRACTICE. AND FRANKLY, COMMISSIONER, THEY
19 WANT THE COMMISSION TO BAIL THEM OUT FOR THAT. AND
20 IT'S THE CLAIMANT'S CONTENTION THAT 42-15-80 DOESN'T
21 REQUIRE THAT SHE SUBMIT, AND THAT THE CLAIMANT'S
22 VOCATIONAL REPORT WAS SUBMITTED ACCORDING TO THE LAW
23 AND SHOULD BE ACCEPTED.

24 BY COMMISSIONER BARDEN:

25 ALL RIGHT. MR. SMITH.

1 BY MR. SMITH:

2 THANK YOU. JUST A COUPLE OF REMARKS. AND
3 FIRST, I -- I DIDN'T MENTION THIS IN THE PRETRIAL
4 HEARING, SO I'M WANTING TO GO AHEAD AND NOTE THIS.
5 I CERTAINLY -- AND I CONCEDE HE'S GOT THE RIGHT TO
6 MAKE A MOTION TO RECONSIDER, BUT THAT'S THE -- THERE
7 WAS NO WRITTEN MOTION FILED. IT'S AN ORAL MOTION TO
8 RECONSIDER. SO PART OF THE CONCERN I HAVE IS IF THE
9 COMMISSIONER DID RECONSIDER THIS, THEN IT'S
10 EXTREMELY PREJUDICE TO THE DEFENDANTS AND THE
11 EMPLOYER BY NOT BEING ABLE -- AND WE RELIED UPON THE
12 ORDER. WE APPEARED HERE TODAY RELYING UPON THE
13 ORDER, AND I DON'T THINK YOU EXCLUDED IT. YOU JUST
14 SAID, OR STRUCK IT FROM THE APAs; YOU JUST SAID YOU
15 WERE NOT GOING TO CONSIDER IT ---

16 BY COMMISSIONER BARDEN:

17 RIGHT.

18 BY MR. SMITH:

19 --- IS WHAT WAS STATED IN THE ORDER. SO I
20 WOULD BE CONCERNED ABOUT THE -- ABOUT THE METHOD OF
21 IT, AND CERTAINLY I AGREE, AND I SAID I CONSENT THAT
22 -- THAT HE'S GOT THE RIGHT TO STAY THE APPEAL HERE,
23 AND I'M NOT TRYING TO USE THAT AS AN ARGUMENT TO
24 STAY HIS APPEAL FOR TOMORROW. BUT, YOU KNOW, IT IS
25 -- IT IS WHEN YOU TALK ABOUT PREJUDICE, AND THAT'S

1 THE WHOLE POINT OF WHEN WE FILED THIS, I CERTAINLY
2 CONCEDE THAT THERE WAS SOME -- THAT HE FILED HIS,
3 THE APAs WHEN HE SAID HE FILED THEM, AND, YOU KNOW -
4 - AND SO, COMMISSIONER, YOU KNOW, THE CONCERN I HAVE
5 IS THE REACHING OUT TO MR. WUKELA'S OFFICE WAS
6 STARTED ON JULY 10TH, AND THERE WAS -- AND THEN THE
7 AFFIDAVIT SETS FORTH THE CONTACT THAT WAS ATTEMPTED
8 WITH THEM. HAD THEY JUST SAID, "NO, WE'RE NOT GOING
9 TO ALLOW THIS" AT THAT POINT IN TIME, THEN WE WOULD
10 HAVE BEEN PLACED ON NOTICE. IT WAS ANOTHER 13 OR 16
11 DAYS UNTIL MR. WUKELA AND I HAD A DISCUSSION, AND HE
12 SAID "I'M NOT GOING TO ALLOW IT," AND AT THAT POINT
13 WE -- WE FILED A MOTION WITH THE COMMISSION. THE
14 COMMISSION RULED AS IT DID. SO IF WE HAD THE
15 ABILITY TO TAKE A DEPOSITION, IF WE WOULD HAVE KNOWN
16 EARLIER, I'M NOT GOING TO SUBMIT TO IT, AND I'M NOT,
17 AND THEN WE HAD FILED A MOTION AND THE COMMISSION
18 RULED ONE WAY OR THE OTHER, THEN, YOU KNOW,
19 OBVIOUSLY WE WOULD HAVE MORE TIME TO TAKE
20 DEPOSITIONS TO BE ABLE TO SUBMIT A VOCATIONAL
21 EVALUATION AT THAT TIME. SO, YOU KNOW, I WOULD
22 POINT OUT AS WELL I UNDERSTAND THE COMMISSIONER'S
23 RULING. ALSO THERE'S SOME DUE PROCESS AND SOME
24 EQUITY THAT'S INVOLVED IN THIS, AND TO HAVE A --
25 HAVE A POSITION WHERE THE CLAIMANT CAN HAVE A

1 VOCATIONAL EVALUATION THAT SAYS -- YOU KNOW, I
2 USUALLY -- I'VE BEEN DOING THIS A WHILE, MOST OF
3 THEM, I RARELY SEE ONE THAT DOESN'T SAY THAT THEY'RE
4 NOT PERMANENT AND TOTAL, THAT SOMEONE'S PERMANENT
5 AND TOTAL -- TOTAL DISABLED, UNABLE TO HAVE FURTHER
6 EMPLOYMENT, AND NOT ALLOW THE DEFENDANT OR THE OTHER
7 SIDE TO PRESENT SOMETHING TO THE CONTRARY, IT JUST
8 VIOLATES THOSE NOTIONS OF -- OF DUE PROCESS, FAIR
9 PLAY, AND THAT'S WHAT WE WERE CONCERNED WITH. SO I
10 WOULD ASK YOU NOT TO RECONSIDER THAT, BUT I
11 CERTAINLY WILL RESPECT WHATEVER DECISION YOU MAKE.

12 **BY COMMISSIONER BARDEN:**

13 ALL RIGHT.

14 **BY MR. WUKELA:**

15 AND, COMMISSIONER, I -- I WILL RESPECT MY
16 FRIEND IN HIS ARGUMENTS, BUT I WOULD SAY NORMALLY
17 DUE PROCESS REQUIRES THE DEFENDANTS HAVE NOTICE OF
18 MY REPORT FOR 15 DAYS. MY BRIEF WITH THIS REPORT
19 WAS FILED APRIL THE 17TH, 2015. THEY HAD FOUR
20 MONTHS WITH MY REPORT IN HAND TO TAKE WHATEVER
21 DEPOSITIONS THEY NEED, TO GET WHATEVER REPORTS THEY
22 NEEDED, AND INDEED THEY HAD A YEAR FROM THE POINT
23 THEY FILED THE FORM 21 TO DO THAT. I THINK DUE
24 PROCESS IS CERTAINLY SATISFIED BY THAT, AND I KNOW
25 THAT THE RULE IS.

1 BY COMMISSIONER BARDEN:

2 OKAY. ALL RIGHT. ARE YOU SATISFIED WITH MY
3 RECITATION OF YOUR POSITIONS ON THE MERITS, OR IS
4 THERE ANYTHING THAT EITHER OF YOU WOULD LIKE TO
5 CORRECT OR CLARIFY WITH REGARD TO THAT SUMMARY?

6 BY MR. WUKELA:

7 I THINK YOUR POSITION WAS STATED, OUR POSITIONS
8 WERE STATED EXACTLY CORRECT, COMMISSIONER. SO I
9 THINK WE'RE READY TO PROCEED.

10 BY MR. SMITH:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 ALL RIGHT. THANK YOU SO MUCH. AND OUR ONLY
14 WITNESS TODAY THEN IS MS. TEDDER; IS THAT CORRECT?

15 BY MR. WUKELA:

16 THAT'S CORRECT, FROM THE CLAIMANT.

17 BY COMMISSIONER BARDEN:

18 ALL RIGHT. MS. TEDDER, IF YOU'LL RAISE YOUR
19 RIGHT HAND, PLEASE.

20 * * * * * * * * *

21 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
22 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
23 MATTER HEREIN:

24 VERMA L. TEDDER,

25 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS

1 FOLLOWS:

2 BY COMMISSIONER BARDEN:

3 _____PLEASE, STATE YOUR FULL NAME FOR THE RECORD.

4 BY THE WITNESS:

5 _____VERMA L. TEDDER.

6 BY COMMISSIONER BARDEN:

7 _____THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS
8 YOUR LAWYER HAS FOR YOU FIRST.

9 DIRECT EXAMINATION BY MR. WUKELA:

10 Q. AND, MS. TEDDER, THE COMMISSIONER HAS OFFERED ME THE
11 OPPORTUNITY ---

12 BY COMMISSIONER BARDEN:

13 AND YOU'RE WELCOME TO SIT OVER HERE.

14 BY MR. WUKELA:

15 I THINK IN REFLECTION I WILL DO THAT,
16 COMMISSIONER, ---

17 BY COMMISSIONER BARDEN:

18 I'LL EVEN ---

19 BY MR. WUKELA:

20 --- BECAUSE SHE'S GOING TO TURN AROUND AND LOOK
21 AT ME EVERY TIME I ASK HER A QUESTION, I IMAGINE.

22 BY COMMISSIONER BARDEN:

23 I'LL EVEN MAKE SOME SPACE FOR YOU HERE THAT YOU
24 CAN PUT YOUR STUFF ON.

25 BY MR. WUKELA:

1 OKAY. THANK YOU, COMMISSIONER.

2 BY COMMISSIONER BARDEN:

3 ALL RIGHT. GO AHEAD.

4 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

5 Q. GOOD AFTERNOON, MS. TEDDER.

6 A. HI.

7 Q. HOW OLD ARE YOU?

8 A. FIFTY-FOUR.

9 BY COMMISSIONER BARDEN:

10 _____ FIFTY-FOUR, DID YOU SAY?

11 BY THE WITNESS:

12 _____ YES.

13 BY COMMISSIONER BARDEN:

14 _____ CAN YOU TURN UP THE VOLUME JUST A LITTLE BIT ON
15 YOUR VOICE?

16 BY THE WITNESS:

17 _____ OKAY.

18 BY COMMISSIONER BARDEN:

19 _____ THANK YOU SO MUCH.

20 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

21 Q. WHERE ARE YOU FROM?

22 A. DARLINGTON, SOUTH CAROLINA.

23 Q. OKAY. HAVE YOU EVER BEEN MARRIED?

24 A. NO.

25 Q. OKAY. AND DO YOU HAVE ANY CHILDREN?

1 A. YES.

2 Q. HOW MANY CHILDREN DO YOU HAVE?

3 A. ONE.

4 Q. OKAY. HOW OLD ARE THEY?

5 A. THIRTY-TWO.

6 Q. OH. OKAY. NOW, WE'RE HERE ABOUT AN ACCIDENT THAT'S
7 ADMITTED THAT YOU HAD WHILE YOU WERE WORKING FOR THE
8 COMMUNITY ACTION AGENCY, OKAY? BEFORE WE GET TO
9 THAT ACCIDENT, I WANT YOU TO TELL ME A LITTLE BIT
10 ABOUT YOUR EDUCATIONAL BACKGROUND AND YOUR WORK
11 HISTORY. FIRST OF ALL, YOU GRADUATED HIGH SCHOOL I
12 UNDERSTAND?

13 A. YES.

14 Q. AND WHERE DID YOU GRADUATE HIGH SCHOOL?

15 A. ROSENWALD HIGH SCHOOL, IN SOCIETY HILL.

16 **BY COMMISSIONER BARDEN:**

17 _____ AND WHERE WAS THAT?

18 **BY THE WITNESS:**

19 _____ ROSENWALD HIGH SCHOOL.

20 **BY COMMISSIONER BARDEN:**

21 _____ OKAY.

22 **BY THE WITNESS:**

23 _____ IN SOCIETY HILL.

24 **BY COMMISSIONER BARDEN:**

25 IS -- CAN YOU HEAR HER OKAY?

1 BY THE COURT REPORTER:

2 _____ (COURT REPORTER NODS HEAD)

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT. OKAY.

5 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

6 Q. OKAY. AND OUT OF HIGH SCHOOL, YOU WENT TO WORK --
7 OR WHAT DID YOU DO OUT OF HIGH SCHOOL?

8 A. I WENT TO WORK AT I THINK IT WAS GALEY & LORD.

9 Q. OKAY.

10 A. IN SOCIETY HILL.

11 Q. AND THAT WAS A TEXTILE MILL?

12 A. YES.

13 Q. CLOSED DOWN NOW OVER THERE?

14 A. YES.

15 Q. OKAY. AND YOU WORKED FOR THEM FOR SOME TIME?

16 A. YES.

17 Q. OKAY.

18 BY COMMISSIONER BARDEN:

19 _____ AND WHAT DID YOU DO FOR THEM?

20 BY THE WITNESS:

21 _____ I WORKED ON THE ASSEMBLY LINE.

22 BY COMMISSIONER BARDEN:

23 _____ OKAY.

24 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

25 Q. AND AT SOME POINT YOU LEFT GALEY & LORD?

1 A. YES.

2 Q. AND WHEN WAS THAT?

3 A. YEAH, I FORGOT WHAT THE YEAR IT WAS.

4 Q. RIGHT ABOUT HOW MANY YEARS YOU WORKED FOR THEM, MS.
5 TEDDER?

6 A. I WORKED FOR THEM FOR LIKE FOUR YEARS.

7 Q. OKAY. AND THEN AT SOME POINT IF I RECALL FROM YOUR
8 HISTORY YOU WENT TO WORK FOR A NURSING HOME?

9 A. YES.

10 Q. WAS THAT AFTER, RIGHT AFTER GALEY & LORD?

11 A. NO.

12 Q. OKAY. WHAT -- WHAT KIND OF WORK WAS IN BETWEEN?

13 A. I WENT TO WORK TO A.O. SMITH IN MCBEE.

14 Q. A.O. SMITH IN MCBEE?

15 A. UH-HUH.

16 Q. YES, MA'AM. AND WHAT KIND OF WORK DID YOU DO FOR
17 A.O. SMITH?

18 A. ASSEMBLY LINE.

19 Q. OKAY. AND RIGHT ABOUT HOW MANY YEARS DID YOU WORK
20 FOR A.O. SMITH?

21 A. FIVE.

22 Q. OKAY.

23 **BY COMMISSIONER BARDEN:**

24 _____ AND WHAT IS A.O. SMITH? WHAT KIND OF PRODUCT
25 DID THEY ---

1 **BY THE WITNESS:**

2 _____IT'S A WATER PRODUCT, LIKE WATER HEATERS.

3 **BY COMMISSIONER BARDEN:**

4 _____OKAY.

5 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

6 Q. AND THEN AFTER YOU LEFT A.O. SMITH, WHERE DID YOU
7 GO?

8 A. I WENT TO, I THINK IT WAS, I WENT TO BETHEA NURSING
9 HOME.

10 Q. THAT'S WHEN YOU WENT TO THE NURSING?

11 A. YES.

12 Q. OKAY. AND WHAT KIND OF WORK DID YOU DO FOR BETHEA
13 NURSING HOME?

14 A. I WAS IN THE KITCHEN HELP. I DID DIETARY AIDE.

15 Q. DIETARY AIDE?

16 A. YES.

17 Q. OKAY. EFFECTIVELY, YOU WERE A HELPER TO THE -- TO
18 THE COOKS IN THE KITCHEN?

19 A. YES. I SET UP THE DINING ROOMS AND DO THE TEA AND
20 WATER, IT'S LIKE THAT.

21 Q. OKAY. AND AT THAT POINT STILL, YOU HAD A HIGH
22 SCHOOL EDUCATION?

23 A. YES.

24 Q. OKAY. AND THEN AT SOME POINT YOU LEFT BETHEA
25 NURSING HOME?

1 A. YES.

2 Q. AND THEN WHERE DID YOU GO TO WORK?

3 A. DARLINGTON COUNTY COMMUNITY ACTION AGENCY.

4 Q. AND THAT'S WHEN YOU GO TO THE COMMUNITY ACTION

5 AGENCY?

6 A. YEAH.

7 Q. OKAY. NOW, SOMEWHERE IN THERE YOU WENT BACK TO

8 SCHOOL, AND YOU GOT A TWO YEARS ASSOCIATE'S DEGREE,

9 IF I REMEMBER CORRECTLY?

10 A. YES. I WENT TO -- TO FLORENCE-DARLINGTON TECH.

11 Q. FLORENCE-DARLINGTON TECH. AND YOU LET -- IS THAT

12 AFTER YOU LEFT THE NURSING HOME?

13 A. NO. I WAS WORKING PART-TIME TO THE NURSING HOME,

14 AND ---

15 Q. GOING TO SCHOOL?

16 A. --- AND SCHOOL. YES.

17 Q. OKAY. AND AT TECH YOU -- WHAT DID YOU STUDY?

18 A. I DID CHILDHOOD, EARLY CHILDHOOD.

19 Q. EARLY CHILDHOOD EDUCATION?

20 A. EARLY CHILDHOOD EDUCATION.

21 Q. OKAY. AND YOU LEFT THERE WITH A TWO YEAR

22 ASSOCIATE'S DEGREE?

23 A. YES.

24 Q. OKAY. AND THEN YOU WENT TO WORK FOR THE COMMUNITY

25 ACTION AGENCY?

1 A. WELL, I WAS WORKING AT THE COMMUNITY ACTION AGENCY
2 DURING THAT TIME.

3 Q. ALSO DURING THAT TIME?

4 A. YES.

5 Q. OKAY. NOW, TELL ME ABOUT YOUR JOB AT THE COMMUNITY
6 ACTION AGENCY?

7 A. WELL, I WAS A -- AN ASSOCIATE TEACHER IN THE
8 CLASSROOM.

9 **BY COMMISSIONER BARDEN:**

10 _____ ASSOCIATE TEACHER IN THE CLASSROOM?

