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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
Gene McCaskill, Commissioner

Appellate Case No. 2016-002294

Timothy McDuffie, Employee, Claimant, Respondent,

v.

Johnson Food Services, LLC, Employer, and Great American Alliance Insurance Co./Strategic
Comp., Carrier, Appellants.

RECORD ON APPEAL

Volume I

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1413546

TIMOTHY A. MCDUFFIE, EMPLOYEE, CLAIMANT,

VERSUS

JOHNSON FOOD SERVICES, LLC, EMPLOYER,

AND

GREAT AMERICAN ALLIANCE INSURANCE CO./STRATEGIC COMP., CARRIER,
DEFENDANTS.

HEARING: Held on October 29, 2015 in Columbia,
South Carolina.

APPEARANCES: Claimant represented by Andrew N.
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Defendants represented by E. Ros Huff,
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PURPOSE OF HEARING: To determine issues outlined in Forms 50
and 51, as well as other relief the
Commission determines to be just/proper,
including whether: (a) Mr. McDuffie's
compensable accident has produced both
back and left leg (knee) injury
components; (b) he requires further
treatment for each of these injury
components; (c) maximum medical
improvement has been attained relative
to either injury component; and (d) he
is entitled to any period of temporary
total disability compensation.

DECISION AND ORDER BY: The Honorable Aisha G. Taylor,
Commissioner.

FILED: May 16, 2016

STATEMENT OF THE CASE

On September 19, 2014, Claimant, Timothy A. McDuffie, sustained a compensable accident while performing his job duties for Defendant, Johnson Food Services, LLC, in Richland County, South Carolina. As this Employer and its Carrier, Great American Alliance Insurance Company, acknowledged the compensability of a back injury component, they subsequently authorized Mr. McDuffie's receipt of certain medical treatment through several providers, primarily Drs. Michael W. Peelle of Moore Orthopaedics and Stewart Young of First Care.

By Form 21 dated May 8, 2015, Defendants sought assessment of Mr. McDuffie's degree of residual disability based upon their contention he had reached maximum medical improvement effective December 31, 2014. In response, Mr. McDuffie, per Form 50 dated June 12, 2015, maintained: (a) the consequences of his compensable accident had created both back and left leg injury components; (b) he required further treatment for each of these injury components in accordance with the recommendations of Drs. Christopher G. Mazoue, John F. Johnson, Ezra B. Riber and Nancy R. Lembo, to the extent he had not reached the point of maximum medical improvement; (c) as Defendants had declined to provide this medical care, the current circumstances warranted Commission designation of appropriate treating physicians; and (d) the issue relative to his degree of residual permanent disability was consequently not ripe for determination. This Form 50 prompted

Defendants' filing of a July 10, 2015 Form 51 through which Defendants again denied Mr. McDuffie's need for further medical care.

A hearing relative to Defendants' Form 21 was initially scheduled for July 29, 2015, but postponed in order to allow Defendants to pursue further discovery. When additional time was required to engage in this discovery, Defendants withdrew their Form 21, resulting in the cancellation of an August 31, 2015 hearing.

Although this claim was reset for hearing on October 29, 2015 in Columbia, South Carolina to address the grounds identified by Forms 50 and 51, counsel for Defendants requested postponement of this hearing for the purpose of engaging in additional cross-examination of Dr. Lembo relative to a report generated in conjunction with her October 13, 2015 reexamination of Mr. McDuffie. While Mr. McDuffie's counsel primarily argued the content of the subsequent report was completely consistent with this physician's previously stated opinions, to the extent no further discovery was either justified or necessary, he alternatively agreed to exclude the October 13, 2015 report from evidence, so as to obviate the need for redeposing Dr. Lembo.

In response to this remedial offer of compromise, defense counsel: (a) again prayed for continuance of the hearing pending receipt of his client's consent to this proposed resolution; and (b) argued that, notwithstanding Mr. McDuffie's counsel's offer

to exclude the contested report, this evidence could not be omitted from the record, absent his consent, per S.C. Code Ann. Regs. 67-612 (D) (2012).

By way of reply, Mr. McDuffie's counsel explained: (a) defense counsel's argument, though technically accurate, was clearly inconsistent with the rationale underlying this portion of Reg. 67-612 (i.e., preventing exclusion of evidence based upon reliance of one party on another's listed evidentiary submissions); (b) his client was missing work due to Defendants' refusal to honor physical limitations outlined by nonauthorized physicians (whose opinions as to causally related medical needs constituted the basis for his seeking further treatment); and (c) while he had no objection to allowing defense counsel leave to obtain his clients' consent to the evidentiary exclusion, the current circumstances warranted conducting the scheduled hearing, including the receipt of Mr. McDuffie's testimony (See, Hearing Transcript, pp. 10 - 14). In this regard, defense counsel acknowledged his awareness of Mr. McDuffie's out-of-work status due to medical restrictions, stating: (a) "I want to sit down and talk to the employer, see if we can put him back to work, because the guy did work for a period of time"; and (b) "I would like to accommodate him." (See, Hearing Transcript, p. 15).

After considering counsels' respective arguments, the undersigned concluded the most reasonable/appropriate course of action entailed: (a) proceeding with the hearing on October 29,

2015; and (b) affording Defendants the opportunity to obtain additional deposition testimony from Dr. Lembo (which they ultimately advised was unnecessary given their post-hearing consent to exclusion of her October 13, 2015 report).

During the course of this hearing, the undersigned received testimony from Mr. McDuffie. Defendants elected to rely upon the medical evidence submitted by the respective parties pursuant to the Administrative Procedures Act, including multiple medical depositions, and offered no witnesses.

STIPULATIONS

At the commencement of the hearing, counsel for the respective parties stipulated:

1. The purpose of the hearing was to determine the issues falling within the purview of Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon the parties of interest.
3. Venue, set in Richland County, was proper per S.C. Code Ann. Section 42-17-20 (1976).
4. Determination of Mr. McDuffie's average weekly wage/compensation rate shall be held in abeyance per agreement of the parties.

MEDICAL EVIDENCE/APA SUBMISSIONS

The following documents were submitted into evidence pursuant to the Administrative Procedures Act, without objection, by the respective parties:

<u>Exhibit No.</u>	<u>Description</u>	<u>Page Nos.</u>
APA 1:	September 23, 2014 Statement of Mr. Ernest Roberts	1
APA 2:	June 10, 2015 - July 13, 2015 reports/responses of Dr. Christopher G. Mazoue of the University of South Carolina School of Medicine's Department of Orthopaedic Surgery	2 - 7
APA 3:	January 12, 2015 - October 12, 2015 reports/responses of Dr. Ezra B. Riber of Palmetto Pain Management, LLC	8 - 15
APA 4:	June 11, 2015 - July 20, 2015 reports/responses of Dr. John F. Johnson of Southeastern Spine Institute	16 - 19
APA 5:	July 9, 2015 - July 15, 2015 reports/responses of Dr. Nancy R. Lembo of Carolina Spine & Sport Rehabilitation Specialists, P.A.	20 - 23
APA 6:	December 17, 2014 - December 31, 2014 reports of Dr. Michael W. Peelle of Moore Orthopaedics	24 - 27
APA 7:	September 20, 2014 report from Medcare Urgent Care Center	28 - 31
APA 8:	September 20, 2014 reports from Palmetto Health Baptist	32 - 52
APA 9:	September 24, 2014 - November 28, 2014 reports of Dr. Stewart Young of First Care	53 - 67
APA 10:	December 19, 2014 report from InMed Diagnostic Services	68
APA 11:	November 5, 2014 - November 24, 2014 reports from Carolina Physical Therapy	69 - 74

APA 12:	September 24, 2014 - December 31, 2014 reports obtained from Moore Orthopaedics (including September 24, 2014 and November 28, 2014 reports of Dr. Stewart Young, as well as December 17, 2014 - December 31, 2014 reports of Dr. Michael W. Peelle and other forms completed and/or generated in connection with evaluation on these dates)	75 - 100
APA 13:	September 24, 2014 - November 28, 2014 reports/notes from Dr. Stewart Young and First Care	101 - 115
APA 14:	September 23, 2014 records from Palmetto Health Baptist	116 - 119
APA 15:	September 23/24, 2014 report of Dr. Jose Luis Plaza of Palmetto Health Baptist	120 - 121
APA 16:	September 20, 2014 reports/notes from Medicare	122 - 127

Additionally, Defendants submitted the following deposition transcripts: (a) Nancy R. Lembo, DO (September 10, 2015; 62 pgs. including exhibit); (b) Christopher G. Mazoue, M.D. (October 19, 2015; 40 pgs.); (c) John F. Johnson, M.D. (October 22, 2015; 27 pgs.); and (d) Ezra B. Riber, M.D. (October 26, 2015; 74 pgs. including exhibit).

FINDINGS OF FACT

Based upon the testimony of Mr. McDuffie, my review of the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, consideration of the deposition testimony and inspection of the Commission file relative to this claim, I FIND AS FACTS:

1. On September 19, 2014, Mr. McDuffie sustained compensable injuries to his back and left leg when he tripped over an exposed pipe at the Johnson Food Services, LLC facility located at Fort Jackson military base in Richland County, South Carolina. Specifically, he: (a) tripped when his left foot came in contact with the exposed pipe; (b) fell forward prior to catching himself before hitting the ground; (c) perceived a pop while attempting to maneuver his left leg away from the pipe; and (d) soon developed pain involving his back and left leg.

2. At the time he sustained these compensable injuries, Mr. McDuffie was performing duties arising out of and within the course and scope of his employment with Johnson Food Services, LLC, where he has worked for approximately two years.

3. Shortly after sustaining this injury, Mr. McDuffie was directed by his Employer to Medcare Urgent Care Center (September 20, 2014), where he: (a) reported the presence of back and left leg pain following this trauma; (b) exhibited a "[p]ostive . . . [left] leg raised test" response; and (c) received a prescription for Naprosyn in conjunction with instruction to apply warm compresses to his back.

4. When his pain persisted, Mr. McDuffie sought further examination through the Palmetto Health Baptist Emergency Room (September 23, 2014), where he: (a) apprised the attending physician of his injury mechanism ("tripping . . . and catching himself on his left lower extremity but jarring his left lower

back buttock area . . . [with resulting] pain down his left lower extremity"); (b) indicated the previously prescribed Naprosyn had "not been helping much"; (c) displayed "some palpable reproducible tenderness at the left sciatic notch . . . with a positive left legged straight leg raise" test response; and (d) received an additional prescription (Flexeril).

5. On the following day, Mr. McDuffie was examined, per Defendants' directive, by Dr. Stewart Young of First Care, who: (a) noted the presence of "mild medial left knee pain, some left thigh muscular pain and some low back pain"; (b) was similarly apprised of pain with standing/weightbearing on the left leg; (c) performed a physical examination which revealed "pain in the left thigh musculature with weightbearing/walking", "tenderness over the MCL area" and lumbar paraspinous tenderness/spasm; and (d) placed him on sedentary duty work status.

6. Inspection of Dr. Young's September 29, 2014 and October 13, 2014 treatment notes further confirms: (a) persistent reports of both left knee and back pain; (b) the presence of both left leg and low back symptoms on clinical examination; and (c) this physician's attempt to treat these symptoms with physical therapy.

7. Upon reexamining Mr. McDuffie following several physical therapy sessions (November 28, 2014), Dr. Young: (a) noted this therapy had not only proved ineffective, but also "made his left knee worse"; (b) observed the "left lumbar

paraspinous musculature [was] . . . tense and tender to palpation", "pain . . . [and tenderness] in the medial anterior knee just lateral to the patella" and "tense"/"tender" left thigh musculature; and (c) restricted him to sedentary work duties, while recommending orthopaedic evaluation for "[p]ersistent low back, left thigh, and left knee pain"

8. Approximately two weeks following this referral (December 17, 2014), Defendants directed Mr. McDuffie for evaluation by Dr. Michael W. Peelle of Moore Orthopaedics, who: (a) noted the September 19, 2014 tripping injury, as well as resulting pain involving his back, left buttock, left thigh and left leg; (b) observed limited lumbar flexion "with reproduction of buttock and hamstring pain on the left side", "a positive straight leg raise test in the seated position", "spinous process tenderness" and a "[n]egative Waddell sign"; (c) did not reference any focused examination of the left knee; (d) offered a diagnosis of left lower extremity radiculopathy, for which he felt an MRI scan was warranted; and (e) restricted his work activities ("[n]o bending or stooping"; 20 lb. lifting/carrying limitation).

9. Although Mr. McDuffie remained symptomatic, at the time of a December 31, 2014 follow-up visit, Dr. Peelle: (a) indicated the lumbar MRI scan did not reveal any disc pathology; (b) offered no additional treatment; and (c) discharged him to resume full duty work activities effective January 5, 2015.

10. At that juncture, Mr. McDuffie sought further evaluation (January 12, 2015) from Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was apprised of persistent low back pain radiating into the left buttock, as well as left knee pain; (b) observed the low back pain was "most closely reproduced with returning upright . . . [from forward flexion] and with extension of less than 10°"; (c) confirmed he displayed left knee pain, particularly with flexion, experienced "some low back and gluteal discomfort on the left" in response to straight leg raise testing and had difficulty standing on his heels/toes; (d) determined the lumbar symptoms were the product of a post-traumatic facet syndrome, for which he identified a facet treatment algorithm that included medial branch blocks; and (e) also recommended performance of an intra-articular left knee injection.

11. On June 9, 2015, Mr. McDuffie was evaluated by Dr. Nancy R. Lembo of Carolina Spine & Sport Rehabilitation Specialists, P.A., who: (a) noted he continued to experience left sided low back pain radiating "into the posterior left side to his knee" following the September, 2014 tripping injury; (b) found that he displayed "left sided lumbar paraspinal hypertrophy and pain with lumbar extension"; (c) characterized his symptoms to be consistent with lumbar facet and myofascial pain; (d) recommended proceeding with a "lumbar facet joint injection vs. medial branch block to indentify [the] . . . pain generator"; (e)

indicated this treatment course was "consistent with" his physical examination and imaging findings; and (f) also felt resumption of Naprosyn and a trial of Robaxin, in conjunction with a 30 lb. lifting limitation, were appropriate.

12. Mr. McDuffie then (June 10, 2015) underwent focused examination of his left knee by Dr. Christopher G. Mazoue of the University of South Carolina School of Medicine's Department of Orthopaedics Surgery, who: (a) was apprised of the September 19, 2014 mechanism of injury, as well as the nature of his left knee pain; (b) elicited both medial joint line tenderness and a very positive medial McMurray's test response on clinical examination; (c) expressed "concern . . . about a medial meniscus tear of his left knee"; and (d) recommended obtaining an MRI of the left knee.

13. Additionally, through questionnaire responses dated July 13, 2015, Dr. Mazoue confirmed: (a) "the mechanism of injury which Mr. McDuffie described (tripping over a pipe with his left leg followed by jarring while attempting to maintain his balance and avoid falling to the floor) was sufficient to create not only Mr. McDuffie's documented left leg symptoms, but also left medial meniscal pathology"; (b) the "documented left leg symptoms, including references to pain in the area of his left knee, are most probably consistent with this September 19, 2014 mechanism of injury"; (c) "[g]iven Mr. McDuffie's mechanism of injury, as well as his documented symptoms of both radicular left leg pain

and left medial knee pain . . . at least a portion of his current left leg symptoms most probably result from a left knee injury component"; (d) "the left knee symptoms and clinical abnormalities identified in [his] June 10, 2015 report most probably result from the consequences of Mr. McDuffie's September 19, 2014 compensable accident"; and (e) "the treatment modalities . . . [he had] recommended, including an MRI scan and reevaluation to assess treatment options, are reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by Mr. McDuffie's September 19, 2014 compensable accident"

14. During the course of an October 19, 2015 deposition, Dr. Mazoue verified/explained: (a) Mr. McDuffie exhibited "a moderate level of discomfort to palpation" of the medial joint line on examination (See, Dr. Mazoue Deposition, p. 11); (b) his McMurray's test response was "significantly positive" (See, Dr. Mazoue Deposition, p. 13); (c) both the medial joint line tenderness and McMurray's test response have "an objective and subjective portion" (See, Dr. Mazoue Deposition, p. 12); (d) Mr. McDuffie's mechanism of injury "was very consistent with the development of a meniscus tear, and his physical exam was highly consistent with a meniscus tear" (See, Dr. Mazoue Deposition, p. 18); and (e) this "high likelihood of meniscus tear" had prompted his recommendation for an MRI scan (Id.).

15. This orthopaedic surgeon further confirmed: (a) the information contained on Mr. Ernest Roberts' September 23, 2014 statement (Claimant's APA, p. 1) generally coincided with his understanding as to Mr. McDuffie's mechanism of injury (See, Dr. Mazoue Deposition, p. 21); (b) it was not uncommon for leg pain associated with an injury of type to have multiple sources (See, Dr. Mazoue Deposition, p. 22); (c) a meniscal tear does not preclude one from exhibiting a relatively normal range of motion (See, Dr. Mazoue Deposition, p. 24); (d) the results of prior examinations during Mr. McDuffie's post-injury course of treatment, including Dr. Young's findings, were consistent with the results of his clinical examination (See, Dr. Mazoue Deposition, pp. 23 - 27); (e) the McMurray's test is a recognized standard for assessing the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, pp. 30 - 31); and (f) Mr. McDuffie's response to this clinical test constituted a "highly significant" finding, which he believed to be a reliable indication of meniscal pathology (See, Dr. Mazoue Deposition, pp. 31 - 33).

16. Additionally, Dr. Mazoue testified: (a) Mr. McDuffie's development of increased pain while sitting was consistent with a medial meniscal tear (See, Dr. Mazoue Deposition, p. 35); (b) the absence of a noticeable limp (which he agreed was "variable as it relates to the level of dysfunction at a given moment") did not preclude the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, p. 36); (c) in view of Mr. McDuffie's mechanism of

injury, well-documented post-injury left medial knee pain and significant clinical findings, his symptoms have "an objective pathological basis" (See, Dr. Mazoue Deposition, pp. 30 & 37); and (d) to a reasonable degree of medical certainty, this pathology is likely a medial meniscus tear that most probably results from the September 19, 2014 compensable accident (Id.).

17. On June 11, 2015, Mr. McDuffie was evaluated by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) obtained a history of injury consistent with previous examiners; (b) noted the presence of persistent "low back and buttock pain on the left that radiates down the left lower extremity to just below the popliteal fossa"; (c) identified "tenderness to palpation in the left lower lumbar region", "decreased . . . [r]ange of motion . . . particularly with full extension secondary to pain", "worsening pain [with] . . . leg extension" and a positive straight leg raise test response on the left; (d) indicated these symptoms were "a result of the 09-19-14 accident and very likely reflective of posttraumatic facet syndrome", for which he had not reached maximum medical improvement; and (e) recommended "focused treatment that could include medial branch blocks which would be diagnostic as well as therapeutic."

18. In this regard, pursuant to questionnaire responses dated July 20, 2015, Dr. Johnson verified, to a reasonable degree of medical certainty, that: (a) "the posttraumatic lumbar facet syndrome . . . [he had] diagnosed proximately results from Mr.

McDuffie's September 19, 2014 compensable accident"; (b) "without treatment, Mr. McDuffie's causally related lumbar symptoms will most probably remain problematic and materially/negatively impact upon his ability to sustain work activities"; (c) "the course of treatment . . . [he had] recommended for Mr. McDuffie's lumbar injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014 compensable accident"; and (d) treatment of the left knee injury component was "likewise reasonable, medically necessary and geared toward lessening [this] . . . ultimate period of disability"

19. When questioned as to the nature/source of Mr. McDuffie's lumbar symptoms, Dr. Johnson confirmed/reiterated: (a) his routine treatment of facetogenic pain, as well as the diagnosis of posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 13 - 14); (b) facetogenic pain, particularly if traumatic, does not lend itself to accurate diagnosis through MRI scanning (Id.); (c) the diminished lumbar extension referenced by several examiners, as well as the slightly flexed posture of the spine he observed during this clinical examination, were reflective of facetogenic pain (See, Dr. Johnson Deposition, pp. 12 - 13, 21); (d) both the left buttock/thigh pain and positive straight leg raise responses he (and several other examiners) observed were likewise consistent with posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 15 - 16); and (e) Mr.

McDuffie's mechanism of injury was likewise consistent with the production of posttraumatic facetogenic pain (See, Dr. Johnson Deposition, pp. 14 - 15).