11 **BY THE WITNESS:**

12 _____ YES.

13 **BY COMMISSIONER BARDEN:**

14 _____ OKAY.

15 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

16 Q. AND TELL ME WHAT THAT MEANS.

17 A. THAT MEAN YOU HAD -- WE WORKED WITH THE KIDS. WE
18 HAD THE -- WE TAUGHT, YOU KNOW, WE TEACH THE KIDS.
19 WE DO EXERCISE. WE DID PLAYTIME. WE HAD -- WE
20 SERVED, YOU KNOW, WE FEED THEM. WE DOING NAP TIME.
21 WE CLEANED AFTER THE -- WE CLEANED THE CLASSROOM
22 AFTER WORK, AND A ---

23 Q. OKAY. NOW, YOU GOT TO KEEP SPEAKING UP, BECAUSE
24 THEY'RE HAVING A CLASS OVER THERE, AND THEY'RE KIND
25 OF LOUD, AND -- AND IT'S HARD FOR COMMISSIONER AND I

1 TO HEAR YOU.

2 **BY COMMISSIONER BARDEN:**

3 _____ HE IS EXACTLY RIGHT. WE CAN HEAR THOSE VOICES
4 COMING THROUGH THAT WALL MORE LOUDLY THAN WE CAN
5 ALMOST HEAR YOURS, SO.

6 **BY THE WITNESS:**

7 _____ OKAY.

8 **BY COMMISSIONER BARDEN:**

9 THANK YOU, SIR.

10 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

11 Q. SO YOU WERE A TEACHER'S AIDE?

12 A. YES.

13 Q. AND HOW OLD WERE THE CHILDREN?

14 A. THREE.

15 Q. THREE YEARS OLD?

16 A. YES.

17 Q. OKAY. AND YOU HAD BEEN WORKING FOR THEM SINCE ABOUT
18 I THINK 1997, WHEN THIS ACCIDENT HAPPENED?

19 A. YES.

20 Q. AND HAD THAT BEEN IN THE SAME POSITION?

21 A. YES.

22 Q. OKAY. DID YOU ENJOY THE WORK?

23 A. YES.

24 Q. OKAY. AND YOU HAD THIS ACCIDENT. NOW, THIS IS AN
25 ADMITTED ACCIDENT. SO I JUST WANT YOU TO TELL ME

1 VERY BRIEFLY, BUT TELL US WHAT HAPPENED.

2 A. WE WAS DOING, I WAS TAKING THE KIDS OUT TO THE
3 PLAYGROUND. WE WAS DOING AN ACTIVITY ON THE
4 PLAYGROUND, AND ONE OF THE KIDS RAN ACROSS IN FRONT
5 OF ME, AND WHEN THEY RAN IN FRONT OF ME, I TRIPPED
6 AND I FELL.

7 Q. OKAY. AND DID YOU FALL ON ONE SIDE OR THE OTHER
8 MORE?

9 A. NO, NOT REALLY.

10 Q. JUST FELL TO THE GROUND?

11 A. JUST FELL, AND WHEN I WENT DOWN, I WENT DOWN ON MY -
12 - I TOOK IT, MY HAND, JUST TO KEEP FROM MY HEAD
13 HITTING THE GROUND.

14 Q. OKAY. ALL RIGHT. NOW, AND THE COMMISSIONER'S AWARE
15 ---

16 BY MR. WUKELA:

17 AND I WON'T RECITE ALL OF THE EVIDENCE,
18 OBVIOUSLY, COMMISSIONER.

19 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

20 Q. AND COMMISSIONER HAS ALL THE EVIDENCE BEFORE HER.
21 BUT WE KNOW THAT YOU WERE TREATED BY DR. ELVINGTON
22 FOR A PERIOD OF TIME AND HAD SURGERY ON YOUR LEFT
23 KNEE?

24 A. YES.

25 Q. OKAY. AND WE ALSO KNOW THAT YOU SAW DR. EDWARDS,

1 AND THAT HE SAW YOU FOR PAIN YOU WERE HAVING IN YOUR
2 -- IN YOUR LOW BACK?

3 A. YES.

4 Q. OKAY. TELL ME -- AND -- AND ALSO, I THINK YOU ALSO
5 HAD ON THE DAY OF THE ACCIDENT INJURIES TO YOUR
6 RIGHT ARM AND HAND?

7 A. YEAH.

8 Q. BUT THOSE MORE OR LESS RESOLVED OVER TIME?

9 A. YES.

10 Q. OKAY. TELL ME ABOUT, AS WE SIT HERE TODAY, THE
11 CONDITION OF YOUR LEFT KNEE. HOW IS YOUR LEFT KNEE
12 DOING?

13 A. IT'S PAINFUL.

14 Q. OKAY.

15 A. IT'S PAINFUL, AND I -- IT HAS PAIN RUNNING FROM LIKE
16 MY FEET ALL THE WAY UP.

17 BY COMMISSIONER BARDEN:

18 _____YOUR FEET, IT'S STARTS AT?

19 BY THE WITNESS:

20 _____YES. IT STARTED LIKE IN MY FEETS, YOU KNOW.

21 BY COMMISSIONER BARDEN:

22 _____OKAY.

23 BY THE WITNESS:

24 _____AND IT WENT ALL THE WAY UP INTO MY LOWER BACK.

25 BY COMMISSIONER BARDEN:

1 _____ OKAY.

2 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

3 Q. AND ARE YOU -- WELL, LET ME ASK YOU THIS WAY: WE HAD
4 YOU UNDERGO A FUNCTIONAL CAPACITY EVALUATION. DO
5 YOU REMEMBER THAT WHERE YOU WENT AND THEY HAD YOU
6 TRY TO PULL AND PUSH?

7 A. YEAH.

8 Q. AND ALL THAT KIND OF STUFF?

9 A. UH-HUH.

10 Q. DO YOU REMEMBER DOING THAT?

11 A. YES.

12 Q. OKAY. AND THE FUNCTIONAL CAPACITY EVALUATOR GAVE
13 YOU A NUMBER OF RESTRICTIONS PRIMARILY WITH REGARD
14 TO LIFTING AND SITTING SUBSEQUENT TO THAT
15 EVALUATION?

16 A. YES.

17 Q. OKAY. AND ALSO, DR. ELVINGTON HAD GIVEN YOU SOME
18 RESTRICTIONS AS SO FAR AS YOUR STANDING AND WALKING
19 AND CLIMBING AND STOOPING; DO YOU REMEMBER THAT?

20 A. YES.

21 Q. OKAY. AND TELL ME, DO YOU -- DO YOU STILL FEEL
22 TODAY THAT YOU HAVE RESTRICTIONS IN THAT REGARD THAT
23 YOU HAVE PROBLEMS WITH LIFTING AND STOOPING AND
24 WALKING AND SITTING FOR A PROLONGED PERIOD OF TIME?

25 A. YES.

1 Q. OKAY. WHY?

2 A. WELL, LIKE RIGHT NOW, IT'S -- IT'S PAINFUL FOR THE
3 WAY I'M SITTING IN THE LOWER BACK, (INDICATING) AND
4 THE KNEE, IT JUST LIKE LITTLE PINS STICKING.

5 Q. AND YOU'RE INDICATING LEFT KNEE?

6 A. YES.

7 Q. OKAY. ALL RIGHT. NOW, YOU HAVE PROBLEMS WITH YOUR
8 RIGHT KNEE AS WELL?

9 A. YES.

10 Q. AND THE RIGHT KNEE'S NOT PART OF THIS CLAIM WITH
11 THIS ACCIDENT, BUT I DO WANT YOU TO TELL THE
12 COMMISSIONER ABOUT WHAT'S GOING ON WITH YOUR RIGHT?

13 A. THE RIGHT KNEE, IT'S LIKE A -- IT'S LIKE A CATCHING.
14 WHEN I GO TO GET UP, IT'S LIKE LOCK, IT LIKE A LOCK,
15 LIKE IT'S LOCKING IN.

16 **BY COMMISSIONER BARDEN:**

17 AND HOW DID THAT OCCUR? HOW DID YOU INJURE
18 YOUR RIGHT KNEE OR WHAT HAPPENED TO YOUR RIGHT KNEE?

19 **BY THE WITNESS:**

20 WELL, WHEN I FELL ON THE JOB.

21 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

22 Q. HAD YOU HAD PRIOR PROBLEMS WITH YOUR RIGHT KNEE?

23 A. NO.

24 Q. OKAY. HAD YOU HAD PRIOR PROBLEMS WITH YOUR LEFT
25 KNEE?

1 A. YES.

2 Q. OKAY. NOW, ARE YOU TAKING ANY MEDICATIONS FOR PAIN?

3 A. I'M TAKING IBUPROFEN AND ALEVES.

4 Q. OKAY.

5 **BY COMMISSIONER BARDEN:**

6 NO PRESCRIPTION MEDICATION?

7 **BY THE WITNESS:**

8 _____ THE IBUPROFEN IS PRESCRIPTION.

9 **BY COMMISSIONER BARDEN:**

10 _____ PRESCRIPTION STRENGTH?

11 **BY THE WITNESS:**

12 _____ UH-HUH.

13 **BY COMMISSIONER BARDEN:**

14 _____ OKAY.

15 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

16 Q. NOW, I -- I UNDERSTAND YOU'VE APPLIED FOR AND
17 RECEIVED DISABILITY RETIREMENT FROM THE STATE
18 RETIREMENT SYSTEM?

19 **BY MR. SMITH:**

20 I'M GOING TO OBJECT TO THAT. FOR WHAT IT'S
21 WORTH, IT'S NOT BEING DISPOSITIVE OF ANY DISABILITY
22 IN THIS CASE, I DON'T KNOW WHAT THE RELEVANCE OF IT
23 WOULD BE IN THAT REGARD. I UNDERSTAND IT'S
24 SUBMITTED IN THERE, AND IT'S IN THE EVIDENCE. BUT I
25 FOR ---

1 BY COMMISSIONER BARDEN:

2 WELL, THOSE OBJECT -- SO IT'S ALSO IN WRITTEN
3 FORM IN HERE?

4 BY MR. SMITH:

5 YES, MA'AM. YEAH.

6 BY COMMISSIONER BARDEN:

7 OKAY. AND THAT WAS NOT OBJECTED TO. ALTHOUGH
8 I CERTAINLY AGREE WITH YOU THAT IT IS NOT
9 DISPOSITIVE, THAT CERTAINLY IT'S A DIFFERENT
10 STANDARD AS TO WHETHER SHE COULD RETURN TO THAT
11 PARTICULAR JOB. I'M GOING TO OVERRULE YOUR
12 OBJECTION.

13 BY MR. SMITH:

14 YES, MA'AM.

15 BY COMMISSIONER BARDEN:

16 BUT YOU HAVE A RUNNING OBJECTION TO ---

17 BY MR. SMITH:

18 YES, MA'AM.

19 BY COMMISSIONER BARDEN:

20 --- THAT LINE OF QUESTIONING. YOU DID NOT,
21 THAT I KNOW OF, OBJECT TO THE WRITTEN FORM OF IT.

22 BY MR. SMITH:

23 I DID NOT.

24 BY COMMISSIONER BARDEN:

25 OKAY.

1 BY MR. SMITH:

2 AND IT'S A -- AND I JUST FOR THE PURPOSES I
3 WANTED TO ASSERT MY OBJECTION AS IT'S NOT
4 DISPOSITIVE IN ---

5 BY COMMISSIONER BARDEN:

6 IT IS NOT, AND I'M FULLY AWARE OF THAT.

7 BY MR. SMITH:

8 YES, MA'AM.

9 BY COMMISSIONER BARDEN:

10 OKAY.

11 BY MR. SMITH:

12 AND SO INSTEAD OF ME MAKING THE ARGUMENT AT ANY
13 OTHER POINT, SO.

14 BY COMMISSIONER BARDEN:

15 OKAY. ALL RIGHT. THANK YOU, SIR. GO AHEAD.

16 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

17 Q. LET ME ASK YOU THIS WAY ---

18 BY COMMISSIONER BARDEN:

19 AND THAT'S WITH THE STATE?

20 BY MR. WUKELA:

21 YES, MA'AM.

22 BY COMMISSIONER BARDEN:

23 IS THAT CORRECT? ALL RIGHT.

24 BY MR. WUKELA:

25 AND THAT'S TO MY POINT, COMMISSIONER, THAT --

1 THAT MY RESPONSE TO MURRELL WOULD BE I UNDERSTAND
2 HIS OBJECTION, AND THE STANDARD HOWEVER -- IT'S OUR
3 POSITION THAT THE -- THE DEFENDANT HAS NOT OFFERED
4 HER ANY WORK WITHIN HER RESTRICTIONS, NOR DOES THE
5 STATE OF SOUTH CAROLINA APPARENTLY HAVE ANY WORK FOR
6 HER. THAT WAS GOING TO BE MY QUESTION. DO YOU ---

7 BY MR. SMITH:

8 COMMISSIONER, CAN I -- CAN I BE HEARD ON THIS
9 REAL QUICK?

10 BY COMMISSIONER BARDEN:

11 YES, SIR.

12 BY MR. SMITH:

13 I DON'T WANT TO GET -- AND I DON'T OBJECT, AND
14 I DON'T MIND. JUST FOR THE RECORD, THERE'S A --
15 SHE'S ON SOCIAL SECURITY DISABILITY.

16 BY COMMISSIONER BARDEN:

17 WELL, IT -- AND LET ME JUST INTERJECT THIS,
18 THERE IS A DOCUMENT FROM A STATE ENTITY TO WHICH I
19 HAVE TO PAY SOME JUDICIAL NOTICE ---

20 BY MR. SMITH:

21 RIGHT.

22 BY COMMISSIONER BARDEN:

23 --- OF IT'S EXISTENCE. BUT AGAIN, IT IS NOT --
24 -

25 BY MR. SMITH:

1 YES, MA'AM.

2 **BY COMMISSIONER BARDEN:**

3 IT HAS NO BEARING ON WHAT I DO HERE TODAY.

4 **BY MR. SMITH:**

5 YES, MA'AM. AND THAT'S WHY I DON'T -- AND
6 THAT'S MY -- WHAT MY OBJECTION IS, IS I ALLOWED IT
7 INTO EVIDENCE, AND I'M HISTORICALLY ---

8 **BY COMMISSIONER BARDEN:**

9 AS IT IS A RECORD FROM ---

10 **BY MR. SMITH:**

11 YES, MA'AM. THIS IS A RECORD FROM THE STATE,
12 AND I THINK IT'S ENTITLED TO BE SUBMITTED PER THE
13 APAs. BUT TO QUESTION HER AND TO TRY TO EXTRAPOLATE
14 THAT INTO SOME BONDING TO THE AGENCY WHEN THIS IS A
15 STATE DISABILITY RETIREMENT, I DO NOT THINK THAT'S
16 RELEVANT IF THAT'S WHERE HE'S TRYING TO LEAD TO THAT
17 TO SAY THAT WE'RE BOUND. WE DIDN'T OFFER. SHE
18 APPLIED FOR THE -- FOR SOCIAL SECURITY DISABILITY,
19 FOR STATE DISABILITY RETIREMENT, IT WAS GRANTED.
20 SHE NEVER CAME BACK. AND A JOB WAS NOT OFFERED.
21 BUT SHE WAS NEVER RELEASED BEFORE ALL THIS WAS
22 GRANTED, ALSO. SO I DON'T WANT TO -- I DON'T WANT
23 TO GET HAMSTRUNG ---

24 **BY COMMISSIONER BARDEN:**

25 RIGHT.

1 BY MR. SMITH:

2 . --- THAT THIS MEANS SHE CAN'T PERFORM HER JOB
3 REQUIREMENTS AT -- AT THE COMMUNITY ACTION.