20. Dr. Johnson further explained: (a) Mr. McDuffie's clinical presentation was valid and the product of a genuine effort (See, Dr. Johnson Deposition, pp. 17 - 18); (b) the presence of 5/5 muscle strength was not only anticipated, but also "in no way inconsistent with [his] . . . diagnosis of post-traumatic facet syndrome" (See, Dr. Johnson Deposition, p. 18); (c) given the fact Mr. McDuffie's posttraumatic facet syndrome and left knee pathology had received no focused treatment, the progressive worsening of lumbar symptoms recently documented by Dr. Riber was an expected consequence of his accident (See, Dr. Johnson Deposition, pp. 18 - 20); (d) failure to treat his left knee injury component has "[a]bsolutely" fueled "the continued presence of the facet syndrome and likely prolong[ed] . . . it" (See, Dr. Johnson Deposition, p. 20); and (e) Mr. McDuffie requires treatment of the left knee in tandem with focused care of his posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 19 - 20, 23-24).

21. Additionally, Dr. Johnson verified: (a) as Mr. McDuffie was attempting to remain employed through performance of regular duty work activities, he did not discourage this effort (See, Dr. Johnson Deposition, pp. 21 - 22); (b) he had developed "trust" in Dr. Riber's opinions through their professional experience ("I

think he does a fine job") (See, Dr. Johnson Deposition, pp. 20 - 21); (c) his agreement with the work restrictions imposed by Dr. Riber (Id.); (d) the validity of Mr. McDuffie's description of his persistent lumbar symptoms (See, Dr. Johnson Deposition, p. 25); and (e) his adherence to the opinions expressed in his July 20, 2015 questionnaire responses (See, Dr. Johnson Deposition, pp. 22 - 23).

22. Pursuant to questionnaire responses dated July 20, 2015, Drs. Riber and Lembo likewise: (a) attributed Mr. McDuffie's lumbar symptoms to the consequences of his compensable accident; (b) verified "failure to treat this lumbar injury component would materially/negatively impact upon . . . [Mr. McDuffie's] ability to sustain work activities"; (c) his need for focused treatment of not only these lumbar symptoms, but also the left knee injury component (which they verified to be "reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014 compensable accident"); and (d) offered each of these opinions to a reasonable degree of medical certainty.

23. Inspection of Dr. Lembo's September 10, 2015 deposition testimony confirms: (a) Mr. McDuffie's reported symptoms were consistent with his described mechanism of injury and her clinical findings (See, Dr. Lembo Deposition, p. 13); (b) he exhibited both objective evidence of muscle spasm and pain with lumbar extension, which she indicated were consistent with an

injury caused by his compensable accident (See, Dr. Lembo Deposition, pp. 20, 22, 44 - 45 and 52); (c) the presence of painful extension was a "significant" factor in her diagnosis, as this finding is "consistent with a facet pain generator" (See, Dr. Lembo Deposition, p. 44); (d) facetogenic pain, which she "commonly . . . see[s] in [her] . . . practice" is not diagnosed through MRI scanning (See, Dr. Lembo Deposition, p. 43); and (e) she reaffirmed her July 20, 2015 opinion that Mr. McDuffie's posttraumatic lumbar facet syndrome proximately results from his September 19, 2014 compensable accident (See, Dr. Lembo Deposition, p. 49).

24. Additionally, after being apprised of Mr. McDuffie's persistent lumbar symptoms and associated functional difficulties, Dr. Lembo verified: (a) his causally related pain was interfering with daily activities (See, Dr. Lembo Deposition, p. 49); (b) her prior questionnaire response relative to the likelihood his "causally related lumbar symptoms . . . remain[ing] problematic and materially/negatively impact[ing] . . . upon his ability to sustain work activities" remained accurate (See, Dr. Lembo Deposition, p. 50); (c) these symptoms were "most likely not going to . . . improve . . . absent treatment" (See, Dr. Lembo Deposition, pp. 50 - 51); (d) his receipt of any accommodations in connection with his employment was not consistent with unrestricted work activity (See, Dr. Lembo Deposition, p. 55); and (e) Mr. McDuffie's causally related

symptoms warranted imposition of a 30 pound lifting restriction (See, Dr. Lembo Deposition, pp. 24, 35 and 54).

25. On October 12, 2015, Mr. McDuffie was reexamined by Dr. Riber, who: (a) noted "his pain and dysfunction had become progressively worse"; (b) again observed "his pain is more closely reproduced with returning upright . . . [from forward flexion] and extension most closely reproduces his pain"; (c) similarly detected "low back, gluteal and hamstring discomfort" in response to straight leg raise testing; (d) perceived slight gait disturbance; (e) reiterated his prior diagnosis of a posttraumatic lumbar facet syndrome, as well as the need for medial branch blocks; and (f) imposed several work restrictions, including "no twisting, stooping or bending and no lifting greater than 10 pounds."

26. During the course of his October 26, 2015 deposition, Dr. Riber explained: (a) Mr. McDuffie displayed no "pain behavior", which he characterized as an "over-dramatic", "unbelievable" or suspicious presentation (See, Dr. Riber Deposition, pp. 17 - 18, 20 and 45); (b) he observed no evidence of symptom magnification and had "no reason to doubt . . . the physiological legitimacy of any pain . . . [Mr. McDuffie] report" (See, Dr. Riber Deposition, pp. 46 and 48); (c) he had previously treated posttraumatic facet syndromes on "hundreds" of occasions prior to examining Mr. McDuffie (estimating "at least" 20% of the backs he sees involve a facet syndrome) (See, Dr. Riber

Deposition, pp. 49 and 59); (d) he would not rely upon an MRI scan to diagnosis a facet syndrome, as "[y]ou can have a perfectly normal MRI and have a very clear-cut facet syndrome" (See, Dr. Riber Deposition, pp. 49 - 50); (e) diagnosis of this condition is instead "based on the mechanism of injury, which is part of the history, the complaints and then the exam" (See, Dr. Riber Deposition, p. 49); and (f) facetogenic pain can include "some nerve involvement" that produces leg pain (See, Dr. Riber Deposition, pp. 50 - 51).

27. Dr. Riber further verified: (a) lumbar extension "loads the facet joints", to the extent that when an individual "either return[s] . . . upright or extend[s], . . . a facet joint issue . . . [will] declare itself" (See, Dr. Riber Deposition, p. 55); (b) his clinical observation of pain with lumbar extension was consistent with the relevant clinical findings identified in Dr. Lembo's June 9, 2015 report, as well as Dr. Johnson's June 11, 2015 report (See, Dr. Riber Deposition, pp. 55 - 56); (c) Mr. McDuffie's positive straight leg raise response was also consistent with the diagnosis of posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 51 - 52); (d) his updated (October 12, 2015) examination remained reflective of a posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 39 - 40); (e) Mr. McDuffie's lumbar symptoms resulted from his September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 27 & 61); (f) treatment for this back injury

component would begin with medial branch blocks, with consideration of radiofrequency rhizotomy depending upon his response to these blocks (See, Dr. Riber Deposition, pp. 29, 60 & 64); (g) improvement of Mr. McDuffie's back injury component would be enhanced by receipt of treatment for his left knee (See, Dr. Riber Deposition, p. 61; (h) his receipt of treatment for the back injury component was reasonable, medically necessary and aimed toward lessening the ultimate period of disability stemming from the September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 61 - 62); and (i) the restrictions he had assigned were not only geared toward preventing Mr. McDuffie "from getting any worse until he gets some treatment", "but also reasonable and medically necessary" in this instance (See, Dr. Riber Deposition, pp. 36 and 62).

28. Although he obviously attempted to perform full duty work in accordance with Dr. Peelle's instruction, Mr. McDuffie: (a) continued to experience back and left leg symptoms; (b) encountered problems engaging in these job activities, noting receipt of assistance and instances where he "couldn't even . . . stand straight up . . . [and/or his] back had locked up" (See, Hearing Transcript, pp. 35 - 36); (c) has more recently missed time from work because his "back was giving [him] . . . problems" (See, Hearing Transcript, p. 37); (d) was instructed by his Employer to obtain "a doctor's slip" in order to resume work following these recent absences (See, Hearing Transcript, p. 38);

(e) provided his Employer with this required documentation following medical reevaluation in October, 2015 (See, Hearing Transcript, p. 39); (f) was nonetheless afforded no opportunity to resume restricted work activities, despite compliance with his Employer's directive (Id.); (g) received no explanation as to why his restrictions would not be accommodated other than ". . . I couldn't come back 'til their insurance people talked to my lawyer" (Id.); and (h) remained "willing to come back". (Id.).

29. Mr. McDuffie's testimony also confirms: (a) the duties incidental to his job as a Cook II include "cooking in the big pots, cleaning up, putting the pots and pans . . . in the aisles, putting them in the warmers, serving on the line . . . [and] going to the meat room to get the meat" (See, Hearing Transcript, p. 20); (b) these work activities require lifting weights that not only exceed 10 lbs. (the limitation identified by Dr. Riber and endorsed by Dr. Johnson), but also the 30 lb. restriction referenced by Dr. Lembo ("chicken is like the most heaviest thing that we'll pick up. It's probably like 40 to 45 pounds.") (Id.); (c) he is also obliged to twist (See, Hearing Transcript, p. 21); (d) the left knee pain had been present "from the beginning" (See, Hearing Transcript, p. 37); (e) while Dr. Young had "looked at [his] . . . knee", there had heretofore been no focused treatment of this injury component by any physician to whom he was directed by Defendants (See, Hearing Transcript, pp. 28 and 42 - 43); and (f) his symptoms had never abated following receipt

of the full duty work release from Dr. Peelle (See, Hearing Transcript, p. 47).

30. After thoroughly reviewing all evidence of record and observing Mr. McDuffie during the course of the hearing, I specifically find: (a) his testimony, including description of the injury mechanism and the nature/location of all symptoms associated with this accident, are wholly consistent with the medical evidence; (b) this medical evidence certainly confirms the onset of low back and left leg pain shortly after sustaining the admittedly compensable September 19, 2014 trauma; (c) while the apparent absence "of structural abnormalities on his MRI" led Dr. Peelle to discharge him from active care, Drs. Johnson, Riber and Lembo unanimously confirmed a scan of this nature is not diagnostic of facetogenic pain; (d) these medical specialists also convincingly verified/explained the positive correlation between their diagnosis of posttraumatic facet syndrome with not only his relevant clinical findings (including diminished lumbar extension), but also the September 19, 2014 mechanism of injury; (e) these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment; and (f) this treatment, aimed toward a posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, proximately results from the consequences of his September 19, 2014 compensable accident.

31. I further find: (a) the evidence, including consistent opinions expressed by Drs. Johnson, Riber and Lembo, convincingly indicates Mr. McDuffie's compensable accident has created a lumbar posttraumatic facet syndrome; (b) this causally related condition has produced not only persistent back pain, but also associated left leg symptoms (See, testimony of Drs. Riber and Johnson); (c) Mr. McDuffie has not reached the point of maximum medical improvement relative to this causally related back injury component; (d) the treatment he requires for this compensable back injury component includes, but is not limited to, the lumbar facet/medial branch blocks identified by these physicians; and (e) Mr. McDuffie's receipt of these additional treatment modalities for his back injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his September 19, 2014 compensable accident.