4 BY COMMISSIONER BARDEN:

5 WELL, YOU HAVE ASKED THE QUESTION WHETHER SHE
6 WAS OFFERED WORK WITHIN HER RESTRICTIONS BY HER
7 EMPLOYER. SHE WAS NOT ACCORDING TO THE RESPONSE. I
8 THINK WE CAN MOVE ON BEYOND THAT. THANK YOU.

9 BY MR. WUKELA:

10 IN FACT, I -- I THINK THAT'S WHAT HER RESPONSE
11 WAS GOING TO BE, BUT I'M NOT SURE SHE ACTUALLY
12 RESPONDED.

13 BY MR. SMITH:

14 OKAY.

15 BY COMMISSIONER BARDEN:

16 OH. DID SHE NOT? OKAY.

17 BY MR. WUKELA:

18 WELL, WE ALL ASSUMED THAT.

19 BY COMMISSIONER BARDEN:

20 I APOLOGIZE.

21 BY MR. WUKELA:

22 AND I THINK THAT IS HER RESPONSE.

23 BY COMMISSIONER BARDEN:

24 I WROTE THAT DOWN. DID SHE ANSWER THE
25 QUESTION? I DON'T KNOW.

1 BY MR. SMITH:

2 AND NOW, SHE KNOWS HOW TO ANSWER THE QUESTION.

3 BY MR. WUKELA:

4 WELL, IN FACT, I THINK MURRELL EVEN SAID IT,

5 BUT WE'LL ASK YOU. DID ---

6 BY COMMISSIONER BARDEN:

7 I THINK THAT'S WHY I WROTE IT DOWN. OKAY.

8 BY MR. SMITH:

9 I DON'T THINK YOU'LL HAVE A TEST FOLLOWING IT.

10 BY COMMISSIONER BARDEN:

11 WE CAN MOVE ON. WE CAN MOVE ON. THANK YOU.

12 THAT'S WHY I WROTE IT DOWN, 'CAUSE HE CONCEDED THAT.

13 ALL RIGHT. GO AHEAD.

14 BY MR. WUKELA:

15 VERY -- VERY WELL, COMMISSIONER.

16 BY COMMISSIONER BARDEN:

17 IF YOU CAN REMEMBER WHERE YOU WERE?

18 BY MR. WUKELA:

19 I -- I'M NOT SURE I CAN, COMMISSIONER.

20 BY MR. SMITH:

21 IT'S ALL PART OF MY DEFENSE STRATEGY.

22 BY MR. WUKELA:

23 I KNOW. HE'S TRICKY, THIS MURRELL.

24 BY COMMISSIONER BARDEN:

25 OKAY. Y'ALL GO AHEAD. YOU HAD -- IT WAS ALL

1 ABOUT THE ---

2 BY MR. WUKELA:

3 YES. YES, MA'AM.

4 BY COMMISSIONER BARDEN:

5 --- PRIOR TO THAT, SHE WAS TALKING ABOUT THE
6 MEDICATION SHE TAKES. DOES THAT HELP?

7 BY MR. WUKELA:

8 YES. THANK YOU, COMMISSIONER.

9 BY COMMISSIONER BARDEN:

10 OKAY.

11 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

12 Q. MS. TEDDER, WOULD YOU LIKE TO DO THAT JOB IF YOU
13 WERE ABLE TO?

14 BY COMMISSIONER BARDEN:

15 I AM GOING TO ASK YOU THIS, I KNOW YOU DON'T
16 INTEND IT, DON'T SUGGEST ANY RESPONSE. DON'T USE
17 YOUR HEAD, OKAY?

18 BY MR. WUKELA:

19 _____ I -- I'M SORRY. I DIDN'T ---

20 BY COMMISSIONER BARDEN:

21 THAT'S ALL RIGHT.

22 BY MR. WUKELA:

23 THAT WASN'T THE ---

24 BY COMMISSIONER BARDEN:

25 AND PEOPLE DO IT. JUST -- JUST WOULD YOU

1 PLEASE WATCH THAT?

2 BY MR. WUKELA:

3 YES, MA'AM, COMMISSIONER.

4 BY COMMISSIONER BARDEN:

5 ALL RIGHT. OKAY.

6 DIRECT EXAMINATION RESUMED BY MR. WUKELA:

7 Q. WOULD YOU LIKE TO BE ABLE TO -- TO RETURN AND DO
8 YOUR JOB? DID YOU ENJOY YOUR JOB?

9 A. YES, I ENJOYED IT.

10 Q. OKAY. AND DO YOU BELIEVE THAT YOU'RE ABLE TO DO ANY
11 WORK?

12 A. NO.

13 Q. AND WHY?

14 A. I'M -- I'M IN PAIN ALL DAY, BASICALLY EVERY DAY.

15 Q. AND WHERE?

16 A. IN THE LEFT, FROM THE -- THE LEFT KNEE AND THE LOWER
17 BACK. IT'S PAIN UP AROUND THE NECK, BECAUSE OF --
18 OF THE BACK HURTING, IT COMES UP TO MY NECK.

19 BY MR. WUKELA:

20 COMMISSIONER, THAT'S ALL THE QUESTIONS I HAVE.

21 BY COMMISSIONER BARDEN:

22 THANK YOU.

23 BY MR. WUKELA:

24 THANK YOU FOR YOUR PATIENCE.

25 BY COMMISSIONER BARDEN:

1 PLEASE, ANSWER ANY -- NO. NO. YOU WERE -- YOU
2 WERE VERY BRIEF. MR. SMITH.

3 BY MR. SMITH:

4 THANK YOU. MAY IT PLEASE THE COMMISSION.

5 CROSS-EXAMINATION BY MR. SMITH:

6 Q. MS. TEDDER, GOOD MORNING. HOW ARE THIS MORNING?

7 GOOD AFTERNOON. HOW ARE YOU DOING TODAY?

8 A. OKAY.

9 Q. ALL RIGHT. MAYBE I OUGHT TO COME OVER HERE SO YOU
10 CAN SPEAK LOUDER.

11 BY COMMISSIONER BARDEN:

12 THAT WOULD HELP IF YOU WOULD, BECAUSE SHE'S
13 TURNED HER CHAIR, AND WE'RE HAVING ENOUGH TROUBLE
14 HEARING HER.

15 BY MR. SMITH:

16 THAT'S MY FAULT.

17 BY COMMISSIONER BARDEN:

18 AND YOU'RE ALSO WELCOME TO USE THIS TABLE IF
19 YOU WOULD LIKE TO.

20 BY MR. SMITH:

21 THANK YOU.

22 CROSS-EXAMINATION RESUMED BY MR. SMITH:

23 Q. SORRY TO MAKE YOU MOVE AROUND.

24 A. THAT'S OKAY.

25 Q. YOU WENT TO SEE PEE DEE ORTHOPAEDICS. YOU WERE

1 REFERRED TO THEM BY THE CARRIER; IS THAT RIGHT?

2 A. YES.

3 Q. AND I THINK FROM REVIEWING YOUR RECORDS YOU WENT TO
4 SEE DR. ELVINGTON FIRST, WHO DID YOUR KNEE SURGERY;
5 IS THAT RIGHT?

6 A. YES.

7 Q. AND DO YOU REMEMBER YOUR FIRST VISIT WITH DR.
8 ELVINGTON?

9 A. NOT TO DATE.

10 Q. OKAY. DO WHEN YOU WENT TO SEE YOUR DOCTORS AT PEE
11 DEE ORTHOPAEDICS, WERE YOU TRUTHFUL WITH THEM?

12 A. YES.

13 Q. DID YOU -- WHEN THEY ASKED YOU QUESTIONS, DID YOU
14 ALWAYS RESPOND TRUTHFULLY TO THEM?

15 A. YES.

16 Q. AND YOU TELL THEM AND DESCRIBE ALL THE PAIN YOU WERE
17 IN WHEN YOU WENT TO GO SEE THEM, DIDN'T YOU?

18 A. YES.

19 Q. AND THEY PERFORMED SOME TESTS ON YOU DURING THAT
20 TIME TOO, DIDN'T THEY?

21 A. YES.

22 Q. OKAY. AND DID YOU TRY YOUR BEST TO CONFORM WITH
23 THEIR TEST AND -- AND TELL THEM WHAT WAS BOTHERING
24 YOU IF THEY MOVED A BODY PART OF YOURS?

25 A. YES.

1 Q. OKAY. AND YOU ANSWERED ALL THEIR QUESTIONS THAT YOU
2 -- THAT THEY PROVIDED TO YOU OR THEY ASKED YOU
3 DURING ALL THE EXAMINATIONS THAT YOU SAW THEM; IS
4 THAT RIGHT?

5 A. YES.

6 Q. OKAY. WHEN YOU WENT TO GO SEE DR. ELVINGTON, HE
7 ASKED YOU ABOUT PRIOR INJURIES, AND YOU HAD A PRIOR
8 INJURY TO YOUR LEFT KNEE, DIDN'T YOU?

9 A. YES.

10 Q. OKAY. AND IN FACT, YOU HAD SURGERY ON YOUR KNEE; IS
11 THAT RIGHT?

12 A. YES.

13 Q. AND YOU HAD THAT SURGERY SOME TEN YEARS, TEN OR
14 FIFTEEN YEARS BEFORE?

15 A. YES.

16 Q. AND YOU TOLD DR. ELVINGTON ABOUT THAT WHEN YOU WENT
17 TO SEE HIM ON HIS FIRST VISIT, RIGHT?

18 A. YES.

19 Q. OKAY. AND HOW DID YOU INJURE YOUR KNEE TEN TO
20 FIFTEEN YEARS BEFORE?

21 A. IT WAS JUST A -- I DIDN'T -- IT WAS ALL -- IT WAS
22 PAINFUL, AND THEY SAID IT WAS SOME KIND OF -- IT WAS
23 LIKE A DISEASE OR SOMETHING THAT I HAD, AND IT JUST
24 STARTED HURTING.

25 Q. YES, MA'AM. AND SO IT WAS SOME PREEXISTING

1 CONDITION YOU HAD?

2 A. YES. UH-HUH.

3 Q. OKAY. AND I THINK THAT'S THE SAME THING DR.

4 ELVINGTON TALKED ABOUT WHEN HE SAW YOUR MENISCUS
5 TEAR FROM THIS, FROM THIS ACCIDENT HERE. YOU ALSO
6 HAD SOME UNDERLYING ARTHRITIS IN YOUR KNEE, DIDN'T
7 YOU?

8 A. YES.

9 Q. OKAY. AND HE TOLD YOU WHEN WE DID ALL THIS THAT THE
10 KNEE SURGERY WAS NOT GOING TO CURE ALL OF YOUR PAIN
11 BECAUSE OF THE ARTHRITIS, RIGHT?

12 A. YES.

13 Q. OKAY. AND YOU UNDERSTOOD THAT PRIOR TO GOING TO GET
14 THE SURGERY?

15 A. YES.

16 Q. AND YOU WERE HAVING SOME PAIN IN THAT KNEE PRIOR TO
17 THIS SURGERY, WEREN'T YOU?

18 A. YES.

19 Q. OKAY. NOW, WHEN YOU WERE -- WHEN YOU WENT TO SEE
20 DR. EDWARDS, YOU AGAIN, HE ASKED YOU A LOT OF
21 QUESTIONS; IS THAT RIGHT?

22 A. YES.

23 Q. AND AT THAT POINT IN TIME, HE ASKED YOU IF YOU EVER
24 HAD ANY PRIOR BACK INJURIES, CORRECT?

25 A. YES.

1 Q. AND FROM MY REVIEW OF THE RECORDS, YOU TOLD HIM YOU
2 NEVER HAD ANY PRIOR BACK INJURIES; IS THAT RIGHT?

3 A. NO, I DIDN'T TELL HIM THAT.

4 Q. MA'AM?

5 A. NO.

6 Q. YOU NEVER HAD ANY BACK INJURIES?

7 A. NO. I DIDN'T TELL HIM I DIDN'T HAVE ANY.

8 Q. OKAY. AND I WAS JUST READING THE RECORD HERE. LET
9 ME -- GIVE ME A SECOND, PLEASE? IT'S APA 104, AND I
10 -- ACCORDING TO HIS RECORDS YOU WENT TO SEE HIM ON
11 MARCH 6TH OF 2014, FOR YOUR BACK, THAT'S DR. EDWARDS
12 AT PEE DEE ORTHOPAEDICS?

13 A. YES.

14 Q. AND IT JUST SAYS, "HOWEVER, HER COMPLAINT OF LOW
15 BACK PAIN PRIOR TO INJURY OF MARCH, LAST YEAR, SHE
16 DID NOT HAVE ANY LEG PAIN OR LOWER BACK PAIN," IS
17 WHAT IS IN HIS RECORD. DID YOU TELL HIM YOU DID NOT
18 HAVE ANY LEG PAIN OR LOWER BACK PAIN?

19 A. NO, I DID NOT.

20 Q. AND, MA'AM, IN FACT, YOU HAD LEG PAIN AND THE LOWER
21 BACK PAIN PRIOR TO THIS FALL AND THIS INJURY; IS
22 THAT RIGHT?

23 A. NO.

24 Q. YOU DID NOT?

25 A. NO.

1 Q. YOU HAD A HISTORY OF BACK PAIN THROUGHOUT YOUR --
2 THROUGHOUT YOUR EMPLOYMENT WITH -- WITH THE -- THE
3 COMMUNITY ACTION, RIGHT?

4 A. NO.

5 Q. HAVE YOU EVER HAD A HISTORY OF BACK PAIN?

6 A. WELL, I -- I'D BEEN IN A CAR ACCIDENT OVER 20-
7 SOMETHING-YEARS AGO.

8 Q. BUT DID THAT PAIN ALL RESOLVE?

9 A. I DIDN'T HAVE ANY PAINS DURING THE TIME I WAS
10 WORKING.

11 Q. OKAY. WHEN IS THE LAST TIME YOU HAD -- WELL, WHEN
12 DID YOU START WORKING AT -- AT DARLINGTON COMMUNITY
13 ACTION?

14 A. I THINK IT WAS BACK IN '90-SOMETHING.

15 Q. OKAY. THAT WOULD BE ---

16 A. IT'D BE '97 OR SOMETHING LIKE THAT.

17 Q. HAVE YOU EVER HAD ANY BACK PAIN WHILE YOU WERE AT
18 DARLINGTON COMMUNITY ACTION?

19 A. NO. NO.

20 Q. OKAY.

21 A. NOTHING OTHER THAN, YOU KNOW, I MEAN NORMAL, LIKE IF
22 YOU'RE OVERWEIGHT, SOMETHING LIKE THAT.

23 Q. ALL RIGHT. AND I'M GOING TO SHOW YOU OUR APAs.

24 **BY COMMISSIONER BARDEN:**

25 _____ AND I DIDN'T HEAR THAT LAST RESPONSE. YOU

1 DIDN'T HAVE ANY BACK PAIN WHILE YOU WERE WORKING FOR
2 THE COMMUNITY ACTION?

3 BY THE WITNESS:

4 _____ NO.

5 BY COMMISSIONER BARDEN:

6 _____ OKAY. ALL RIGHT.