32. I also find: (a) the symptoms stemming from Mr. McDuffie's causally related back injury component have negatively impacted upon his ability to engage in unrestricted work activities, notwithstanding Dr. Peelle's previous full duty work release; (b) Dr. Riber (who documented the presence of facetogenic symptoms in January, 2015, as well as the progressive impact of his condition in October, 2015) recommended several work restrictions ("no twisting, stooping or bending and no lifting greater than 10 pounds") in order to avoid further

worsening of these symptoms; (c) these restrictions were subsequently endorsed by Dr. Johnson, who expressed his "trust" in Dr. Riber's judgment as to work status; (d) Dr. Lembo similarly felt Mr. McDuffie was incapable of performing unrestricted work activities, assigning a 30 pound lifting limitation; and (d) the work restrictions assigned by these physicians are inconsistent with certain aspects of Mr. McDuffie's "full duty" work regimen.

33. In this regard, I further find: (a) after his causally related lumbar symptoms necessitated his absence from work in 2015, Mr. McDuffie attempted to resume performance of his job duties; (b) despite his provision of medical documentation authorizing performance of restricted work activities, his Employer has declined to afford him any opportunity to engage in job duties consistent with these medical restrictions; (c) the medical evidence firmly establishes these restrictions result from/are attributable to the consequences of his September 19, 2014 compensable accident; (d) my inspection of the record verifies Mr. McDuffie's continued absence from work was exclusively the product of Defendants' unwillingness to "accommodate" these work restrictions (See, Hearing Transcript, pp. 11, 15 and 37 - 39); (e) although all parties were aware of these work restrictions, as well as Mr. McDuffie's desire to engage in accommodated job duties, Defendants elected not to provide work consistent with these medical limitations; and (f)

these circumstances have produced a continuing period of temporary total disability.

34. Additionally, I find: (a) after sustaining the September 19, 2014 trauma, Mr. McDuffie reported the presence of both back and left leg pain; (b) as time progressed, the left leg pain persisted from his buttocks to his knee; (c) despite Dr. Young's clinical identification of left knee symptoms and recommendation of orthopaedic referral for assessment of ". . . [p]ersistent low back, left thigh and **left knee pain**", Defendants' designated physician (Dr. Peelle) did not perform a focused examination of Mr. McDuffie's left knee; and (d) he was consequently obliged to obtain an independent medical evaluation by Dr. Mazoue.

35. I also find Dr. Mazoue (the only orthopaedic surgeon who scrutinized Mr. McDuffie's left knee): (a) discovered significant clinical evidence of medial meniscus pathology; (b) explained these clinical findings had "an objective" element; (c) indicated the September 19, 2014 mechanism of injury "was very consistent with the development of a meniscus tear"; (d) attributed Mr. McDuffie's left knee symptoms to the consequences of his compensable accident; and (e) recommended further treatment, commencing with performance of an MRI scan.

36. I also find: (a) the reliable medical evidence, particularly the opinions expressed by Dr. Mazoue, amply establish a causal relationship between Mr. McDuffie's focal left

knee symptoms and his September 19, 2014 compensable accident; (b) he requires further treatment for this injury component, including an MRI scan and follow-up care through Dr. Mazoue; (c) Mr. McDuffie has not yet achieved maximum medical improvement relative to his causally related left knee injury component; (d) his receipt of further treatment is reasonable, medically necessary and will tend to lessen the period of disability produced by the consequences of the September 19, 2014 compensable accident; and (e) notwithstanding their full awareness of Dr. Mazoue's determination as to the nature/source/medical requirements of Mr. McDuffie's causally related left knee symptoms, as well as the absence of any contrary opinion relative to these symptoms, Defendants chose to deny liability for this left knee injury component.

37. The medical treatment, medications, evaluations, diagnostic testing, physical therapy, etc. which Mr. McDuffie has heretofore received/undergone through any authorized medical providers were reasonable, medically necessary and tended to lessen his ultimate period of disability. I also find Dr. Mazoue's June 10, 2015 evaluation was reasonable, medically necessary and tended to lessen Mr. McDuffie's ultimate period of disability.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On September 19, 2014, Mr. McDuffie, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained compensable injuries to his back and left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Johnson Food Service, LLC, an employer within the meaning of S.C. Code Ann. Section 42-1-140. (1976).

3. As previously noted, the evidence of record (testimony and the opinions expressed, to a reasonable degree of medical certainty, by Drs. Johnson, Riber, Lembo and Mazoue) firmly convincingly/reliably establishes: (a) Mr. McDuffie's persistent back and left leg symptoms proximately result from the consequences of his September 19, 2014 compensable accident; (b) his left leg symptoms involve not only pain stemming from a posttraumatic facet syndrome, but also a distinct left knee injury component of the nature identified by Dr. Mazoue; (c) he has not yet reached the point of maximum medical improvement as to either his back or left leg injury components; and (d) Mr. McDuffie requires not only facet-directed treatment of the back injury component, but also focused care for a likely medial meniscal tear. I consequently conclude Mr. McDuffie has clearly

established: (a) the causal relationship of his current lumbar symptoms to the consequences of his September 19, 2014 compensable accident; (b) his need for treatment of a heretofore untreated causally related posttraumatic facet syndrome; (c) the September 19, 2014 compensable accident also produced a left knee injury component that likewise requires focused treatment; and (d) maximum medical improvement has yet to be attained as to either of these compensable injury components.

4. Defendants are financially responsible for the medical treatment, medications, evaluations, physical therapy, evaluative procedures, diagnostic testing, etc. which Mr. McDuffie has heretofore received/undergone through any authorized healthcare providers as a result of his back injury component, as he received these treatment modalities per the direction of Defendants. I further conclude: (a) the additional medical evaluations which Mr. McDuffie has independently undergone relative to his back injury component were certainly warranted, especially in view of Defendants' denial of liability for further treatment of his causally related posttraumatic facet syndrome; and (b) the assessment by Dr. Mazoue, the only orthopaedic surgeon to actually evaluate Mr. McDuffie's left knee symptoms/pathology, was certainly reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2007).

5. I further conclude: (a) despite their knowledge (through report, questionnaire responses and deposition testimony) of Dr. Mazoue's opinions relative to Mr. McDuffie's left knee injury component and the absence of any conflicting medical opinion relative to this injury component, Defendants maintain their denial of liability; (b) notwithstanding this denial, they certainly had ample opportunity to obtain assessment of this left knee injury component, but chose not to do so; (c) given the nature of his left knee symptoms, Mr. McDuffie reasonably sought evaluation from Dr. Mazoue (whose qualifications to treat this condition have not been challenged); (d) Mr. McDuffie has developed sufficient confidence in Dr. Mazoue to proceed with surgery by this physician (a likely scenario); and (e) the current circumstances constitute good cause for designation of Dr. Mazoue as Mr. McDuffie's authorized treater relative to the left knee injury component per Section 42-15-60. See also, Clark v. Aiken County Government, 366 S.C. 102, 620 S.E. 2d 99, 104 (Ct. App. 2005); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

6. I similarly conclude: (a) Mr. McDuffie's receipt of treatment for the posttraumatic lumbar facet syndrome diagnosed by Drs. Johnson, Riber and Lembo is reasonable, medically necessary and geared toward lessening his ultimate period of disability per Section 42-15-60; (b) this treatment shall include, but not be limited to, performance of lumbar

facet/medial branch blocks, in accordance with the treatment recommendations outlined by these physicians; (c) Defendants will be afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but strictly based upon the undersigned's ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident, so as to ensure receipt of this treatment; and (d) this obligation to provide ongoing medical treatment shall continue until this Commission determines he has achieved maximum medical improvement.

7. Upon informing counsel of my rulings relative to this dispute, the undersigned inadvertently overlooked their previous agreement to defer establishment of Mr. McDuffie's average weekly wage and compensation rate pending further review of all relevant data. This oversight was subsequently brought to the undersigned's attention via email communication from McDuffie's counsel.

8. Additionally, this email correspondence requested the undersigned to address Mr. McDuffie's entitlement to temporary total disability compensation. In response, counsel for Defendants maintained that as the Form 50 did not specifically request this compensation, the issue was not ripe for determination.

9. In this regard, counsel for the respective parties have directed the undersigned to portions of the hearing transcript

which they believe are particularly relevant to this issue. Based upon my review of the pertinent portions of the hearing transcript, I conclude: (a) while the parties were obviously preoccupied with the issue involving withdrawal of Dr. Lembo's report, Mr. McDuffie's counsel nonetheless indicated his client was not currently working due to his Employer's unwillingness to honor restrictions identified by unauthorized physicians (Drs. Riber and Lembo) (See, Hearing Transcript, p. 11); (b) Defendants were obviously aware of Mr. McDuffie's restricted duty work status, as reflected by their counsel's recognition of a need "to accommodate him" (See, Hearing Transcript, p. 15); (c) Mr. McDuffie provided relatively detailed testimony outlining not only his efforts to resume restricted duty work activities, but also his Employer's inability/failure to provide duties consistent with his medical restrictions (See, Hearing Transcript, pp. 37 - 39); (d) the Form 50 contained "a boilerplate claim for '[a]ppropriate benefits as provided in the [Workers' Compensation] Act for the above ground and other relief as the Workers' Compensation Commission may direct as just and proper" (See, Nettles v. Spartanburg School District #7, 341 S.C. 580, 535 S.E. 2d 146, 149 (Ct. App. 2000)); and (e) in view of this proviso, as well as the parties' mutual recognition of the fact his absence from work was due to Defendants' disinclination "to accommodate" him, Mr. McDuffie's entitlement to temporary total disability compensation is properly before the undersigned

for consideration. See also, Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994) ("As to the merits of the pleading issue, Harbin's claim for any and all rights under the Act was a sufficient pleading.").

10. "Under the Workers' Compensation Act, a claimant is entitled to compensation for a total disability resulting from a work-related injury." Last v. MSI Construction Company, Inc., 305 S.C. 349, 409 S.E. 2d 334, 336 (1991). In this regard, the Supreme Court of South Carolina has consistently held that "the loss of earning capacity caused by the physical injury is the pertinent measure of compensable disability." (Id.); See also, Bowen v. Chiquola Manufacturing Company, 238 S.C. 322, 120 S.E. 2d 99 (1961); Shealy v. Algeron Blair, Inc., 250 S.C. 106, 156 S.E. 2d 640 (1967). Consequently, the issue is "whether the injury ha[s]. . . resulted in some loss of. . . [the Claimant's] earning capacity." Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E. 2d 448, 449 (Ct. App. 1996); Last, 409 S.E. 2d at 336.

11. Additionally, a review of the relevant portions of S.C. Code Ann. Section 42-9-260 (1976, as amended), as well as S.C. Code Ann. Regs. 67-505 (2012) and 67-506 (2012), verifies: (a) disability is presumed to continue until an employee has returned to work for the requisite fifteen day period with the employer responsible for the payment of temporary disability compensation; and (b) this compensation remains payable unless the injured employee is either released by the treating physician to work

"without restriction", provided with "limited duty work consistent with. . . [restrictions assigned by] the treating physician" or actively working.

12. Our Appellate Courts have similarly held: (a) the incarceration of an injured worker did not terminate his period of temporary total disability (rejecting an argument that imprisonment, rather than work related injury, produced inability to work). Last, supra; (b) an intervening pregnancy did "not change the fact that . . . [a compensable] injury" continued to prohibit an employee from performing her previous job. Orr, 474 S.E.2d at 449; (c) a "seasonal" employee remained temporarily totally disabled due to injury, notwithstanding his "return to school on a full-time basis . . . [purportedly] removed him from the labor market" Hines v. Hendricks Canning Company, 263 S.C. 399, 211 S.E.2d 220, 223 (1975); and (d) an employer "can be relieved of the liability to pay . . . [temporary total disability compensation] by either offering or procuring" suitable employment for the injured worker. Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43, 46 (1965); See also, S.C. Code Ann. Section 42-9-190 (1976).

13. Essentially, "when the injured worker is under work restrictions, the employer must either offer suitable employment within the injured worker's capacity or pay temporary total disability compensation." Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E. 2d 430, 433 (2013) (Court indicated

it "d[id] . . . not disagree with [this] . . . proposition . . .
."). In this instance, analysis of the evidence of record
reveals: (a) Mr. McDuffie work status has been materially
restricted as a consequence of his causally related symptoms; (b)
these limitations are inconsistent with his regular/full duty
work activities; (c) while Johnson Food Service, LLC has been
afforded an opportunity to provide suitably restricted work
activities, it has declined to do so; and (d) Mr. McDuffie has
not yet reached maximum medical improvement. I consequently
conclude he has been temporarily totally disabled within the
meaning of S.C. Code Ann. Section 42-9-10 (2007), as a matter of
law, since his last work date and remains so at this time.

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a)
accept financial responsibility for all medical modalities
previously provided/prescribed by any authorized healthcare
specialists, as well as for the charges stemming from Dr.
Mazoue's June 10, 2015 evaluation; (b) authorize the additional
causally related medical treatment, medications, evaluations,
diagnostic testing, evaluative procedures, physical therapy,
surgical procedures, etc. provided/prescribed by Dr. Mazoue who
is hereby designated as Mr. McDuffie's treating physician
relative to the left knee injury component for the purposes of
this claim; (c) accept financial responsibility for treatment of
Mr. McDuffie's lumbar posttraumatic facet syndrome through an

appropriate specialist of its choosing, who shall provide treatment for this condition as a causally related result of Mr. McDuffie's compensable accident; and (d) pay temporary total disability compensation (at the rate specified herein) effective the day following his last active work date until such time as this obligation is relieved by further Order of this Commission.

IT IS SO ORDERED.



Commissioner Aisha Taylor

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).

May 18, 2016

By: Renee Smith, Administrative
Assistant to Commissioner Taylor

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1413546

TIMOTHY A. MCDUFFIE, EMPLOYEE, CLAIMANT,

VERSUS

JOHNSON FOOD SERVICES, LLC, EMPLOYER,

AND

GREAT AMERICAN ALLIANCE INSURANCE CO./STRATEGIC COMP., CARRIER,
DEFENDANTS.

HEARING: Held on August 16, 2016 in Columbia,
South Carolina.

APPEARANCES: Claimant represented by Andrew N.
Safran, Esquire, Post Office Box 12089,
Columbia, South Carolina 29211.

Defendants represented by E. Ros Huff,
Jr., Esquire, Huff & Hapeshis, LLC,
Post Office Box 1935, Irmo, South
Carolina 29063.

PURPOSE OF HEARING: Review of the May 16, 2016 Order of The
Honorable Aisha G. Taylor.

DECISION AND ORDER OF THE APPELLATE PANEL

FILED:

October 12th, 2016

STATEMENT OF THE CASE

This is an appeal from the May 16, 2016 Order of The Honorable Aisha G. Taylor, which determined: (a) the consequences of Claimant's, Timothy A. McDuffie's, September 19, 2014 compensable accident had produced distinct back and left knee injury components; (b) he required focused care for the essentially untreated left knee injury component through Dr. Christopher G. Mazoue, who had not only confirmed the causal relationship of his persistent symptoms, but also the potential need for surgery due to clinical findings consistent with a medial meniscus tear; (c) his compensable accident had also produced a posttraumatic facet syndrome that had not been treated by the physicians designated by Defendant, Great American Alliance/Strategic Comp. and warranted focused medical care per the opinions of Drs. John F. Johnson, Nancy R. Lembo and Ezra B. Riber; (d) Mr. McDuffie had not yet reached maximum medical improvement for either of these injury components; and (e) as his Employer, Johnson Food Services, LLC, had declined to accommodate work restrictions, notwithstanding an obvious awareness of their presence, Mr. McDuffie was entitled to accrued/continuing temporary total disability compensation.

Essentially, Defendants contend Commissioner Taylor erred in: (a) finding Mr. McDuffie had sustained a compensable left leg injury; (b) designating Dr. Mazoue as the authorized treater; (c) concluding Mr. McDuffie was entitled to temporary total

disability compensation; and (d) failing to generate a legally sufficient order.

In response, Mr. McDuffie maintains: (a) the evidence of record, including the nature of his undisputed mechanism of injury and the presence of distinct left knee symptoms documented by one of Defendants' medical providers, as well as Dr. Mazoue's unrefuted opinions relative to the causal relationship of these symptoms and his associated treatment needs, amply supports Commissioner Taylor's determination he sustained a compensable left knee injury that requires focused medical care; (b) her designation of Dr. Mazoue under the present circumstances satisfies the "good cause" proviso contained in S.C. Code Ann. Section 42-15-60 (2007), especially in view of Defendants' unwillingness to even acknowledge this injury component and Mr. McDuffie's confidence in/comfort with the prospect of undergoing surgery with this highly qualified specialist; (c) Defendants' specious argument relative to the temporary total disability compensation award conveniently ignores their admitted acknowledgement of Mr. McDuffie's restricted duty work status (which belies any notion due process was lacking) and unquestioned refusal to accommodate his medical limitations, as well as a clear legal basis for addressing this issue; (d) the May 16, 2016 Order, which contains thirty-seven (37) detailed factual findings and thirteen (13) comprehensive legal

conclusions, meets all applicable criteria; and (e) Commissioner Taylor's rulings should be affirmed in all respects.

After reviewing all pertinent evidence, in light of the relevant legal authorities and arguments of counsel, We hereby fully affirm Commissioner Taylor's determinations based upon the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW**:

FINDINGS OF FACT

1. On September 19, 2014, Mr. McDuffie sustained compensable injuries to his back and left leg when he tripped over an exposed pipe at the Johnson Food Services, LLC facility located at Fort Jackson military base in Richland County, South Carolina. Specifically, he: (a) tripped when his left foot came in contact with the exposed pipe; (b) fell forward prior to catching himself before hitting the ground; (c) perceived a pop while attempting to maneuver his left leg away from the pipe; and (d) soon developed pain involving his back and left leg.

2. At the time he sustained these compensable injuries, Mr. McDuffie was performing duties arising out of and within the course and scope of his employment with Johnson Food Services, LLC, where he has worked for approximately two years.

3. Shortly after sustaining this injury, Mr. McDuffie was directed by his Employer to Medcare Urgent Care Center (September 20, 2014), where he: (a) reported the presence of back and left leg pain following this trauma; (b) exhibited a "[p]ostive . . . [left] leg raised test" response; and (c) received a prescription

for Naprosyn in conjunction with instruction to apply warm compresses to his back.

4. When his pain persisted, Mr. McDuffie sought further examination through the Palmetto Health Baptist Emergency Room (September 23, 2014), where he: (a) apprised the attending physician of his injury mechanism ("tripping . . . and catching himself on his left lower extremity but jarring his left lower back buttock area . . . [with resulting] pain down his left lower extremity"); (b) indicated the previously prescribed Naprosyn had "not been helping much"; (c) displayed "some palpable reproducible tenderness at the left sciatic notch . . . with a positive left legged straight leg raise" test response; and (d) received an additional prescription (Flexeril).

5. On the following day, Mr. McDuffie was examined, per Defendants' directive, by Dr. Stewart Young of First Care, who: (a) noted the presence of "mild medial left knee pain, some left thigh muscular pain and some low back pain"; (b) was similarly apprised of pain with standing/weightbearing on the left leg; (c) performed a physical examination which revealed "pain in the left thigh musculature with weightbearing/walking", "tenderness over the MCL area" and lumbar paraspinous tenderness/spasm; and (d) placed him on sedentary duty work status.

6. Inspection of Dr. Young's September 29, 2014 and October 13, 2014 treatment notes further confirms: (a) persistent reports of both left knee and back pain; (b) the presence of both

left leg and low back symptoms on clinical examination; and (c) this physician's attempt to treat these symptoms with physical therapy.

7. Upon reexamining Mr. McDuffie following several physical therapy sessions (November 28, 2014), Dr. Young: (a) noted this therapy had not only proved ineffective, but also "made his left knee worse"; (b) observed the "left lumbar paraspinous musculature [was] . . . tense and tender to palpation", "pain . . . [and tenderness] in the medial anterior knee just lateral to the patella" and "tense"/"tender" left thigh musculature; and (c) restricted him to sedentary work duties, while recommending orthopaedic evaluation for "[p]ersistent low back, left thigh, and left knee pain"

8. Approximately two weeks following this referral (December 17, 2014), Defendants directed Mr. McDuffie for evaluation by Dr. Michael W. Peelle of Moore Orthopaedics, who: (a) noted the September 19, 2014 tripping injury, as well as resulting pain involving his back, left buttock, left thigh and left leg; (b) observed limited lumbar flexion "with reproduction of buttock and hamstring pain on the left side", "a positive straight leg raise test in the seated position", "spinous process tenderness" and a "[n]egative Waddell sign"; (c) did not reference any focused examination of the left knee; (d) offered a diagnosis of left lower extremity radiculopathy, for which he felt an MRI scan was warranted; and (e) restricted his work

activities ("[n]o bending or stooping"; 20 lb. lifting/carrying limitation).