7 BY MR. SMITH:

8 COMMISSIONER, I'M GOING TO APOLOGIZE FOR THIS.
9 I NOTICED MY PARALEGAL DID NOT BATES STAMP OUR APAS
10 WE SUBMITTED IN ACCORDANCE WITH THEIR LAST ONE, AND
11 I'LL CERTAINLY CORRECT THAT, IF I ---

12 BY COMMISSIONER BARDEN:

13 THAT DOES NOT -- AS LONG AS THEY'RE NUMBERED
14 AND I HAVE A NUMBER TO USE, I'M FINE.

15 BY MR. SMITH:

16 OKAY.

17 BY COMMISSIONER BARDEN:

18 DON'T WORRY ABOUT THAT.

19 BY MR. SMITH:

20 WELL, I'M GOING TO REFER TO DEFENDANTS' APA 15.

21 CROSS-EXAMINATION RESUMED BY MR. SMITH:

22 Q. AND, MS. TEDDER, I'M GOING TO SHOW YOU AN
23 APPLICATION. YOU WENT TO WORK AT BEREA HEALTH CARE,
24 RIGHT? A NURSING HOME?

25 A. BETHEA.

1 Q. BETHEA. I'M SORRY. AND BETHEA, AND THEY HAD YOU
2 FILL OUT A QUESTIONNAIRE, DIDN'T THEY, WITH THE
3 PACKAGE?

4 A. YES. UH-HUH.

5 Q. AND ON THERE THEY ASKED YOU IF YOU HAD A HISTORY OF
6 BACK PROBLEMS, AND YOU CHECKED "YES," DIDN'T YOU?

7 A. YES.

8 Q. OKAY. AND FROM MY REVIEW OF THIS APPLICATION THAT
9 WHEN YOU WENT TO GO WORK WITH THEM, IT SEEMS THAT
10 THIS WAS IN ---

11 BY COMMISSIONER BARDEN:

12 AND TELL ME WHAT PAGE YOU'RE ON.

13 BY MR. SMITH:

14 PAGE 15.

15 BY COMMISSIONER BARDEN:

16 OKAY. 'CAUSE I HAVE A -- I HAVE A -- IS THIS
17 THE RECORD FROM DR. FARROW?

18 BY MR. SMITH:

19 NO. I -- I'M SORRY. IT'S OUR 15 HERE.

20 BY COMMISSIONER BARDEN:

21 OH, WRONG -- WRONG SET.

22 BY MR. SMITH:

23 AND IF I'M RIGHT.

24 BY COMMISSIONER BARDEN:

25 THANK YOU. THAT EXPLAINS THAT. OKAY. GO

1 AHEAD.

2 CROSS-EXAMINATION RESUMED BY MR. SMITH:

3 Q. AND I'M GOING TO SHOW YOU THIS. THIS APPLICATION
4 THAT YOU FILLED OUT WAS ON OCTOBER 16TH OF 2007,
5 WHICH IS APA NUMBER 11. IS THAT WHEN YOU WENT AND
6 APPLIED FOR THE JOB AT BETHEA?

7 A. EXCUSE ME. LET ME SEE. I'D JUST HAD -- GOING ON MY
8 EYES.

9 Q. OH. YOU CAN'T SEE?

10 A. I CAN'T, SO.

11 Q. OKAY.

12 BY MR. WUKELA:

13 BUT WE'LL -- WE'LL STIPULATE ---

14 BY MR. SMITH:

15 OKAY. WE'LL STIPULATE.

16 BY MR. WUKELA:

17 --- THE DATE.

18 CROSS-EXAMINATION RESUMED BY MR. SMITH:

19 Q. BUT YOU -- SOMETIME IN 2007, YOU HAD -- IS WHEN YOU
20 WENT AND APPLIED FOR THAT JOB AT BETHEA NURSING
21 HOME; IS THAT RIGHT?

22 A. WELL, I'VE BEEN WITH BETHEA TWICE, SO I'M NOT SURE.

23 Q. YES, MA'AM.

24 A. MAYBE 2007 AND ALL.

25 Q. OKAY. BUT AT THAT POINT IN TIME, YOU TOLD THEM THAT

1 YOU HAD A HISTORY OF BACK PAIN WHEN YOU W
2 APPLY FOR THE EMPLOYMENT WITH BETHEA; IS

3 A. YES.

4 Q. SO YOU WERE HAVING BACK PAIN ALL THROUGHOUT THE TIME
5 YOU WERE WORKING WITH -- WITH DARLINGTON COUNTY
6 COMMUNITY ACTION?

7 A. NO, I WASN'T REALLY HAVING ANY BACK PAINS.

8 Q. OKAY. NOW, YOU ALSO WERE HAVING PROBLEMS WITH YOUR
9 RIGHT KNEE, CORRECT?

10 A. YES.

11 Q. OKAY. AND AGAIN, YOUR UNDERSTANDING IS YOUR RIGHT
12 KNEE, YOU HAVE SOME ARTHRITIC PROBLEMS AND SOME
13 DEGENERATIVE PROBLEMS; IS THAT RIGHT?

14 A. YES.

15 Q. OKAY. AND YOUR RIGHT KNEE IS CAUSING YOU A
16 SUBSTANTIAL AMOUNT OF PAIN TOO; IS THAT RIGHT?

17 A. YES. UH-HUH.

18 Q. OKAY. AND WHEN YOU WENT TO GO SEE DR. EDWARDS, AND
19 LET ME MAKE SURE I GET THIS, ON JULY 31ST OF 2014,
20 THIS WAS YOUR -- OR HOLD ON A SECOND -- JULY 3RD OF
21 2014, APA 111 OF THE CLAIMANT'S.

22 BY COMMISSIONER BARDEN:

23 OKAY.

24 CROSS-EXAMINATION RESUMED BY MR. SMITH:

25 Q. YOU WENT TO SEE HIM DURING THAT TIME; THIS WAS YOUR

1 LAST VISIT WITH DR. EDWARDS; DO YOU RECALL THAT?

2 A. YES.

3 Q. WHERE HE RELEASED YOU?

4 A. YES.

5 Q. AND HE ASKED YOU AGAIN A SERIES OF QUESTIONS ABOUT
6 HOW YOU WERE DOING, RIGHT?

7 A. YES.

8 Q. OKAY.

9 BY COMMISSIONER BARDEN:

10 AND THIS IS ON THE 3RD?

11 BY MR. SMITH:

12 YES, MA'AM.

13 BY COMMISSIONER BARDEN:

14 ALL RIGHT.

15 BY MR. SMITH:

16 JULY 3RD, 2014.

17 BY COMMISSIONER BARDEN:

18 ALL RIGHT. OKAY.

19 CROSS-EXAMINATION RESUMED BY MR. SMITH:

20 Q. AND AT THAT TIME YOU TOLD -- AND YOU WERE TRUTHFUL
21 WITH HIM?

22 A. YES.

23 Q. AND WHEN HE ASKED YOU TO DO SOME TESTS, YOU FULLY
24 PARTICIPATED IN THOSE TESTS; IS THAT RIGHT?

25 A. YES.

- 1 Q. OKAY. AND WHEN I'M LOOKING THROUGH THIS, WERE YOU
2 IN PAIN THAT DAY WHEN YOU WENT TO GO SEE HIM?
- 3 A. YES.
- 4 Q. DID YOU REPORT THAT YOU WERE IN PAIN WITH THAT DAY?
- 5 A. YES.
- 6 Q. AND I JUST READ "THERE'S NO ACUTE DISTRESS." SO YOU
7 WERE TELLING HIM THAT YOU WERE -- YOU WERE IN PAIN?
- 8 A. YES.
- 9 Q. AND IT SAYS -- AND ALSO WERE YOU HAVING THE SAME
10 PROBLEMS FROM STANDING UP AND SITTING AND ALL THAT?
- 11 A. YES.
- 12 Q. ALL RIGHT. AND SO WHERE I NOTE WHERE IT'S "RISING
13 EASILY FROM SITTING TO STANDING," WERE YOU HAVING
14 THAT; IS THAT NOT TRUE?
- 15 A. NO.
- 16 Q. OKAY. AND THEN YOUR HIP AND KNEE MOTION, DO YOU
17 REMEMBER HIM MOVING YOUR HIPS AND YOUR KNEES WHEN HE
18 WAS CHECKING YOU?
- 19 A. YES.
- 20 Q. WERE YOU HAVING PAIN WHEN HE WAS DOING THAT?
- 21 A. YES.
- 22 Q. OKAY. AND -- AND SO WHEN IT SAYS "HIP AND KNEE
23 MOTION IS FULL AND PAINLESS," THAT'S NOT CORRECT?
- 24 A. THAT'S NOT CORRECT.
- 25 Q. ALL RIGHT. AND THEN YOUR GAIT, YOUR WALKING, WERE

1 YOU STILL HAVING THE SAME LIMP AND THE SAME PROBLEMS
2 THAT YOU HAVE TODAY?

3 A. YES.

4 Q. OKAY. AND SO YOU WEREN'T WALKING NORMALLY THEN,
5 WERE YOU?

6 A. NO.

7 Q. OKAY. SO WHEN HE RECORDED "WALKING NORMALLY, GAIT
8 IS NORMAL," THAT'S NOT TRUE?

9 A. NO.

10 BY COMMISSIONER BARDEN:

11 WHO PRESCRIBED THE CANE FOR YOU? DID ONE OF
12 THE ---

13 BY THE WITNESS:

14 _____ DOCTOR -- DR. ELVIS [SIC].

15 BY COMMISSIONER BARDEN:

16 _____ ELVINGTON?

17 BY THE WITNESS:

18 _____ ELVINGTON.

19 CROSS-EXAMINATION RESUMED BY MR. SMITH:

20 Q. OKAY. AND SO WHEN IT SAYS USES CANE ON THE RIGHT
21 SIDE FOR SUPPORT, WAS THAT FOR YOUR RIGHT KNEE THAT
22 YOU WERE USING THE CANE?

23 A. HE GAVE ME THE CANE AFTER HE DID THE SURGERY ON THE
24 LEFT KNEE.

25 Q. OKAY.

1 A. FOR SUPPORT, AND HE ---

2 Q. BUT YOU WERE USING IT FOR THE RIGHT KNEE AFTER THE
3 SURGERY, WEREN'T YOU?

4 A. NO. I WAS USING IT FOR THE LEFT KNEE.

5 Q. OKAY. AND DR. EDWARDS DISCHARGED YOU ON JULY 3RD,
6 2014, WITH NO RESTRICTIONS; IS THAT RIGHT?

7 A. NO.

8 Q. OKAY. DID HE GIVE YOU RESTRICTIONS?

9 A. HE TOLD ME IT WAS THE SAME AS WHEN HE FIRST GAVE IT
10 TO ME, NO LIFTING, NO BENDING.

11 Q. OKAY. DO YOU HAVE ANY DOCUMENTS FROM THAT JULY 3RD,
12 2014, THAT SHOWS THAT THERE'S NO LIFTING OR BENDING
13 OR ANYTHING THAT WAS PRESCRIBED BY DR. EDWARDS?

14 A. EVERYTHING I HAD, I -- I ALREADY TURNED IT IN.

15 Q. OKAY. AND OBVIOUSLY, HE TOLD YOU IF YOU WERE HAVING
16 MORE PROBLEMS TO FOLLOW UP WITH HIM; IS THAT RIGHT?

17 A. YES.

18 Q. HAVE YOU FOLLOWED UP WITH DR. EDWARDS?

19 A. YES. I HAD WENT BACK TO HIM.

20 Q. WHEN?

21 A. AND THEN HE SENT ME TO THE DOCTOR FOR MY BACK.

22 Q. THE DOCTOR FOR YOUR BACK?

23 A. YES.

24 Q. OKAY.

25 BY COMMISSIONER BARDEN:

1 WE'LL TALK LATER, MAYBE.

2 BY MR. SMITH:

3 YEAH.

4 BY MR. WUKELA:

5 AND I'LL ASK HER. SHE'S NOT SEEN ANOTHER
6 DOCTOR FOR HER BACK. I THINK YOU MAY HAVE ELVINGTON
7 AND EDWARDS CONFUSED.

8 BY MR. SMITH:

9 OH, OKAY. OKAY. ALL RIGHT.

10 BY THE WITNESS:

11 _____IT'S ELVINGTON AND EDWARDS.

12 CROSS-EXAMINATION RESUMED BY MR. SMITH:

13 Q. ALL RIGHT. I'M SORRY. AND I -- THEY BOTH START
14 WITH AN "E," AND THEY ---

15 A. YES.

16 Q. --- SOUND ALIKE. I'M NOT TRYING TO CONFUSE YOU.

17 BY MR. WUKELA:

18 THE DEFENDANTS ARE CONCERNED THAT THERE IS
19 ANOTHER DOCTOR THAT YOU'VE SEEN THAT WE HAVEN'T TOLD
20 HIM ABOUT.

21 BY MR. SMITH:

22 YEAH.

23 BY MR. WUKELA:

24 THAT'S WHY.

25 BY THE WITNESS:

1 OH. OH. OKAY.

2 CROSS-EXAMINATION RESUMED BY MR. SMITH:

3 Q. YOU -- HAVE YOU BEEN TO ANY OTHER DOCTORS ---

4 A. NO. NO.

5 Q. --- BESIDES DR. EDWARDS AND DR. ELVINGTON?

6 A. NO.

7 Q. OKAY. I -- I'M JUST -- THERE'S BEEN NO FOLLOW UP
8 FOR YOUR BACK WITH DR. ---

9 A. NO. UH-HUH.

10 Q. --- EDWARDS, AFTER HE RELEASED YOU ---

11 A. NO.

12 Q. --- IN JULY OF 2014?

13 A. NO.

14 Q. OKAY. AND THEN I -- I KNOW YOU WENT TO SEE DR.
15 ELVINGTON SHORTLY THEREAFTER; IS THAT RIGHT?

16 A. YES.

17 Q. ALL RIGHT. AND JUST WHEN I -- YOU KNOW, I LOOKED AT
18 THIS, DECEMBER 5TH, 2013, SEEMS TO BE THE LAST NOTE
19 I HAVE FROM HIM, AND HE JUST SAID YOUR -- YOU HAD
20 GOOD RANGE OF MOTION IN YOUR KNEE AND GOOD STRENGTH
21 AT THAT TIME. DO YOU HAVE GOOD STRENGTH IN YOUR
22 LEFT KNEE?

23 A. NO.

24 Q. OKAY. AND HE ENCOURAGED YOU TO CONTINUE YOUR HOME
25 EXERCISE PROGRAM; DID YOU DO THAT?

- 1 A. YES.
- 2 Q. WHAT WAS YOUR HOME EXERCISE PROGRAM?
- 3 A. I HAD TO LIKE LIFT IT AND DRAW IT BACK AND STRETCH
- 4 AND UP -- SIT UP AND DOWN.
- 5 Q. HAVE YOU BEEN CONTINUING TO DO THAT?
- 6 A. YES.
- 7 Q. AND I NOTICED THAT YOU, OBVIOUSLY AFTER THAT, YOU
- 8 WENT TO LOWE'S PHYSICAL THERAPY OVER HERE IN -- OVER
- 9 THERE IN FLORENCE?
- 10 A. YES.
- 11 Q. ALL RIGHT. AND THEY EVENTUALLY RELEASED YOU TOO; IS
- 12 THAT RIGHT?
- 13 A. YEAH.
- 14 Q. ALL RIGHT. AND AT SOME POINT JUST LOOKING THROUGH
- 15 THIS, IT'S JUST THE 115, APA 115, THE PHYSICAL
- 16 THERAPY GOALS, YOUR STRENGTH IN YOUR RIGHT AND LEFT
- 17 WERE EQUAL, AND YOUR RANGE OF MOTION RIGHT AND LEFT
- 18 WERE EQUAL; IS THAT TRUE, DID YOU HAVE GOOD STRENGTH
- 19 AND RANGE OF MOTION IN BOTH KNEES?
- 20 A. NO.
- 21 Q. AND THEY ALSO SAID YOU COULD, I PRESUME R.T.W. --
- 22 DID THE LOWE'S PHYSICAL THERAPY TELL YOU YOU COULD
- 23 RETURN TO WORK?
- 24 A. NO.
- 25 Q. AND WHEN DID YOU SEE DR. ELVINGTON ON -- I -- IT'S

1 HARD FOR ME TO READ, AND I'M GETTING OLD, BUT IT
2 LOOKS LIKE IT'S 8/26/14, IS WHEN HE GAVE YOU THE ---

3 BY COMMISSIONER BARDEN:

4 AND WHAT PAGE ARE YOU ON?

5 BY MR. SMITH:

6 ONE-THIRTEEN. DO YOU READ IT THE SAME WAY, AS
7 8/26/14, RIGHT THERE?

8 BY COMMISSIONER BARDEN:

9 YEAH. THAT'S WHAT IT LOOKS LIKE TO ME.

10 BY MR. SMITH:

11 OKAY.

12 BY MR. WUKELA:

13 8/26/14, IN THE ADDENDUM, I THINK IT IS.

14 BY MR. SMITH:

15 THE ADDENDUM.

16 BY MR. WUKELA:

17 YEAH.

18 BY MR. SMITH:

19 YES, SIR. OKAY.

20 CROSS-EXAMINATION RESUMED BY MR. SMITH:

21 Q. AND -- AND DID YOU GO SEE HIM ON THAT TIME, 8/26/14,
22 FOR THE IMPAIRMENT RATING?

23 A. WHO?

24 Q. DR. ELVINGTON? DO YOU KNOW?

25 A. I'M NOT SURE.

1 Q. OKAY. IS THERE ANYTHING AFTER 8/26 FROM PEE DEE
2 ORTHOPAEDICS THAT YOU HAVE THAT TELLS YOU YOU CANNOT
3 RETURN TO WORK?

4 A. NO, I DON'T HAVE ANYTHING.

5 Q. OKAY. AND IS THERE ANYTHING FROM PEE DEE
6 ORTHOPAEDICS THAT -- THAT TELLS YOU YOU HAVE ANY
7 RESTRICTIONS AFTER 8/26/14 THAT YOU'RE AWARE OF?

8 A. I DON'T HAVE ANYTHING.

9 Q. OKAY. AND, MS. TEDDER, WHEN I LOOK AT THIS, AND I
10 SEE YOU -- YOU LAST SAW THE PHYSICIAN THAT WE KNOW
11 YOU LAST SAW FROM THESE RECORDS WAS DR. EDWARDS ON
12 JULY 3RD OF 2014. AND THEN AT SOME TWO, A LITTLE
13 OVER TWO-AND-A-HALF MONTHS LATER ON SEPTEMBER 12TH,
14 YOU WENT TO THIS FUNCTIONAL CAPACITY EVALUATION AT
15 COLUMBIA REHABILITATION CLINIC, INC.; DO YOU
16 REMEMBER THAT?

17 A. YES.

18 Q. ALL RIGHT. AND SO WHEN YOU WENT THERE, YOU REPORTED
19 THAT YOU HAD A PAIN LEVEL OF SEVEN ---

20 A. YES.

21 Q. --- WHEN YOU WENT THERE?

22 A. UH-HUH.

23 **BY COMMISSIONER BARDEN:**

24 _____ IS THAT A YES?

25 **BY MR. SMITH:**

1 AND THAT'S HER ---

2 BY THE WITNESS:

3 _____ YES.

4 CROSS-EXAMINATION RESUMED BY MR. SMITH:

5 Q. AND THAT'S ON 1/4. AND TWO MONTHS AFTER YOU LAST SAW
6 DR. EDWARDS, YOU -- IT DOES NOT APPEAR YOU WERE
7 COMPLAINING OF ANY PAIN THEN, AND THEN YOU HAVE A
8 SEVEN TWO MONTHS LATER WHEN YOU GO TO SEE THE
9 FUNCTIONAL CAPACITY EVALUATOR?

10 A. AND, THAT WERE -- EXCUSE ME. LAST TIME I SAW DR.
11 EDWARDS, ALL I TOLD HIM, ALL AT THE SAME TIME, THAT
12 I WAS STILL IN A LOT OF PAIN.

13 Q. AND THEN AT THAT POINT I ALSO NOTE THAT -- THAT THIS
14 EVALUATOR DID YOUR FLEXION, WHICH IS LEANING BACK, I
15 BELIEVE, AND GOING FORWARD. AND I KNOW ONE'S
16 ABDUCTION AND ONE'S FLEXION, BUT DID YOU REMEMBER
17 DOING THAT WITH THIS EVALUATOR THAT YOU WENT TO SEE
18 ON SEPTEMBER 12TH, 2014?

19 A. YES.

20 Q. OKAY. AND ALSO, THE SAME TWO MONTH -- TWO-AND-A-
21 HALF MONTHS BEFORE, DR. EDWARDS DID THE SAME TYPE OF
22 TESTS, DIDN'T HE?

23 A. DOCTOR -- NO.

24 Q. HE DIDN'T?

25 A. DOCTOR, WHICH -- WAIT A MINUTE. JUST A DR. ELWOOD

1 [SIC] OR DR. EDWARDS.

2 Q. EDWARDS.

3 A. EDWARD [SIC], YES.

4 Q. I'M SORRY. THE BACK DOCTOR?

5 A. YES.

6 Q. HOW ABOUT WE CALL HIM THE BACK DOCTOR, OKAY? AND I
7 ALSO NOTE THAT SHE HAD YOU DO A FIVE POSITION HAND
8 GRIP TEST. WAS THERE SOME PROBLEMS DOING THAT?

9 A. YES.

10 Q. WHAT WERE THE PROBLEMS WITH THAT?

11 A. (INDICATING) WITH THE THIS HAND HERE, AND THE
12 FINGERS WAS LIKE CRAMPING UP, AND I HAD PAIN IN THE
13 HAND.

14 **BY MR. SMITH:**

15 ALL RIGHT. AND I THINK THAT'S ALL THE
16 QUESTIONS. AND I THANK YOU, MS. TEDDER.

17 **BY COMMISSIONER BARDEN:**

18 ALL RIGHT. ANYTHING ON REDIRECT? YOU CAN STAY
19 WHERE YOU ARE.

20 **BY MR. WUKELA:**

21 YES, MA'AM. THANK YOU, COMMISSIONER.

22 **BY COMMISSIONER BARDEN:**

23 AS LONG AS WE CAN HEAR HER.

24 **BY MR. WUKELA:**

25 YES, MA'AM.

1 **REDIRECT EXAMINATION BY MR. WUKELA:**

2 Q. REMEMBER TO SPEAK UP.

3 A. OKAY.

4 Q. COUNSEL ASKED YOU ABOUT WHEN YOU HAD THE FUNCTIONAL
5 CAPACITY EVALUATION, YOU DID THE GRIP STRENGTH TEST?

6 A. YES.

7 Q. YOU DID THAT WITH YOUR RIGHT HAND?

8 A. YES.

9 Q. OKAY. AND YOU -- YOU SAID IT CRAMPED UP?

10 A. YES.

11 **BY COMMISSIONER BARDEN:**

12 _____ ARE YOU LEFT HANDED OR RIGHT HANDED?

13 **BY THE WITNESS:**

14 _____ WELL, SHE DID BOTH OF THEM, BUT RIGHT.

15 **BY COMMISSIONER BARDEN:**

16 _____ WHAT? WHAT ARE YOU?

17 **BY THE WITNESS:**

18 _____ I'M RIGHT HANDED.

19 **BY COMMISSIONER BARDEN:**

20 _____ YOU'RE RIGHT HANDED.

21 **REDIRECT EXAMINATION RESUMED BY MR. WUKELA:**

22 Q. OKAY. AND YOUR RIGHT HAND WAS INJURED IN THIS
23 ACCIDENT?

24 A. YES.

25 Q. BUT THOSE PROBLEMS YOU HAD WITH IT RESOLVED?

1 A. YEAH.

2 Q. OKAY. THAT'S YES?

3 A. YES.

4 Q. OKAY.

5 BY MR. SMITH:

6 SPEAK LOUD FOR HER.

7 BY MR. WUKELA:

8 SPEAK LOUD FOR HER.

9 BY MR. SMITH:

10 YOU'RE SPEAKING TO HER.

11 BY MR. WUKELA:

12 AND YOU'RE -- I'LL TELL YOU WHAT, LET ME WALK
13 OVER HERE, COMMISSIONER. THAT'S GOING TO BE A
14 PROBLEM.

15 BY COMMISSIONER BARDEN:

16 THANK YOU.

17 BY MR. WUKELA:

18 ALL RIGHT. NOW, COMMISSIONER, I'D POINT YOU TO
19 PAGE 144.

20 BY MR. SMITH:

21 COMMISSIONER, CAN YOU, ONE SECOND? (INDICATING
22 MS. PATTERSON) SHE'S GOT AN APPOINTMENT IN COLUMBIA.
23 DO YOU MIND IF SHE IS EXCUSED? SHE'S NOT GOING TO
24 TESTIFY.

25 BY COMMISSIONER BARDEN:

1 NOT AT ALL. NO.

2 BY MR. SMITH:

3 I JUST DON'T WANT HER TO STAND UP AND WALK OUT.

4 BY COMMISSIONER BARDEN:

5 BE SAFE ON THE ROAD.

6 BY MS. PATTERSON:

7 THANK YOU.

8 BY MR. SMITH:

9 THANK YOU.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. GO AHEAD, MR. WUKELA.

12 BY MR. WUKELA:

13 I'M GOING TO GIVE MURRELL A SECOND, IF YOU
14 DON'T MIND, COMMISSIONER?

15 BY COMMISSIONER BARDEN:

16 OKAY.

17 (MS. PATTERSON EXITS THE HEARING ROOM)

18 REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

19 Q. OKAY. NOW, MS. TEDDER, WERE YOU AWARE THAT WHEN
20 THEY DID THE FUNCTIONAL CAPACITY EVALUATION THEY
21 ALSO DID A VARIETY OF OTHER TESTS TO DETERMINE
22 WHETHER YOU WERE MALINGERING?

23 A. YES.

24 Q. DID THEY TELL YOU ABOUT THAT AFTER THE FACT?

25 A. NO.

1 Q. OKAY.

2 A. SHE SAID SHE WOULD SEND THE REPORTS TO YOU.

3 Q. SHE WOULD ---

4 **BY MR. SMITH:**

5 OBJECT TO WHAT SHE SAYS. IT'S IN THE REPORT OF
6 THIS.

7 **BY COMMISSIONER BARDEN:**

8 SUSTAINED.

9 **BY MR. WUKELA:**

10 OKAY.

11 **BY MR. WUKELA:**

12 _____ WELL, LET ME TALK ABOUT THE REPORT. PAGE 144
13 CONTAINS THE REPORT. IT CONTAINS A VARIETY OF
14 WADDELL'S TEST AND OTHER TESTS TO DETERMINE
15 MALINGERING, AND ALL THOSE REVEALED AS NEGATIVE.
16 AND THE SCORING WAS CONCLUDED TO BE CLINIC --
17 CLINICALLY INSIGNIFICANT, BECAUSE IT DIDN'T SHOW
18 NONORGANIC LOW BACK PAIN, COMMISSIONER.

19 **REDIRECT EXAMINATION RESUMED BY MR. WUKELA:**

20 Q. NOW, LET ME ASK YOU, COUNSEL ASKED YOU A LITTLE BIT
21 ABOUT YOUR VISIT WITH DR. EDWARDS. YOU SAID IN YOUR
22 LAST VISIT WITH DR. EDWARDS YOU HAD COMPLAINED TO
23 HIM OF BACK PAIN?

24 A. YES.

25 Q. OKAY.

1 BY MR. WUKELA:

2 AND I'M GOING TO TURN YOU, COMMISSIONER, TO
3 PAGE 111. THAT'S THAT LAST NOTE ON JULY THE 3RD,
4 2014.

5 REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

6 Q. AND IN THAT ASSESSMENT, DR. EDWARDS DIAGNOSIS IS
7 MECHANICAL LOW BACK PAIN SECONDARY TO THE LUMBAR
8 SPONDYLOLISTHESIS, AND RATED HER AT FIVE PERCENT TO
9 THE SPINE; WERE YOU AWARE OF THAT?

10 A. YES.

11 Q. DID HE TELL YOU ABOUT THAT DIAGNOSIS?

12 A. NO.

13 Q. OKAY. NOW, ALSO I WANT TO GO BACK TO DR. ELVINGTON
14 AND HIS RESTRICTIONS. YOU SAW DR. ELVINGTON ON
15 SEPTEMBER THE 12TH, 2013, AFTER HE PERFORMED THE
16 SURGERY ON YOUR LEFT KNEE ON SEPTEMBER THE 4TH,
17 2013?

18 A. YES.

19 BY COMMISSIONER BARDEN:

20 _____ DID THE SURGERY HELP AT ALL?

21 BY THE WITNESS:

22 _____ IT'S HELPED A LITTLE.

23 BY COMMISSIONER BARDEN:

24 _____ OKAY.

25 BY MR. WUKELA:

1 THAT -- I THINK THAT FIRST VISIT AFTER THE
2 SURGERY, COMMISSIONER, IS AT PAGE 92.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY MR. WUKELA:

6 SEPTEMBER THE 12TH, 2013.

7 BY COMMISSIONER BARDEN:

8 THANK YOU.

9 REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

10 Q. NOW, IN THAT REPORT, HE SAYS HE HAD PERFORMED LEFT
11 KNEE ARTHROSCOPY PARTIAL MEDIAL MENISCECTOMY. HE
12 HAD PERFORMED THE SURGERY ON YOUR LEFT KNEE?

13 A. YES.

14 Q. YOU WERE THERE TO SEE HIM ABOUT YOUR LEFT KNEE?

15 A. YES.

16 BY MR. WUKELA:

17 AND AT THE END OF PARAGRAPH ONE, COMMISSIONER,
18 THE LAST SENTENCE.

19 REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

20 Q. HE SAYS "PATIENT WILL FOLLOW UP IN FOUR WEEKS FOR
21 REPEAT CHECK. SHE CAN RETURN TO WORK WITH NO
22 PROLONGED WALKING OR STANDING; NO CLIMBING,
23 STOOPING, OR CRAWLING; AND NO LIFTING OR CARRYING
24 GREATER THAN TEN POUNDS." DO YOU REMEMBER HIM
25 TELLING YOU THAT?

1 A. YES.

2 Q. ALL RIGHT. AND THE NEXT SENTENCE HE SAYS "WE WILL
3 ADDRESS THE PATIENT'S RIGHT KNEE SYMPTOMS AT A LATER
4 DATE." DO YOU REMEMBER HIM TELLING YOU THAT?

5 A. YES.

6 Q. NOW, SO ON THAT SEPTEMBER 12TH VISIT, HE WAS FOCUSED
7 ON YOUR LEFT KNEE?

8 A. YES.

9 Q. AND HE HAD DONE SURGERY ON YOUR LEFT KNEE?

10 A. YES.

11 Q. AND HE GAVE YOU RESTRICTIONS FOR YOUR LEFT KNEE?

12 A. YES.

13 Q. AND IN FACT ,HE GAVE YOU A SLIP, WHICH IS FOUND AT
14 PAGE 93 OF THE NEXT PAGE, WITH THOSE RESTRICTIONS?

15 A. YES.

16 Q. AND YOU TOOK THOSE RESTRICTIONS TO YOUR EMPLOYER?

17 A. YEAH. YES, I SENT ALL OF IT TO THEM.

18 Q. AND DID THEY EVER OFFER YOU WORK WITHIN THOSE
19 RESTRICTIONS?

20 A. NO.

21 Q. AND IN FACT, THE LAST TIME YOU SAW DR. EDWARDS WAS -
22 - I MEAN -- I'VE DONE IT NOW. DOC -- THE KNEE
23 DOCTOR, DR. ELVINGTON WAS DECEMBER THE 5TH, 2013,
24 WHICH IS PAGE 99, AND AT THAT VISIT, HE SAYS
25 "CONTINUE THE SAME WORK STATUS" AS FAR AS THE SAME

1 RESTRICTIONS?

2 A. YES.

3 Q. AND DID DR. ELVINGTON, AT ANY POINT AFTER HE GAVE
4 YOU ALL THOSE RESTRICTIONS IN SEPTEMBER OF 2013,
5 TELL YOU THAT YOU WEREN'T RESTRICTED THAT WAY ANY
6 MORE?

7 A. NO.

8 BY MR. WUKELA:

9 COMMISSIONER, THAT'S ALL THE QUESTIONS I HAVE.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. THANK YOU. MR. SMITH.