9. Although Mr. McDuffie remained symptomatic, at the time of a December 31, 2014 follow-up visit, Dr. Peelle: (a) indicated the lumbar MRI scan did not reveal any disc pathology; (b) offered no additional treatment; and (c) discharged him to resume full duty work activities effective January 5, 2015.

10. At that juncture, Mr. McDuffie sought further evaluation (January 12, 2015) from Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was apprised of persistent low back pain radiating into the left buttock, as well as left knee pain; (b) observed the low back pain was "most closely reproduced with returning upright . . . [from forward flexion] and with extension of less than 10°"; (c) confirmed he displayed left knee pain, particularly with flexion, experienced "some low back and gluteal discomfort on the left" in response to straight leg raise testing and had difficulty standing on his heels/toes; (d) determined the lumbar symptoms were the product of a post-traumatic facet syndrome, for which he identified a facet treatment algorithm that included medial branch blocks; and (e) also recommended performance of an intra-articular left knee injection.

11. On June 9, 2015, Mr. McDuffie was evaluated by Dr. Nancy R. Lembo of Carolina Spine & Sport Rehabilitation Specialists, P.A., who: (a) noted he continued to experience left

sided low back pain radiating "into the posterior left side to his knee" following the September, 2014 tripping injury; (b) found that he displayed "left sided lumbar paraspinal hypertrophy and pain with lumbar extension"; (c) characterized his symptoms to be consistent with lumbar facet and myofascial pain; (d) recommended proceeding with a "lumbar facet joint injection vs. medial branch block to indentify [the] . . . pain generator"; (e) indicated this treatment course was "consistent with" his physical examination and imaging findings; and (f) also felt resumption of Naprosyn and a trial of Robaxin, in conjunction with a 30 lb. lifting limitation, were appropriate.

12. Mr. McDuffie then (June 10, 2015) underwent focused examination of his left knee by Dr. Christopher G. Mazoue of the University of South Carolina School of Medicine's Department of Orthopaedics Surgery, who: (a) was apprised of the September 19, 2014 mechanism of injury, as well as the nature of his left knee pain; (b) elicited both medial joint line tenderness and a very positive medial McMurray's test response on clinical examination; (c) expressed "concern . . . about a medial meniscus tear of his left knee"; and (d) recommended obtaining an MRI of the left knee.

13. Additionally, through questionnaire responses dated July 13, 2015, Dr. Mazoue confirmed: (a) "the mechanism of injury which Mr. McDuffie described (tripping over a pipe with his left leg followed by jarring while attempting to maintain his balance

and avoid falling to the floor) was sufficient to create not only Mr. McDuffie's documented left leg symptoms, but also left medial meniscal pathology"; (b) the "documented left leg symptoms, including references to pain in the area of his left knee, are most probably consistent with this September 19, 2014 mechanism of injury"; (c) "[g]iven Mr. McDuffie's mechanism of injury, as well as his documented symptoms of both radicular left leg pain and left medial knee pain . . . at least a portion of his current left leg symptoms most probably result from a left knee injury component"; (d) "the left knee symptoms and clinical abnormalities identified in [his] June 10, 2015 report most probably result from the consequences of Mr. McDuffie's September 19, 2014 compensable accident"; and (e) "the treatment modalities . . . [he had] recommended, including an MRI scan and reevaluation to assess treatment options, are reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by Mr. McDuffie's September 19, 2014 compensable accident"

14. During the course of an October 19, 2015 deposition, Dr. Mazoue verified/explained: (a) Mr. McDuffie exhibited "a moderate level of discomfort to palpation" of the medial joint line on examination (See, Dr. Mazoue Deposition, p. 11); (b) his McMurray's test response was "significantly positive" (See, Dr. Mazoue Deposition, p. 13); (c) both the medial joint line tenderness and McMurray's test response have "an objective and

subjective portion" (See, Dr. Mazoue Deposition, p. 12); (d) Mr. McDuffie's mechanism of injury "was very consistent with the development of a meniscus tear, and his physical exam was highly consistent with a meniscus tear" (See, Dr. Mazoue Deposition, p. 18); and (e) this "high likelihood of meniscus tear" had prompted his recommendation for an MRI scan (Id.).

15. This orthopaedic surgeon further confirmed: (a) the information contained on Mr. Ernest Roberts' September 23, 2014 statement (Claimant's APA, p. 1) generally coincided with his understanding as to Mr. McDuffie's mechanism of injury (See, Dr. Mazoue Deposition, p. 21); (b) it was not uncommon for leg pain associated with an injury of type to have multiple sources (See, Dr. Mazoue Deposition, p. 22); (c) a meniscal tear does not preclude one from exhibiting a relatively normal range of motion (See, Dr. Mazoue Deposition, p. 24); (d) the results of prior examinations during Mr. McDuffie's post-injury course of treatment, including Dr. Young's findings, were consistent with the results of his clinical examination (See, Dr. Mazoue Deposition, pp. 23 - 27); (e) the McMurray's test is a recognized standard for assessing the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, pp. 30 - 31); and (f) Mr. McDuffie's response to this clinical test constituted a "highly significant" finding, which he believed to be a reliable indication of meniscal pathology (See, Dr. Mazoue Deposition, pp. 31 - 33).

16. Additionally, Dr. Mazoue testified: (a) Mr. McDuffie's development of increased pain while sitting was consistent with a medial meniscal tear (See, Dr. Mazoue Deposition, p. 35); (b) the absence of a noticeable limp (which he agreed was "variable as it relates to the level of dysfunction at a given moment") did not preclude the presence of a medial meniscal tear (See, Dr. Mazoue Deposition, p. 36); (c) in view of Mr. McDuffie's mechanism of injury, well-documented post-injury left medial knee pain and significant clinical findings, his symptoms have "an objective pathological basis" (See, Dr. Mazoue Deposition, pp. 30 & 37); and (d) to a reasonable degree of medical certainty, this pathology is likely a medial meniscus tear that most probably results from the September 19, 2014 compensable accident (Id.).

17. On June 11, 2015, Mr. McDuffie was evaluated by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) obtained a history of injury consistent with previous examiners; (b) noted the presence of persistent "low back and buttock pain on the left that radiates down the left lower extremity to just below the popliteal fossa"; (c) identified "tenderness to palpation in the left lower lumbar region", "decreased . . . [r]ange of motion . . . particularly with full extension secondary to pain", "worsening pain [with] . . . leg extension" and a positive straight leg raise test response on the left; (d) indicated these symptoms were "a result of the 09-19-14 accident and very likely reflective of posttraumatic facet syndrome", for

which he had not reached maximum medical improvement; and (e) recommended "focused treatment that could include medial branch blocks which would be diagnostic as well as therapeutic."

18. In this regard, pursuant to questionnaire responses dated July 20, 2015, Dr. Johnson verified, to a reasonable degree of medical certainty, that: (a) "the posttraumatic lumbar facet syndrome . . . [he had] diagnosed proximately results from Mr. McDuffie's September 19, 2014 compensable accident"; (b) "without treatment, Mr. McDuffie's causally related lumbar symptoms will most probably remain problematic and materially/negatively impact upon his ability to sustain work activities"; (c) "the course of treatment . . . [he had] recommended for Mr. McDuffie's lumbar injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014 compensable accident"; and (d) treatment of the left knee injury component was "likewise reasonable, medically necessary and geared toward lessening [this] . . . ultimate period of disability"

19. When questioned as to the nature/source of Mr. McDuffie's lumbar symptoms, Dr. Johnson confirmed/reiterated: (a) his routine treatment of facetogenic pain, as well as the diagnosis of posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 13 - 14); (b) facetogenic pain, particularly if traumatic, does not lend itself to accurate diagnosis through MRI scanning (Id.); (c) the diminished lumbar extension referenced by

several examiners, as well as the slightly flexed posture of the spine he observed during this clinical examination, were reflective of facetogenic pain (See, Dr. Johnson Deposition, pp. 12 - 13, 21); (d) both the left buttock/thigh pain and positive straight leg raise responses he (and several other examiners) observed were likewise consistent with posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 15 - 16); and (e) Mr. McDuffie's mechanism of injury was likewise consistent with the production of posttraumatic facetogenic pain (See, Dr. Johnson Deposition, pp. 14 - 15).

20. Dr. Johnson further explained: (a) Mr. McDuffie's clinical presentation was valid and the product of a genuine effort (See, Dr. Johnson Deposition, pp. 17 - 18); (b) the presence of 5/5 muscle strength was not only anticipated, but also "in no way inconsistent with [his] . . . diagnosis of post-traumatic facet syndrome" (See, Dr. Johnson Deposition, p. 18); (c) given the fact Mr. McDuffie's posttraumatic facet syndrome and left knee pathology had received no focused treatment, the progressive worsening of lumbar symptoms recently documented by Dr. Riber was an expected consequence of his accident (See, Dr. Johnson Deposition, pp. 18 - 20); (d) failure to treat his left knee injury component has "[a]bsolutely" fueled "the continued presence of the facet syndrome and likely prolong[ed] . . . it" (See, Dr. Johnson Deposition, p. 20); and (e) Mr. McDuffie requires treatment of the left knee in tandem with focused care

of his posttraumatic facet syndrome (See, Dr. Johnson Deposition, pp. 19 - 20, 23-24).

21. Additionally, Dr. Johnson verified: (a) as Mr. McDuffie was attempting to remain employed through performance of regular duty work activities, he did not discourage this effort (See, Dr. Johnson Deposition, pp. 21 - 22); (b) he had developed "trust" in Dr. Riber's opinions through their professional experience ("I think he does a fine job") (See, Dr. Johnson Deposition, pp. 20 - 21); (c) his agreement with the work restrictions imposed by Dr. Riber (Id.); (d) the validity of Mr. McDuffie's description of his persistent lumbar symptoms (See, Dr. Johnson Deposition, p. 25); and (e) his adherence to the opinions expressed in his July 20, 2015 questionnaire responses (See, Dr. Johnson Deposition, pp. 22 - 23).

22. Pursuant to questionnaire responses dated July 20, 2015, Drs. Riber and Lembo likewise: (a) attributed Mr. McDuffie's lumbar symptoms to the consequences of his compensable accident; (b) verified "failure to treat this lumbar injury component would materially/negatively impact upon . . . [Mr. McDuffie's] ability to sustain work activities"; (c) his need for focused treatment of not only these lumbar symptoms, but also the left knee injury component (which they verified to be "reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014

compensable accident"); and (d) offered each of these opinions to a reasonable degree of medical certainty.