12 BY MR. SMITH:

13 NO, MA'AM. NO RECROSS.

14 BY COMMISSIONER BARDEN:

15 ALL RIGHT. AND THAT'S THE CLAIMANT'S CASE, AND
16 THE DEFENDANTS HAVE NO WITNESSES, RIGHT?

17 BY MR. SMITH:

18 YES, MA'AM.

19 BY MR. WUKELA:

20 THAT'S THE CLAIMANT'S CASE.

21 BY COMMISSIONER BARDEN:

22 OKAY. THAT CONCLUDES THIS PROCEEDING.

23 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
24 CONCLUDED AT THE HOUR OF 12:21 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1307602

EMPLOYEE/CLAIMANT: VERMA L. TEDDER

EMPLOYER: DARLINGTON COUNTY COMMUNITY ACTION

INSURER: STATE ACCIDENT FUND

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF VERMA L. TEDDER, TAKEN ON THE 20TH DAY OF AUGUST, 2015. **70 PAGES**

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 13TH DAY OF SEPTEMBER, 2015.

Sallye Deanne Nelson

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1307602

VERMA TEDDER	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
DARLINGTON COUNTY	)	
	)	VERMA TEDDER
EMPLOYER,	)	
AND	)	VS
	)	
STATE ACCIDENT FUND	)	DARLINGTON COUNTY COMMUNITY ACTION
	)	
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Verma Tedder versus Darlington County Community Action, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:00 P.M., Monday, February 22, 2016, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

APPEARANCES

FOR THE APPELLANT:
Stephen J. Wukela, Esquire
Wukela Law Firm
403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

FOR THE RESPONDENT:
G. Murrell Smith, Jr., Esquire
Lee, Erter, Wilson, James, Holler & Smith
126 North Main Street
P.O. Box 580
Sumter, SC 29150

COMMISSIONERS PRESENT:

Melody James, Chair
Mike Campbell
Avery Wilkerson

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

**This is an Official Transcript governed by 25A S.C. Code ANN. Regs 67-615 D (Supp. 2000). The unauthorized copying of this document is deemed to be conversion of an asset belonging to the Court Reporter.

I N D E X

	Page
Argument for the Appellant by Mr. Wukela	4:24
Argument for the Respondent by Mr. Smith	14:25
Reply for the Appellant by Mr. Wukela	23:8
Certificate	26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21
22

23

24

21

1 admitted accident case, admitted injuries to the left
2 lower extremity and back. There was a 21 filed by the
3 Defendants; the Plaintiff argued that they were totally
4 and permanently disabled. The 21 was filed in
5 September of 2014, and it was rescheduled on six (6)
6 different occasions. I will point out that those
7 weren't Mr. Smith's fault; most of those reschedulings
8 were a product of his appearance requirement in the
9 General Assembly but no less --

10 Commissioner James: Not only that, I
11 think you all went back and mediated too,
12 right?

13 Mr. Wukela: -- yes, ma'am. In fact,
14 the medication was held in February of 2015; although,
15 I will point out that the 21s filed in September wasn't
16 mediated until February but that is the status that the
17 case was in when it finally got heard. Now, in July of
18 2015, right after it had been continued for the fifth
19 occasion, the Fund decided that they wanted my Claimant
20 -- my client to be evaluated by a Vocational Expert.
21 At that point I was pretty frustrated, frankly, with
22 the Fund, Commissioners, and I argued that, no, they're
23 -- were not entitled to a Vocational Expert under
24 42-15-80 since they were not at a physician or surgeon.
25 Now, of course, that's a rule that sited more in the

1 breach. In reality what happens is, depositions are
2 taken, those questions that are asked of the Claimant
3 by the Vocational Expert could easily be asked -- asked
4 in deposition; the response is provided to the
5 Vocational Expert and they make their decision; nobody
6 makes anybody go through that hoop. But --

7 Commissioner James: But a lot of people
8 test during voc assessments so -- but you
9 wouldn't be able to test during a deposition.

10 Mr. Wukela: That's right but, again,
11 only test -- the testing that's only required for the
12 Claimant to undergo is testing by a physician or
13 surgeon --

14 Commissioner James: I --

15 Mr. Wukela: -- pursuant to 42-15-80.

16 Commissioner James: -- I'm familiar;
17 you are correct on that.

18 Mr. Wukela: Yes.

19 Commissioner James: It just -- yes.

20 Mr. Wukela: So, if you had someone who
21 was qualified as a physician or surgeon they could test
22 during the Vocational Expert's evaluation but the point
23 is, Commissioners, usually that point of law is not
24 stood by; is not insisted upon by the Claimant. But
25 here because of the long -- lengthy time that had past,

1 the fact that they had had my Voc Expert since April
2 and the fact that, frankly, the Fund just had not paid
3 attention to the case, I -- I did insist upon the point
4 of law. Now, the Commissioner found, I think correct
5 -- they made a motion to compel, the Commissioner
6 found, I think correctly, that I was right, 42-15-80
7 says physician or surgeon, the Vocational Expert was
8 not one. Where we go astray I think under the law, is
9 where the Commissioner penalized the Claimant by
10 refusing to admit into evidence the Claimant's
11 vocational report, which, by the way, had been provided
12 to the Defense, in their APA submissions, April
13 previous. Now, Commissioners, there is no grounds or
14 basis in law to support that conclusion. Murrell is a
15 good lawyer and he's going to argue due process to you
16 but the fact of the matter is, we have a statutory
17 system, the statutory system is very clear that expert
18 reports are submitted by moving parties fifteen (15)
19 days before a hearing, this one had been submitted in
20 April before a hearing in August; there was no basis
21 for the Commissioner to exclude that report.

22 Commissioner Wilkerson: But you
23 wouldn't let your client sit for their voc
24 evaluation; is that correct?

25 Mr. Wukela: That is correct.

1 Commissioner Wilkerson: Even at a later
2 date?

3 Mr. Wukela: I'm sorry, Commissioner?

4 Commissioner Wilkerson: Even at a later
5 date, not the first time but even at a later
6 date; is that fair?

7 Mr. Wukela: No. The first time they
8 asked for it was right before the -- the last time the
9 hearing was scheduled and incidentally, Commissioner,
10 that was just after I had been asked to consent to a
11 continuance for the fifth occasion and I said no; I'm
12 not doing it. There wasn't any other motion to
13 continue --

14 Commissioner James: How -- how would
15 they obtain the -- a vocational? And I
16 understand your reason with the deposition,
17 what if it's not an issue in the deposition
18 and they've had their one time at the
19 deposition; how then would they reconvene the
20 deposition in order to ask the questions? I
21 understand many, many moons ago that that's
22 the way that it used to be done.

23 Mr. Wukela: Well, I know -- I'm sorry
24 to cut you off, Commissioner, but in April when they
25 had my voc report they could have taken the Claimant's

1 deposition and asked them everything that their
2 Vocational Expert would ask --

3 Commissioner James: So, you said that

4 --

5 Mr. Wukela: -- provided those responses
6 to their own expert and got their own opinion.

7 Commissioner James: -- so, you said it
8 was never -- it -- the -- their -- the
9 Claimant's depo had not been taken at that
10 point --

11 Mr. Wukela: Commissioner --

12 Commissioner James: -- in this
13 particular case?

14 Mr. Wukela: -- I'll be candid with you,
15 Commissioner, I'm not -- I don't remember whether the
16 Claimant's deposition had or had not been taken;
17 Murrell may answer that question.

18 Commissioner James: Okay.

19 Mr. Wukela: But they could have -- the
20 -- the point is, this 51 -- that this 21 had been filed
21 back in September, they had essentially a -- a year to
22 get a Vocational Report by whatever means and they
23 didn't do it until the last minute. But remember, the
24 question at issue isn't whether the motion to compel
25 should have been granted; the motion to compel was

1 denied by the Commissioner. The issue is whether the
2 Commissioner can then penalize the Claimant by
3 excluding their Vocational Report. Why did -- the --
4 if that's the law the Commissioner could have penalized
5 the Claimant by excluding any of the Claimant's
6 evidence; the rules don't provide for that. But I want
7 to move forward, too. That -- it didn't stop there,
8 though, Commissioners. Because then the Commissioner
9 decided that the -- the FCE, which was also
10 uncontradicted, was invalid. She made that
11 determination based on her interpretation of the FCE's
12 test results. Now, Your Honors, Burnett has been very
13 clear -- the Court of Appeals has been very clear in
14 the case of Burnett that the Commission isn't entitled
15 to interpret tests results, in fact, that's precisely
16 what Commissioner Barden did in Burnett, in which the
17 Court of Appeals found disturbing; their words, not
18 mine. Here the Commissioner decided to interpret the
19 Functional Capacity Evaluation and come to a conclusion
20 that the Functional Capacity was invalid, which was not
21 the conclusion that the expert that performed the
22 Functional Capacity Evaluation reached; an opinion, by
23 the way, which was uncontradicted anywhere in the
24 record also. So, the Commissioner excluded the
25 Vocational Report because the Claimant asserted their

1 rights under 42-15-80. Then the Commissioner found
2 that the Functional Capacity Evaluation was invalid,
3 contrary to the opinion of the Functional Capacity
4 Evaluator and I -- I won't go through all of them. My
5 brief discusses the particular places where the
6 Functional Capacity Evaluator found that the Waddell
7 signs didn't indicate invalidity where the -- where the
8 Functional Capacity Evaluator specifically found the
9 flexion and extension were valid, where the Functional
10 Capacity Evaluator specifically found that the Claimant
11 wasn't able to walk at a normal pace. And so, now
12 we're -- then we're left without the Functional
13 Capacity Evaluation; which is uncontradicted, without
14 the Vocational Report; which was uncontradicted, with
15 the opinions of Dr. Elvington, the authorized treating
16 Orthopedic. Now, Dr. Elvington performed surgery on
17 the Claimant's knee in September of 2013; APA, page 92.
18 He found that she was limited to low lifting or
19 carrying more than twelve (12) pounds, no prolonged
20 standing or walking, no climbing, stooping or crawling,
21 and he specifically found that he was going to leave
22 consideration of the right knee, which was not a part
23 of the case, for another day. So, there wasn't any
24 question in the record that Dr. Elvington's
25 restrictions given in September of '13, were for the

1 admitted left knee. Now, in December of 2000 -- in
2 October of 2013, which is page 97 of the APA, he says
3 those -- those restrictions continue. In December of
4 2013, which is page 99 of the APA, he says those
5 restrictions continue. And then in August of 2014,
6 which is page 113, he prepares an addendum to the
7 December 5th note, and in that addendum he indicates
8 that the Claimant had reached maximum medical
9 improvement and he rated her left knee, I think three
10 percent (3%). That note, that December 2013 note, was
11 the note that said the restrictions continue.

12 Commissioner Wilkerson: So, how does
13 three percent (3%) equate to a twelve (12)
14 pound lifting restriction?

15 Mr. Wukela: Well, Commissioner, you
16 know, all he did was a -- a medial meniscus tear repair
17 -- replace --

18 Commissioner Wilkerson: Okay.

19 Mr. Wukela: -- or repair.

20 Commissioner Wilkerson: Okay.

21 Mr. Wukela: But he specifically found
22 those restrictions, Commissioner.

23 Commissioner Wilkerson: He did.

24 Mr. Wukela: Those restrictions aren't
25 contradicted in the record; they are -- they are

1 actually supported by the Functional Capacity
2 Evaluation. And so, what you -- but the Commissioner
3 found that the Claimant had no restrictions. So, based
4 on those reports of Dr. Elvington that I've just read,
5 what the Defense is going to tell you is, since he
6 didn't find specific restrictions in the August, 2014
7 addendum, that she had no restrictions. Well, if you
8 look at that addendum it's the addendum to the
9 December, 2013 note, which listed the same restrictions
10 that he had been listing since September. But you
11 also, in order to find no restrictions, have to
12 disregard the Functional Capacity Evaluation, which the
13 Functional Capacity Evaluator themselves said had
14 legitimate results and -- which is uncontradicted in
15 the record, and you've got to discount the Vocational
16 Report, which was excluded by the Commissioner to
17 penalize the Claimant for asserting their rights under
18 the Act. Last point I -- and I don't want to -- I
19 don't want to minimize those other points,
20 Commissioners, but the last point I want to make is,
21 the final thing the Commissioner found was that the
22 Claimant was entitled to an award of forty-three point
23 five (43.5) weeks. An award, by the way, Your Honors,
24 which found loss of use significantly more than the
25 impairment ratings, which one would say might be

1 inconsistent with the findings that the Claimant wasn't
2 credible, which the Commissioner made. But that award
3 of forty-three point five (43.5) weeks was offset by a
4 sixty-three (63) week credit that the Commissioner
5 awarded back to September of 2014, the date of that
6 first 21 before there were six (6) reschedulings of the
7 hearing and the Claimant asserts that the doctrine of
8 laches requires that that -- that credit not be
9 asserted. And --

10 Commissioner James: All right.

11 Mr. Wukela: -- with the right to
12 further argument -- if I could -- might finish this
13 point -- thought, Commissioner?

14 Commissioner James: Okay.

15 Mr. Wukela: That the statute also
16 doesn't allow -- even if the credit is allowed, it
17 doesn't allow the Fund to then try to obtain
18 reimbursement from the Claimant.

19 Commissioner James: All right. Thank
20 you.

21 Mr. Wukela: Thank you.

22 Commissioner James: You'll get three
23 (3) minutes in reply. Mr. Smith.

24 ARGUMENT FOR THE RESPONDENT

25 By Mr. Smith:

1 Thank you. May it please the Commission. Let me
2 just start off with -- with where this case is, is
3 there was a rating of three percent (3%) to the left
4 knee and there was a rating by Dr. Edwards, of Pee Dee
5 Orthopedics, also five percent (5%) to the back. And
6 then -- well, if you go through here and -- and I'll
7 talk about this in a little bit -- the injuries that
8 they claimed in the beginning were right bilateral knee
9 pain, back pain, arm pain and all that. We go and take
10 Dr. Elvington's deposition and Dr. Elvington says the
11 right leg is not related. So, it's not like it wasn't
12 claimed; it was excluded by the treating physician.
13 And so, when you look at the evidence -- that's what we
14 need to look at here is, (A) that you've got a five
15 percent (5%) and a three percent (3%) and then we're
16 arguing permanent and total impairment. But when you
17 look at this and -- and, you know, we heard this all
18 throughout the hearing and we hear it again today about
19 that she had permanent restrictions on there and what
20 -- when you look at the medical record, and it's APA
21 113, is the medical record at the bottom clearly says,
22 you know, the work restrictions but that's the December
23 of 2000 -- December 5th of 2013. And then, when you
24 look at it, look what he writes right above those work
25 restrictions, it says this will -- it talks about the

1 right -- patient's right knee continues to be painful,
2 per MI, she had a medial meniscus tear to the right,
3 recommend right knee arthroscopy with partial medial
4 meniscus -- meniscectomy and this will be scheduled
5 once we've received the Workers' Compensation approval.
6 So, here he's -- how do you know he's not talking about
7 the right leg? This is an issue at that point that was
8 still there before the Commission and -- and -- and we
9 took his deposition and he excluded it; he testified
10 that it was not related to the accident. So, there is
11 nothing in the record. And you talk about burden of
12 proof, it is the Claimant's burden to come over here
13 and prove these restrictions. There's obviously a lot
14 of ambiguity here in this -- in this report and I
15 respectfully submit that what the Commissioner found is
16 exactly what we argued. This is a -- this is a work
17 restriction due to her right knee in December of 2013.
18 So, then he comes back with Lowe's Physical Therapy and
19 says, I agree with it. And look at the top of 1 -- of
20 113, the patient is at maximum medical improvement from
21 the range of motion documented by a Physical Therapist,
22 she is status post-knee arthroscopy with partial
23 meniscectomy; patient will have a permanent physical
24 impairment rating of three percent (3%) to the left
25 knee. There are no work restrictions there, none. And

1 so, what they want to argue is something that occurred
2 eight (8), nine (9) months before is a permanent work
3 restriction; it doesn't say that. They didn't get a
4 14-B. We didn't get a deposition. We didn't get
5 anything. And so, you know, that -- when you look at
6 this, I think, obviously the Commissioner found that
7 they failed to meet their burden of proof and that's
8 what they have. You know, I -- I want to also point
9 out when -- you know, when we're talking about this
10 Functional Capacity Evaluation and Dr. Brown is exactly
11 what you're saying, Commissioner James, is -- is that
12 when we were looking at this is that we've already
13 taken the Claimant's deposition, we took that in
14 August; so, I only get one bite at that apple and so, I
15 can't come back and get at the bite again. And we
16 heard over and over again, this is the quandary that we
17 got -- we get put into as Defense on -- on these
18 Vocational Experts, uncontroverted. Well, if I can't
19 examine the -- if we can't examine the Claimant and how
20 is it not going to be uncontroverted? I mean, you
21 know, you can come up and get a labor market study, you
22 can get one of those but you don't have the same
23 ability to look at the findings and test the
24 credibility when you do this. And so, you know, to go
25 back, I agree the statute does not say that we're

1 entitled to have them -- to have a -- an independent
2 Vocational Evaluation but what it is, is it's just a
3 matter of fundamental fairness to say that you can go
4 and get yourself a Vocational Evaluation and we're
5 going to stiff arm and so, nope, you can't do it. And
6 then, we're going to come in front of you -- and come
7 with a five (5) and three percent (3%) impairment
8 rating, and I recognize that's not dispositive on
9 permanent and total, but then we're going to say there
10 is uncontroverted evidence in the record that you --
11 that -- that this person is permanent and total based
12 upon our expert that we paid and we sent them to;
13 that's inherently unfair when you -- when you handle
14 those situations and when you're presented with that.
15 And then they want to argue that -- that Commissioner
16 Barden interpreted a Functional Capacity Evaluation; I
17 respectfully submit that's not the case. She based
18 upon the evidence that was submitted to her and the
19 evidence said that there was -- the two (2) grip test
20 was not -- was indicative of not -- of not being valid.
21 And then they go through and the other thing she
22 pointed out --

23 Commissioner James: Well, I think -- I
24 think in Burnett she compared two (2) MRIs,
25 which they said needed a medical opinion.

1 So, what you're saying is in this she just
2 quotes things that are out of the report,
3 itself, as opposed to comparing two (2)
4 things?

5 Mr. Smith: -- yes, ma'am. I mean,
6 that's what she is doing is she's looking in there and
7 if you look in my brief I point throughout there is
8 that she goes through and every one was patient
9 self-limited or patient did not do anything else and
10 so, that was going to point out there. And let's look
11 at those two (2), vis a vis, you've got the doctors,
12 two (2) physicians, Dr. Edwards said there are no
13 restrictions to the back and if you go through and look
14 at these Functional Capacity Evaluations and you look
15 at the Vocational Evaluation, all of them talk about
16 problems with the back, the shoulder, the right knee
17 and all of these things, and that's what she's pointing
18 out is what is before me is not valid. I mean, there
19 are questions and I have concerns about, and she goes
20 through and evaluates them, looks at them and quotes
21 them, and I don't think there's anything wrong with
22 that, that's not interpreting test results through
23 Burnett; that's just pointing out the evidence that was
24 submitted to her in testimony. And even if we look at
25 all this, I respectfully submit if you find that the

1 Vocational Evaluation, yes, we should have -- it should
2 have been admitted, I think when you look at the
3 totality of the evidence and, you know, Vocational
4 Expert or expert testimony, once its admitted it is to
5 be treated by any -- like any other expert testimony.
6 They always quote Tiller to us when we have these cases
7 and so, Tiller says that they -- it's -- you can -- you
8 don't have to -- that's not controlling, if there is
9 other competent evidence in the record then you
10 certainly can make those findings and that's what she
11 did. She paid -- gave greater weight to the two (2)
12 physicians, treating physicians, that said no
13 restrictions; there was no evidence. And so, I think,
14 you know, when you look at two (2) treating physicians
15 versus two (2) experts hired by the Claimant that's a
16 judgment call she's got to make; that's a credibility
17 call and that's certainly within her discretion. So, I
18 ask that you look at those and even if you say that
19 should be determined -- that should have been admitted,
20 it's harmless error; it doesn't make any difference in
21 this case. I still think the evidence shows that she's
22 not -- that she's not permanent and total and I cited
23 in my brief, if you look, she even said that she wasn't
24 aware of any restrictions the doctors placed upon her;
25 that's per her own testimony during my

1 cross-examination. So, now all of a sudden we have --
2 we have restrictions that she didn't even agree with in
3 the hearing. Lastly, let me just tell you about this
4 laches argument. I think you all rightfully pointed
5 out is there was a 21 that was filed and there was a
6 hearing scheduled in front of you --

7 Commissioner Wilkerson: In front of me.

8 Mr. Smith: -- Commissioner Wilkerson.

9 Commissioner Wilkerson: Yes.

10 Mr. Smith: And so, at that point we
11 realized that -- that it was subject to mediation. I
12 -- I say this, there was a Form 58, mediation is
13 required pursuant to 16 -- 67-1802 regulation. There
14 was not -- that wasn't checked on their 58, obviously
15 when I got it say -- the end of it said, she contends
16 that she is permanent and total, we have to mediate.
17 So, we mediated the case and it was scheduled May 5th.
18 So, really, if you want to talk about continuances and
19 I'm sorry we got the flag debate, we got budget, we had
20 all sorts of issues; I would much rather be trying this
21 case than doing what I did over there but regardless,
22 we're talking about a three (3) month window. And when
23 you look at the law of laches that you've got to --
24 you've got to make -- you've got to show there is
25 negligence. I don't think there's negligence that we

1 had to comply with a -- with a mediation -- with a
2 mediation requirement per regulation there's negligence
3 on my part; I think that's just the system. I mean,
4 you know, I -- and so, then, if you look at three (3)
5 months, I don't think that should invoke the laches
6 that we sat on our right but more importantly I quoted
7 and -- and when you look at the testimony where Mr.
8 Wukela was talking about it, and he wasn't talking
9 about it from -- he was talking about the Vocational
10 Report and why he did this -- but two (2) things he
11 said at the hearing that was -- that was pertinent is
12 one (1), that the -- these continuances were entirely
13 appropriate and we consented to them. And then number
14 two (2) is, we didn't believe she was prejudiced by the
15 reschedulings and we certainly consented to them. So,
16 you can't take a position in a hearing that we're not
17 prejudiced and when you have an adverse ruling come
18 back and say, yep, I'm prejudiced and I want you to
19 waive the requirement that -- that TTD would -- should
20 be paid back. So, when you look at the totality of the
21 case I think Commissioner Barden made the appropriate
22 decision. She weighed the credibility of the Claimant,
23 which she found not to be credible and when you look at
24 the evidence and you look at her testimony it was -- it
25 wasn't any -- it wasn't substantive of how she couldn't

1 do anything; she even agreed she didn't know of any
2 restrictions that was placed upon her. So, I would
3 respectfully request that you all affirm Commissioner
4 Barden's order.

5 Commissioner James: All right. Thank
6 you.

7 REPLY FROM THE APPELLANT

8 By Mr. Wukela:

9 She reached MMI in July of '14, and they asked for
10 a continuance after continuance, to which we didn't
11 object. And then, we had the hearing in May of '15,
12 and they asked for credit back to September of '14,
13 when they filed -- finally filed their 21, two (2)
14 months after she had reached MMI to begin with. During
15 that time we got a Vocational Report, which we gave
16 them in April. We got a Functional Capacity
17 Evaluation. We presented evidence that she's totally
18 and permanently disabled and when they finally got up
19 to the hearing -- this isn't Murrell's doing, this is
20 the State Fund's doing; Murrell was exactly where he
21 was supposed to be. But then they realized that --
22 then they realized they had uncontradicted evidence.
23 So, at the last second they said we want you to submit
24 to a Vocational Report; I insisted on the statute,
25 which my client is entitled to do. That upset the

1 Commissioner; she penalized the Claimant by taking away
2 her Vocational Report. She found the FCE invalid and
3 -- and, Commissioners, I'd like to point to Burnett.
4 In Burnett what Commissioner Barden did, the Court of
5 Appeals found was, she opined that an MRI showed only a
6 minimal protrusion with no root displacement and
7 comparatively no greater pathology. And the Court of
8 Appeals said, because no evidence indicates this
9 opinion originated from a medical provider, yet it
10 appears in the Commissioner's order, we are forced to
11 conclude that it's the medical opinion of the single
12 Commissioner. There isn't any opinion from any expert
13 in the record anywhere that says that this Functional
14 Capacity Evaluation is invalid, quite the contrary; the
15 Functional Capacity Evaluator says exactly the
16 opposite. That's the medical opinion of Commissioner
17 Barden, which was precisely what this Court of Appeals
18 in Burnett said was inappropriate. And finally, as to
19 the ratings, you know, Commissioners, we know that the
20 ratings don't consider pain, the ratings don't consider
21 restrictions. What they want you to believe is that
22 the restrictions that Elvington gave in September of
23 '13, when he said we'll consider the right leg later
24 and the fact that he kept those same restrictions
25 throughout the case until he ultimately found her at

1 MMI in August, 2014, what the Defense asks you to
2 believe is that actually the restrictions from her left
3 knee went away completely and she had no permanent
4 restrictions and all those restrictions went to the
5 right knee, although Elvington doesn't say anything
6 like that. Thank you, Your Honors.

7 Commissioner Campbell: Okay.

8 Commissioner Wilkerson: Thank you all.

9 Commissioner Campbell: Thank you.

10 Commissioner James: Thank you. And that
11 concludes this hearing.

12 (THERE BEING NO FURTHER ARGUMENTS, THE HEARING CONCLUDED AT
13 2:24 P.M.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Full Board Hearing of Verma Tedder, vs. Darlington County Community Action;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 25 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 21st Day of May, 2016.

Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

*This Transcript may contain quoted material, such material is reproduced as read or quoted by the speaker.

**This is an Official Transcript governed by 25A S.C. Code Ann. Regs. 67-615 D (Supp. 2000). The unauthorized copying of this document is deemed to be conversion of an asset belonging to the Court Reporter.



Claimant's Name: Verma Tedder Employer's Name: Darlington County Community Action Agency
Address: 130 Lumber Road Address: 904 South Fourth Street
City: Society Hill State: SC Zip: 29593 City: Hartsville State: SC Zip: 29550
Home Phone: () - Work Phone: () - Carrier: State Accident Fund
Preparer's Name: Stephen J. Wukela Preparer's Phone #: (843) 669-5634

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: TBD 2. AWW: TBD Date of Injury: March 29, 2013
3. Type of injury and body part(s): Left leg and back
4. Facts in controversy: See attached.
5. Legal issues involved: See attached.
6. Unusual aspects: None.
7. Witnesses (designate if expert):* Verma Tedder, Claimant
8. Exhibits: See attached.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached.
10. Name, address, and specialty, if any, of the treating physician: Richard T. Ferro, M.D., McLeod Urgent Care; Peter Hyman, M.D., McLeod Occupational Health; Robert E. Elvington, Jr, M.D. and W.S. Edwards, Jr., M.D., Pee Dee Orthopaedic Associates; Lowe's Therapy; Barbara A. Wright, M.D., CareSouth Carolina; Columbia Rehabilitation Clinic, Inc; J. Adger Brown, Jr., MA, CDMS
11. Impairment rating(s); body part(s); physician and date of opinion: 3% to the left knee (APA No. 5, p. 113); 5% to the spine (APA No. 5, p. 111)
12. I am amending my Form 50/51 in the following manner: no amendment to Form 50

☐ **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 G. Murrell Smith, Jr., Esquire, Lee, Erter, Wilson, Holler & Smith, LLC, Post Office Box 999, Sumter, SC 29151 on the 16th day of October 2014 by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature] Email: stephen@wukelalaw.com
Date of hearing: October 29, 2014 at 1:30 AM Time needed for hearing: 30 minutes

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.

Verma Tedder vs. Darlington County Community Action Agency
WCC File No. 1307702

This is an admitted accident before the Commission on the Defendants' Form 21 Request to Stop Payment. The Claimant, an employee of the Darlington County Community Action Agency, was injured on March 29, 2013 when while supervising children on the way to the playground, one of the children caused the Claimant to fall to the ground on her left side.

The Claimant suffered admitted injuries to her left leg and back. The Claimant initially saw McLeod Urgent Care and underwent a course of physical therapy and ultimately saw McLeod Occupational Health from which she was referred to Pee Dee Orthopaedic.

She was initially seen at Pee Dee Orthopaedic by Dr. Robert Elvington, who diagnosed a medial meniscus tear of the left knee and ultimately performed left knee arthroscopy and partial medial meniscectomy on September 4, 2013.

The Claimant began receiving temporary total disability benefits on August 29, 2013 in anticipation of her surgery and has received them since that date.

After the surgery, on September 12, 2013, Dr. Elvington gave the Claimant restrictions of no lifting or carrying over 10 pounds, no prolonged standing, walking, climbing, stooping, or crawling. (APA No. 5, p. 92). He reiterated those restrictions on October 24, 2013 (APA No. 5, p. 97) and again on December 5, 2013 (APA No. 5, p. 99), when he released her at maximum medical improvement for her left knee and gave her a permanent physical impairment rating of 3% to the left knee. (APA No. 5, p. 113).

The Claimant was also seen at Pee Dee Orthopaedic with regard to her low back pain. The back injury was initially denied by the carrier, however, they subsequently agreed for her to see Dr. Bill Edwards, who after an MRI of April 4, 2014, concluded:

"Though she has diffuse degenerative changes that were exacerbated by her work injury of last year, she was reassured that there is no evidence of any need for surgical intervention or serious pathology." (APA No. 5, p. 110).

Thereafter, he released her with a 5% impairment to her spine on July 3, 2014. (APA No. 5, p. 111).

A functional capacity evaluation was performed on September 12, 2014 which revealed that she had limitations of lifting no more than three pounds floor to waist, eight pounds 12 inch to waist, ten pounds waist to shoulder and that she was limited to limited sedentary to limited light work. (APA No. 7, p. 126).

A vocational evaluation was performed by J. Adger Brown on September 19, 2014 which revealed that the Claimant was a fifty-three year old female with an Associate of Arts degree in early

Verma Tedder vs. Darlington County Community Action Agency
WCC File No. 1307702

childhood education from Florence-Darlington Technical College, had been working as a teacher's assistant with the Darlington Community Action Agency since 1997, along with work as a dietary aide at Bethea Nursing Home where she performed on an evening shift following her duties with the Community Action Agency. (APA No. 8, p. 151).

Mr. Brown noted that the Claimant had been awarded state disability retirement, which has as its basic standard the inability to return to former employment, and that she also has applied for and is receiving social security disability benefits because of her inability to physically perform the work that exists in a regional or national economy within her age, education, work experience, and physical limitations. Mr. Brown, therefore, reached the conclusion that the Claimant is totally disabled. (APA No. 8, p. 152).

The parties also have a dispute as to the Claimant's weekly wage. Defendants' Form 20 indicates that the Claimant earned \$12,357.36 in the four quarters prior to the accident. When dividing that amount over the number of weeks paid to the employee during the four quarters preceding the accident, which was 38 weeks according to the Defendants' Form 20, they produce an average weekly wage of \$325.19. However, the time and attendance records indicate that the Claimant was out of work for an additional ten weeks between November 19, 2012 and February 3, 2013, which is during the 52 weeks prior to the accident. The Claimant will testify that she was absent from work during that period for an unrelated wrist surgery.

Therefore, it is the Claimant's contention that the wages paid during those four quarters should be divided by 28 weeks as opposed to 38 weeks with a resulting average weekly wage of \$441.33 and a compensation rate of \$294.22.

Therefore, the Claimant contends that she is totally and permanently disabled and seeks re-computation of her average weekly wage.