23. Inspection of Dr. Lembo's September 10, 2015 deposition testimony confirms: (a) Mr. McDuffie's reported symptoms were consistent with his described mechanism of injury and her clinical findings (See, Dr. Lembo Deposition, p. 13); (b) he exhibited both objective evidence of muscle spasm and pain with lumbar extension, which she indicated were consistent with an injury caused by his compensable accident (See, Dr. Lembo Deposition, pp. 20, 22, 44 - 45 and 52); (c) the presence of painful extension was a "significant" factor in her diagnosis, as this finding is "consistent with a facet pain generator" (See, Dr. Lembo Deposition, p. 44); (d) facetogenic pain, which she "commonly . . . see[s] in [her] . . . practice" is not diagnosed through MRI scanning (See, Dr. Lembo Deposition, p. 43); and (e) she reaffirmed her July 20, 2015 opinion that Mr. McDuffie's posttraumatic lumbar facet syndrome proximately results from his September 19, 2014 compensable accident (See, Dr. Lembo Deposition, p. 49).

24. After being apprised of Mr. McDuffie's persistent lumbar symptoms and associated functional difficulties, Dr. Lembo also verified: (a) his causally related pain was interfering with daily activities (See, Dr. Lembo Deposition, p. 49); (b) her prior questionnaire response relative to the likelihood his "causally related lumbar symptoms . . . remain[ing] problematic

and materially/negatively impact[ing] . . . upon his ability to sustain work activities" remained accurate (See, Dr. Lembo Deposition, p. 50); (c) these symptoms were "most likely not going to . . . improve . . . absent treatment" (See, Dr. Lembo Deposition, pp. 50 - 51); (d) his receipt of any accommodations in connection with his employment was not consistent with unrestricted work activity (See, Dr. Lembo Deposition, p. 55); and (e) Mr. McDuffie's causally related symptoms warranted imposition of a 30 pound lifting restriction (See, Dr. Lembo Deposition, pp. 24, 35 and 54).

25. On October 12, 2015, Mr. McDuffie was reexamined by Dr. Riber, who: (a) noted "his pain and dysfunction had become progressively worse"; (b) again observed "his pain is more closely reproduced with returning upright . . . [from forward flexion] and extension most closely reproduces his pain"; (c) similarly detected "low back, gluteal and hamstring discomfort" in response to straight leg raise testing; (d) perceived slight gait disturbance; (e) reiterated his prior diagnosis of a posttraumatic lumbar facet syndrome, as well as the need for medial branch blocks; and (f) imposed several work restrictions, including "no twisting, stooping or bending" and no lifting greater than 10 pounds."

26. During the course of his October 26, 2015 deposition, Dr. Riber explained: (a) Mr. McDuffie displayed no "pain behavior", which he characterized as an "over-dramatic",

"unbelievable" or suspicious presentation (See, Dr. Riber Deposition, pp. 17 - 18, 20 and 45); (b) he observed no evidence of symptom magnification and had "no reason to doubt . . . the physiological legitimacy of any pain . . . [Mr. McDuffie] report" (See, Dr. Riber Deposition, pp. 46 and 48); (c) he had previously treated posttraumatic facet syndromes on "hundreds" of occasions prior to examining Mr. McDuffie (estimating "at least" 20% of the backs he sees involve a facet syndrome) (See, Dr. Riber Deposition, pp. 49 and 59); (d) he would not rely upon an MRI scan to diagnosis a facet syndrome, as "[y]ou can have a perfectly normal MRI and have a very clear-cut facet syndrome" (See, Dr. Riber Deposition, pp. 49 - 50); (e) diagnosis of this condition is instead "based on the mechanism of injury, which is part of the history, the complaints and then the exam" (See, Dr. Riber Deposition, p. 49); and (f) facetogenic pain can include "some nerve involvement" that produces leg pain (See, Dr. Riber Deposition, pp. 50 - 51).

27. Dr. Riber further verified: (a) lumbar extension "loads the facet joints", to the extent that when an individual "either return[s] . . . upright or extend[s], . . . a facet joint issue . . . [will] declare itself" (See, Dr. Riber Deposition, p. 55); (b) his clinical observation of pain with lumbar extension was consistent with the relevant clinical findings identified in Dr. Lembo's June 9, 2015 report, as well as Dr. Johnson's June 11, 2015 report (See, Dr. Riber Deposition, pp. 55 - 56); (c) Mr.

McDuffie's positive straight leg raise response was also consistent with the diagnosis of posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 51 - 52); (d) his updated (October 12, 2015) examination remained reflective of a posttraumatic facet syndrome (See, Dr. Riber Deposition, pp. 39 - 40); (e) Mr. McDuffie's lumbar symptoms resulted from his September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 27 & 61); (f) treatment for this back injury component would begin with medial branch blocks, with consideration of radiofrequency rhizotomy depending upon his response to these blocks (See, Dr. Riber Deposition, pp. 29, 60 & 64); (g) improvement of Mr. McDuffie's back injury component would be enhanced by receipt of treatment for his left knee (See, Dr. Riber Deposition, p. 61); (h) his receipt of treatment for the back injury component was reasonable, medically necessary and aimed toward lessening the ultimate period of disability stemming from the September 19, 2014 compensable accident (See, Dr. Riber Deposition, pp. 61 - 62); and (i) the restrictions he had assigned were not only geared toward preventing Mr. McDuffie "from getting any worse until he gets some treatment", "but also reasonable and medically necessary" in this instance (See, Dr. Riber Deposition, pp. 36 and 62).

28. Although he obviously attempted to perform full duty work in accordance with Dr. Peelle's instruction, Mr. McDuffie: (a) continued to experience back and left leg symptoms; (b)

encountered problems engaging in these job activities, noting receipt of assistance and instances where he "couldn't even . . . stand straight up . . . [and/or his] back had locked up" (See, Hearing Transcript, pp. 35 - 36); (c) has more recently missed time from work because his "back was giving [him] . . . problems" (See, Hearing Transcript, p. 37); (d) was instructed by his Employer to obtain "a doctor's slip" in order to resume work following these recent absences (See, Hearing Transcript, p. 38); (e) provided his Employer with this required documentation following medical reevaluation in October, 2015 (See, Hearing Transcript, p. 39); (f) was nonetheless afforded no opportunity to resume restricted work activities, despite compliance with his Employer's directive (Id.); (g) received no explanation as to why his restrictions would not be accommodated other than ". . . I couldn't come back 'til their insurance people talked to my lawyer" (Id.); and (h) remained "willing to come back". (Id.).

29. Mr. McDuffie's testimony also confirms: (a) the duties incidental to his job as a Cook II include "cooking in the big pots, cleaning up, putting the pots and pans . . . in the aisles, putting them in the warmers, serving on the line . . . [and] going to the meat room to get the meat" (See, Hearing Transcript, p. 20); (b) these work activities require lifting weights that not only exceed 10 lbs. (the limitation identified by Dr. Riber and endorsed by Dr. Johnson), but also the 30 lb. restriction referenced by Dr. Lembo ("chicken is like the most heaviest thing

that we'll pick up. It's probably like 40 to 45 pounds.") (Id.); (c) he is also obliged to twist (See, Hearing Transcript, p. 21); (d) the left knee pain had been present "from the beginning" (See, Hearing Transcript, p. 37); (e) while Dr. Young had "looked at [his] . . . knee", there had heretofore been no focused treatment of this injury component by any physician to whom he was directed by Defendants (See, Hearing Transcript, pp. 28 and 42 - 43); and (f) his symptoms had never abated following receipt of the full duty work release from Dr. Peelle (See, Hearing Transcript, p. 47).

30. After thoroughly reviewing all evidence of record and acknowledging Commissioner Taylor's observations of Mr. McDuffie during the course of the hearing, We specifically find: (a) his testimony, including description of the injury mechanism and the nature/location of all symptoms associated with this accident, are wholly consistent with the medical evidence; (b) this medical evidence certainly confirms the onset of low back and left leg pain shortly after sustaining the admittedly compensable September 19, 2014 trauma; (c) while the apparent absence "of structural abnormalities on his MRI" led Dr. Peelle to discharge him from active care, Drs. Johnson, Riber and Lembo unanimously confirmed a scan of this nature is not diagnostic of facetogenic pain; (d) these medical specialists also convincingly verified/explained the positive correlation between their diagnosis of posttraumatic facet syndrome with not only his

relevant clinical findings (including diminished lumbar extension), but also the September 19, 2014 mechanism of injury; (e) these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment; and (f) this treatment, aimed toward a posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, proximately results from the consequences of his September 19, 2014 compensable accident.

31. We further find: (a) the evidence, including consistent opinions expressed by Drs. Johnson, Riber and Lembo, convincingly indicates Mr. McDuffie's compensable accident has created a lumbar posttraumatic facet syndrome; (b) this causally related condition has produced not only persistent back pain, but also associated left leg symptoms (See, testimony of Drs. Riber and Johnson); (c) Mr. McDuffie has not reached the point of maximum medical improvement relative to this causally related back injury component; (d) the treatment he requires for this compensable back injury component includes, but is not limited to, the lumbar facet/medial branch blocks identified by these physicians; and (e) Mr. McDuffie's receipt of these additional treatment modalities for his back injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his September 19, 2014 compensable accident.

32. We also find: (a) the symptoms stemming from Mr. McDuffie's causally related back injury component have negatively impacted upon his ability to engage in unrestricted work activities, notwithstanding Dr. Peelle's previous full duty work release; (b) Dr. Riber (who documented the presence of facetogenic symptoms in January, 2015, as well as the progressive impact of his condition in October, 2015) recommended several work restrictions ("no twisting, stooping or bending and no lifting greater than 10 pounds") in order to avoid further worsening of these symptoms; (c) these restrictions were subsequently endorsed by Dr. Johnson, who expressed his "trust" in Dr. Riber's judgment as to work status; (d) Dr. Lembo similarly felt Mr. McDuffie was incapable of performing unrestricted work activities, assigning a 30 pound lifting limitation; and (d) the work restrictions assigned by these physicians are inconsistent with certain aspects of Mr. McDuffie's "full duty" work regimen.