**VERMA TEDDER VS. DARLINGTON COUNTY COMMUNITY ACTION AGENCY
WCC FILE NO. 1307702**

APA #	PHYSICIAN/ OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1	Richard T. Ferro, M.D.	McLeod Urgent Care	03/29/13 - 05/02/13	000001 - 000019
APA#2		McLeod Regional Medical Center	03/29/13 - 09/04/13	000020 - 000028
APA#3		Lowe's Therapy	05/13/13 - 10/10/13	000029 - 000057
APA#4		McLeod Occupational Health	05/21/13 - 06/04/13	000058 - 000078
APA#5		Pee Dee Orthopaedic Associates	06/20/13 - 07/03/14	000079 - 000120
APA#6	Barbara A. Wright, M.D.	CareSouth Carolina	10/08/13	000121 - 000123
APA#7		Columbia Rehabilitation Clinic, Inc.	09/12/14	000124 - 000146
APA#8	J. Adger Brown, Jr. MA, CDMS		09/19/14	000147 - 000153
APA#9	Payroll Records from Darlington County Community Action Agency		01/06/12 - 03/29/13	000154 - 000158
APA#10	Time and Attendance Records from Darlington County Community Action Agency		01/09/12 - 03/29/13	000159 - 000180
APA#11	Notice of Award from Social Security Administration		05/05/14	000181 - 000185
APA#12	Notice of Approval of Disability Retirement from South Carolina Retirement Systems		06/06/14	000186

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1307602
Carrier File #: 2013000912
September 24, 2014

NOTICE OF HEARING

VERNA L TEDDER v. DARLINGTON COUNTY COMMUNITY ACTION

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: October 29, 2014 at 11:30 AM

Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Avery B. Wilkerson Jr.
803-737-5697, eboyd@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Elaine Boyd, SC Workers' Compensation, September 24, 2014

Party

Employee: VERNA L TEDDER

Employer: DARLINGTON COUNTY COMMUNITY
ACTION
Carrier: State Accident Fund

Attorney

Steve Wukela, Jr.
steve@wukelalaw.com
843-669-5634

G. Murrell Smith, Jr
murrellsmith@leeandmoise.com
803-778-2471

Lee, Erter, Wilson, Holler & Smith, L.L.C.

Jack W. Erter, Jr.
Harry C. Wilson, Jr.†
David C. Holler*‡
G. Murrell Smith, Jr.

Attorneys at Law

126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151

Robert W. Brown
Of Counsel

*Licensed in SC, NC & GA
†Certified Family Court Mediator
‡Certified Circuit Court Mediator

Telephone: (803) 778-2471
Facsimile: (803) 778-1643

October 22, 2014

Email Address: murrellsmith@leeandmoise.com

VIA EMAIL: eboyd@wcc.sc.gov
Attn: Elaine Boyd
Commissioner Avery B. Wilkerson, Jr.
SC Worker's Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

IN RE: Verma Tedder v. Darlington County Comm. Action Agency
WCC File No.: 1307602
SAF File No.: 2013-00912

Dear Elaine:

In reviewing the Pre-Hearing Briefs, I see that the Claimant's attorney is requesting a Permanent and Total Award. I have discussed this issue with him and he believes that Mrs. Tedder is Permanently and Totally Disabled as a result of this work injury.

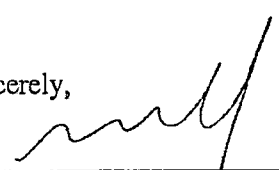
It is my understanding that if the Claimant is requesting an Award of Permanent and Total, then the Commissioner is without Jurisdiction to hear the case unless there is a Mediation. We have not mediated this case.

Therefore, both attorneys would request that this matter be continued until such time as we can Mediate this case. We are going to attempt to Mediate this case in the very near future. I do not know whether Commissioner Wilkerson would like to reschedule this or send it back to general files upon completion of Mediation. If you could please let me know the best route to handle this matter, we will be happy to comply with the same.

If you have any questions, please feel free to contact me.

With kindest regards, I am

Sincerely,



G. MURRELL SMITH, JR.

GM,jr:mln

cc: Steven J. Wukela, Esq. (via email)
Mee Ling Khor-Gould (SAF # 2013-00912)

Stephen J. Wukela

From: Boyd, Elaine <EBoyd@wcc.sc.gov>
Sent: Thursday, October 23, 2014 2:37 PM
To: Mattie Newhouse
Cc: mkgould@saf.sc.gov; stephen@wukelalaw.com
Subject: RE: Tedder v. Darlington County/ SAF # 2013-00912

Okay, I have taken it off the docket for 10/29 and will return the file to the judicial department for the mediation.

-----Original Message-----

From: Mattie Newhouse [<mailto:mnewhouse@leeandmoise.com>]
Sent: Thursday, October 23, 2014 2:34 PM
To: Boyd, Elaine
Cc: mkgould@saf.sc.gov; stephen@wukelalaw.com
Subject: Tedder v. Darlington County/ SAF # 2013-00912

Please see attached correspondence.

Mattie L. Newhouse, Paralegal to
G. Murrell Smith, Jr.
Lee, Erter, Wilson, Holler & Smith, LLC
Attorneys at Law
126 N. Main Street
PO Box 580
Sumter, SC 29150/29151
803-778-2471
803-778-1643 (fax)

Your message is ready to be sent with the following file or link attachments:

tedder-2

Jeannie Bailey

From: Bill Smith <bsmith@csa-law.com>
Sent: Monday, February 23, 2015 1:17 PM
To: mediation@wcc.sc.gov
Cc: 'jbailey@wukelalaw.com'; Murrell Smith (murrell@leeandmoise.com); Chris Black
Subject: Verma Tedder v Darlington County Community Action WCC 107702
Attachments: doc08289920150223131157.pdf

Folks,

Attached please find the form 70. The case did not settle.

William L. Smith II
Chappell, Smith & Arden
Post Office Box 12330
Columbia, SC 29211
803-509-5839
FAX 803-929-3604

This electronic message may contain confidential or privileged information and is intended for the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify the sender immediately by using the e-mail address of the sender or by telephone at 800-531-9780.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675 www.wcc.sc.gov



WCC File #: 1307702
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Verma Tedder SSN: _____ Employer's Name: Darlington County Community Action
Address: _____ Address: _____
City: _____ State: SC Zip: _____ City: _____ State: SC Zip: _____
Home Phone: (803) _____ Work Phone: () _____ Insurance Carrier: State Accident Fund

Claimant's Attorney: Stephen J. Wukela Employer Carrier Attorney: G. Murrell Smith
Phone: (843) 669-5634 email: jbailey@wukelalaw.com Phone: (803) 778-2471 email: murrellsmith@leeannoise.com

William L. Smith II Mediator bsmith@csa-law.com 6/09/14
Preparer's Signature Title Email Date

Pursuant to Reg. 67-1803 A. and 67-1809, the undersigned duly qualified Mediator reports the following results of the mediation held on 2/23/15:

The following issues mediated and are settled or contested as indicated below:

ISSUE	SETTLED	CONTESTED
-------	---------	-----------

Case did not settle. Please set for hearing.

Per agreement of the Parties the matter is to be:

- ☐ Rescheduled pursuant to Reg. 67-1804 C. on _____
☒ Set for hearing to determine all issues.
☐ Set for hearing to determine remaining issues pursuant to the Forms 58.
☐ Returned to General Files pending request for hearing from either Party.

The Claimant Defendants shall submit the Final Agreement & Release, Consent Order, Form 16A, or other appropriate documentation regarding the agreement to the Commission.

The costs of the mediation is : \$ 300.00

The cost was shared equally by the Parties. **Yes**

The total cost was paid by the ☐ Claimant ☐ Defense.

The cost was paid pursuant to an Order of the Commission pursuant to Reg. 67-1807.

Mediator: William L. Smith II Address: PO Box 12330, Columbia, SC Phone: 803-929-3600 Email: bsmith@csa-law.com

This report is to be returned to the Commission in all cases, whatever the mediation results. This form is used solely for tracking purposes and does not become a part of the Commission file.

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or mediation@wcc.sc.gov. Refer to Regulation 67-1801.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1307602
Carrier File #: 2013000912
March 5, 2015

NOTICE OF HEARING

VERNA L TEDDER v. DARLINGTON COUNTY COMMUNITY ACTION

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: May 5, 2015 at 01:00 PM

Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Aisha Taylor
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, March 5, 2015

Party

Employee: VERNAL TEDDER

Employer: DARLINGTON COUNTY COMMUNITY
ACTION
Carrier: State Accident Fund

Attorney

Steve Wukela, Jr.
steve@wukelalaw.com
843-669-5634

G. Murrell Smith, Jr
murrellsmith@leeandmoise.com
803-778-2471

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard
Jason B. Turnblad
E. Katherine Moore

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

April 17, 2015

Honorable Aisha Taylor
Commissioner
SC Workers' Compensation Commission
PO Box 1715
Columbia SC 29202-1715

Re: WCC File No. 1301802
Verma Tedder vs. Darlington County Community Action Agency

Dear Commissioner Taylor:

Enclosed please find the Pre-Hearing Brief on behalf of the Claimant in the above-entitled matter. I am, by copy of this letter, forwarding a copy to the attorney for the Defendants.

Also, enclosed is a Notice of Submission on behalf of the Claimant in support of our position at the hearing. This document includes a list of any witnesses who may be called and is submitted pursuant to the provisions of the South Carolina Administrative Procedures Act. Copies of medical reports referenced in the Notice of Submission will be presented to you at the hearing. I am also, by copy of this letter to the Defendants' attorney, notifying him of this filing and serving a copy of the notice upon him.

With kind regards, I am,

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb

Enclosures

cc: G. Murrell Smith, Jr., Esquire



Claimant's Name: Verma Tedder Employer's Name: Darlington County Community Action Agency
Address: 130 Lumber Road Address: 904 South Fourth Street
City: Society Hill State: SC Zip: 29593 City: Hartsville State: SC Zip: 29550
Home Phone: () - Work Phone: () - Carrier: State Accident Fund
Preparer's Name: Stephen J. Wukela Preparer's Phone #: (843) 669-5634

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$294.21 2. AWW: \$441.32 ^{325.10} Date of Injury: March 29, 2013
3. Type of injury and body part(s): Left leg and back
4. Facts in controversy: See attached. *(Pharm / med / injury - resolved)*
5. Legal issues involved: See attached.
6. Unusual aspects: None.
7. Witnesses (designate if expert):* Verma Tedder, Claimant
8. Exhibits: See attached.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached.
10. Name, address, and specialty, if any, of the treating physician: Richard T. Ferro, M.D., McLeod Urgent Care; Peter Hyman, M.D., McLeod Occupational Health; Robert E. Elvington, Jr, M.D. and W.S. Edwards, Jr., M.D., Pee Dee Orthopaedic Associates; Lowe's Therapy; Barbara A. Wright, M.D., CareSouth Carolina; Columbia Rehabilitation Clinic, Inc; J. Adger Brown, Jr., MA, CDMS
11. Impairment rating(s); body part(s); physician and date of opinion: 3% to the left knee (APA No. 5, p. 113); 5% to the spine (APA No. 5, p. 111)
12. I am amending my Form 50/51 in the following manner: no amendment to Form 50

☐ **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 G. Murrell Smith, Jr., Esquire, Lee, Erter, Wilson, Holler & Smith, LLC, Post Office Box 580, Sumter, SC 29152 on the 17 April 2015 day of April 2015 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature] Email: stephen@wukelalaw.com
Date of hearing: May 5, 2015 Time needed for hearing: 30 minutes

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.

Verma Tedder vs. Darlington County Community Action Agency
WCC File No. 1307602

This is an admitted accident before the Commission on the Defendants' Form 21 Request to Stop Payment. The Claimant, an employee of the Darlington County Community Action Agency, was injured on March 29, 2013 when while supervising children on the way to the playground, one of the children caused the Claimant to fall to the ground on her left side.

The Claimant suffered admitted injuries to her left leg and back. The Claimant initially saw McLeod Urgent Care and underwent a course of physical therapy and ultimately saw McLeod Occupational Health from which she was referred to Pee Dee Orthopaedic.

She was initially seen at Pee Dee Orthopaedic by Dr. Robert Elvington, who diagnosed a medial meniscus tear of the left knee and ultimately performed left knee arthroscopy and partial medial meniscectomy on September 4, 2013.

The Claimant began receiving temporary total disability benefits on August 29, 2013 in anticipation of her surgery and has received them since that date.

After the surgery, on September 12, 2013, Dr. Elvington gave the Claimant restrictions of no lifting or carrying over 10 pounds, no prolonged standing, walking, climbing, stooping, or crawling. (APA No. 5, p. 92). He reiterated those restrictions on October 24, 2013 (APA No. 5, p. 97) and again on December 5, 2013 (APA No. 5, p. 99), when he released her at maximum medical improvement for her left knee and gave her a permanent physical impairment rating of 3% to the left knee. (APA No. 5, p. 113).

The Claimant was also seen at Pee Dee Orthopaedic with regard to her low back pain. The back injury was initially denied by the carrier, however, they subsequently agreed for her to see Dr. Bill Edwards, who after an MRI of April 4, 2014, concluded:

"Though she has diffuse degenerative changes that were exacerbated by her work injury of last year, she was reassured that there is no evidence of any need for surgical intervention or serious pathology." (APA No. 5, p. 110).

Thereafter, he released her with a 5% impairment to her spine on July 3, 2014. (APA No. 5, p. 111).

A functional capacity evaluation was performed on September 12, 2014 which revealed that the Claimant had limitations of lifting no more than three pounds floor to waist, eight pounds 12 inch to waist, ten pounds waist to shoulder and that she was limited to limited sedentary to limited light work. (APA No. 7, p. 126).

A vocational evaluation was performed by J. Adger Brown on September 19, 2014 which revealed that the Claimant was a fifty-three year old female with an Associate of Arts degree in

Verma Tedder vs. Darlington County Community Action Agency
WCC File No. 1307602

early childhood education from Florence-Darlington Technical College, had been working as a teacher's assistant with the Darlington Community Action Agency since 1997, along with work as a dietary aide at Bethea Nursing Home where she performed on an evening shift following her duties with the Community Action Agency. (APA No. 8, p. 151).

Mr. Brown noted that the Claimant had been awarded state disability retirement, which has as its basic standard the inability to return to former employment, and that she also has applied for and is receiving social security disability benefits because of her inability to physically perform the work that exists in a regional or national economy within her age, education, work experience, and physical limitations. Mr. Brown, therefore, reached the conclusion that the Claimant is totally disabled. (APA No. 8, p. 152).

The parties also have a dispute as to the Claimant's weekly wage. Defendants' Form 20 indicates that the Claimant earned \$12,357.36 in the four quarters prior to the accident. When dividing that amount over the number of weeks paid to the employee during the four quarters preceding the accident, which was 38 weeks according to the Defendants' Form 20, they produce an average weekly wage of \$325.19.

However, the Employer's time and attendance records, (APA No. 10), indicate that the Claimant was out of work for an additional period of approximately ten weeks between November 19, 2012 and February 3, 2013, during the 52 weeks prior to the accident. The Claimant will testify that she was absent from work during that period for an unrelated wrist surgery.

Therefore, it is the Claimant's contention that the wages paid during those four quarters should be divided by 28 weeks as opposed to 38 weeks with a resulting average weekly wage of \$441.32 and a compensation rate of \$294.21.

Therefore, the Claimant contends that she is totally and permanently disabled and seeks re-computation of her average weekly wage.

**VERMA TEDDER VS. DARLINGTON COUNTY COMMUNITY ACTION AGENCY
WCC FILE NO. 1307602**

APA #	PHYSICIAN/ OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1	Richard T. Ferro, M.D.	McLeod Urgent Care	03/29/13 - 05/02/13	000001 - 000019
APA#2		McLeod Regional Medical Center	03/29/13 - 09/04/13	000020 - 000028
APA#3		Lowe's Therapy	05/13/13 - 10/10/13	000029 -
APA#4		McLeod Occupational Health	05/21/13 - 06/04/13	000058 - 000078
APA#5		Pee Dee Orthopaedic Associates	06/20/13 - 07/03/14	000079 - 000120
APA#6	Barbara A. Wright, M.D.	CareSouth Carolina	10/08/13	000121 - 000123
APA#7		Columbia Rehabilitation Clinic, Inc.	09/12/14	000124 - 000146
APA#8	J. Adger Brown, Jr. MA, CDMS		09/19/14	000147 - 000153
APA#9	Payroll Records from Darlington County Community Action Agency		01/06/12 - 03/29/13	000154 - 000158
APA#10	Time and Attendance Records from Darlington County Community Action Agency		01/09/12 - 03/29/13	000159 - 000180
APA#11	Notice of Award from Social Security Administration		05/05/14	000181 - 000185
APA#12	Notice of Approval of Disability Retirement from South Carolina Retirement Systems		06/06/14	000186