33. In this regard, We further find: (a) after these causally related lumbar symptoms necessitated his absence from work in 2015, Mr. McDuffie attempted to resume performance of his job duties; (b) despite his provision of medical documentation authorizing performance of restricted work activities, his Employer has declined to afford him any opportunity to engage in job duties consistent with these medical restrictions; (c) the medical evidence firmly establishes these restrictions result

from/are attributable to the consequences of his September 19, 2014 compensable accident; (d) our inspection of the record verifies Mr. McDuffie's continued absence from work was exclusively the product of Defendants' unwillingness to "accommodate" these work restrictions (See, Hearing Transcript, pp. 11, 15 and 37 - 39); (e) although all parties were aware of these work restrictions, as well as Mr. McDuffie's desire to engage in accommodated job duties, Defendants elected not to provide work consistent with these medical limitations; and (f) these circumstances have produced a continuing period of temporary total disability.

34. Additionally, We find: (a) after sustaining the September 19, 2014 trauma, Mr. McDuffie reported the presence of both back and left leg pain; (b) as time progressed, the left leg pain persisted from his buttocks to his knee; (c) despite Dr. Young's clinical identification of left knee symptoms and recommendation of orthopaedic referral for assessment of "[p]ersistent low back, left thigh and **left knee pain**", Defendants' designated physician (Dr. Peelle) did not perform a focused examination of Mr. McDuffie's left knee; and (d) he was consequently obliged to obtain an independent medical evaluation by Dr. Mazoue.

35. We also find Dr. Mazoue (the only orthopaedic surgeon who scrutinized Mr. McDuffie's left knee): (a) discovered significant clinical evidence of medial meniscus pathology; (b)

explained these clinical findings had "an objective" element; (c) indicated the September 19, 2014 mechanism of injury "was very consistent with the development of a meniscus tear"; (d) attributed Mr. McDuffie's left knee symptoms to the consequences of his compensable accident; and (e) recommended further treatment, commencing with performance of an MRI scan.

36. We also find: (a) the reliable medical evidence, particularly the opinions expressed by Dr. Mazoue, amply establish a causal relationship between Mr. McDuffie's focal left knee symptoms and his September 19, 2014 compensable accident; (b) he requires further treatment for this injury component, including an MRI scan and follow-up care through Dr. Mazoue; (c) Mr. McDuffie has not yet achieved maximum medical improvement relative to his causally related left knee injury component; (d) his receipt of further treatment is reasonable, medically necessary and will tend to lessen the period of disability produced by the consequences of the September 19, 2014 compensable accident; and (e) notwithstanding their full awareness of Dr. Mazoue's determination as to the nature/source/medical requirements of Mr. McDuffie's causally related left knee symptoms, as well as the absence of any contrary opinion relative to these symptoms, Defendants chose to deny liability for this left knee injury component.

37. The medical treatment, medications, evaluations, diagnostic testing, physical therapy, etc. which Mr. McDuffie has

heretofore received/undergone through any authorized medical providers were reasonable, medically necessary and tended to lessen his ultimate period of disability. We also find Dr. Mazoue's June 10, 2015 evaluation was reasonable, medically necessary and tended to lessen Mr. McDuffie's ultimate period of disability.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, WE CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On September 19, 2014, Mr. McDuffie, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained compensable injuries to his back and left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Johnson Food Service, LLC, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976).

3. As previously noted, the evidence of record (testimony and the opinions expressed, to a reasonable degree of medical certainty, by Drs. Johnson, Riber, Lembo and Mazoue) firmly/convincingly/reliably establishes: (a) Mr. McDuffie's persistent back and left leg symptoms proximately result from the

consequences of his September 19, 2014 compensable accident; (b) his left leg symptoms involve not only pain stemming from a posttraumatic facet syndrome, but also a distinct left knee injury component of the nature identified by Dr. Mazoue; (c) he has not yet reached the point of maximum medical improvement as to either his back or left leg injury components; and (d) Mr. McDuffie requires not only facet-directed treatment of the back injury component, but also focused care for a likely medial meniscal tear. We consequently conclude Mr. McDuffie has clearly established: (a) the causal relationship of his current lumbar symptoms to the consequences of his September 19, 2014 compensable accident; (b) his need for treatment of a heretofore untreated causally related posttraumatic facet syndrome; (c) the September 19, 2014 compensable accident also produced a left knee injury component that likewise requires focused treatment; and (d) maximum medical improvement has yet to be attained as to either of these compensable injury components.

4. Defendants are financially responsible for the medical treatment, medications, evaluations, physical therapy, evaluative procedures, diagnostic testing, etc. which Mr. McDuffie has heretofore received/undergone through any authorized healthcare providers as a result of his back injury component, as he received these treatment modalities per the direction of Defendants. We further conclude: (a) the additional medical evaluations which Mr. McDuffie has independently undergone

relative to his back injury component were certainly warranted, especially in view of Defendants' denial of liability for further treatment of his causally related posttraumatic facet syndrome; and (b) the assessment by Dr. Mazoue, the only orthopaedic surgeon to actually evaluate Mr. McDuffie's left knee symptoms/pathology, was clearly reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2007).

5. We further conclude: (a) despite their knowledge (through report, questionnaire responses and deposition testimony) of Dr. Mazoue's opinions relative to Mr. McDuffie's left knee injury component and the absence of any conflicting medical opinion relative to this injury component, Defendants maintained their denial of liability; (b) notwithstanding this denial, they certainly had ample opportunity to obtain assessment of this left knee injury component, but chose not to do so; (c) given the nature of his left knee symptoms, Mr. McDuffie reasonably sought evaluation from Dr. Mazoue (whose qualifications to treat this condition have not been challenged); (d) Mr. McDuffie has developed sufficient confidence in Dr. Mazoue to proceed with surgery by this physician (a likely scenario); and (e) the current circumstances constitute good cause for designation of Dr. Mazoue as Mr. McDuffie's authorized treater relative to the left knee injury component per Section 42-15-60. See also, Clark v. Aiken County Government, 366 S.C.

102, 620 S.E. 2d 99, 104 (Ct. App. 2005); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

6. We similarly conclude: (a) Mr. McDuffie's receipt of treatment for the posttraumatic lumbar facet syndrome diagnosed by Drs. Johnson, Riber and Lembo is reasonable, medically necessary and geared toward lessening his ultimate period of disability per Section 42-15-60; (b) this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by these physicians; (c) Defendants will be afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but strictly based upon the undersigned's ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident, so as to ensure receipt of this treatment; and (d) this obligation to provide ongoing medical treatment shall continue until this Commission determines he has achieved maximum medical improvement.

7. Upon informing counsel of her rulings relative to this dispute, Commissioner Taylor inadvertently overlooked their previous agreement to defer establishment of Mr. McDuffie's average weekly wage and compensation rate pending further review of all relevant data. This oversight was subsequently brought to her attention via email communication from Mr. McDuffie's counsel. As a consequence, the issue relative calculation of Mr.

McDuffie's average weekly wage and compensation is held in abeyance for determination at a later date.

8. Additionally, the email correspondence requested Commissioner Taylor to address Mr. McDuffie's entitlement to temporary total disability compensation. In response, counsel for Defendants maintained that as the Form 50 did not specifically request this compensation, the issue was not ripe for determination.

9. In this regard, counsel for the respective parties directed Commissioner Taylor, as well as this Panel, to portions of the hearing transcript which they believe are particularly relevant to this issue. Based upon our review of the pertinent portions of the hearing transcript, We conclude: (a) while the parties were obviously preoccupied with the issue involving withdrawal of Dr. Lembo's report (a circumstance which is thoroughly addressed in the May 16, 2016 Order), Mr. McDuffie's counsel nonetheless indicated his client was not currently working due to his Employer's unwillingness to honor restrictions identified by unauthorized physicians (Drs. Riber and Lembo) (See, Hearing Transcript, p. 11); (b) Defendants were obviously aware of Mr. McDuffie's restricted duty work status, as reflected by their counsel's recognition of a need "to accommodate him" (See, Hearing Transcript, p. 15); (c) Mr. McDuffie provided relatively detailed testimony outlining not only his efforts to resume restricted duty work activities, but also his Employer's

inability/failure to provide duties consistent with his medical restrictions (See, Hearing Transcript, pp. 37 - 39); (d) the Form 50 contained "a boilerplate claim for '[a]ppropriate benefits as provided in the [Workers' Compensation] Act for the above ground and other relief as the Workers' Compensation Commission may direct as just and proper" (See, Nettles v. Spartanburg School District #7, 341 S.C. 580, 535 S.E. 2d 146, 149 (Ct. App. 2000)); and (e) in view of this proviso, as well as the parties' mutual recognition of the fact his absence from work was due to Defendants' disinclination "to accommodate" him, Mr. McDuffie's entitlement to temporary total disability compensation is properly before this Commission for consideration. See also, Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 115 (Ct. App. 1994) ("As to the merits of the pleading issue, Harbin's claim for any and all rights under the Act was a sufficient pleading.").

10. "Under the Workers' Compensation Act, a claimant is entitled to compensation for a total disability resulting from a work-related injury." Last v. MSI Construction Company, Inc., 305 S.C. 349, 409 S.E. 2d 334, 336 (1991). In this regard, the Supreme Court of South Carolina has consistently held that "the loss of earning capacity caused by the physical injury is the pertinent measure of compensable disability." (Id.); See also, Bowen v. Chiquola Manufacturing Company, 238 S.C. 322, 120 S.E. 2d 99 (1961); Shealy v. Algeron Blair, Inc., 250 S.C. 106, 156

S.E. 2d 640 (1967). Consequently, the issue is "whether the injury ha[s]. . . resulted in some loss of. . . [the Claimant's] earning capacity." Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E. 2d 448, 449 (Ct. App. 1996); Last, 409 S.E. 2d at 336.

11. Additionally, a review of the relevant portions of S.C. Code Ann. Section 42-9-260 (1976, as amended), as well as S.C. Code Ann. Regs. 67-505 (2012) and 67-506 (2012), verifies: (a) disability is presumed to continue until an employee has returned to work for the requisite fifteen day period with the employer responsible for the payment of temporary disability compensation; and (b) this compensation remains payable unless the injured employee is either released by the treating physician to work "without restriction", provided with "limited duty work consistent with. . . [restrictions assigned by] the treating physician" or actively working.

12. Our Appellate Courts have similarly held: (a) the incarceration of an injured worker did not terminate his period of temporary total disability (rejecting an argument that imprisonment, rather than work related injury, produced inability to work). Last, supra; (b) an intervening pregnancy did "not change the fact that . . . [a compensable] injury" continued to prohibit an employee from performing her previous job. Orr, 474 S.E.2d at 449; (c) a "seasonal" employee remained temporarily totally disabled due to injury, notwithstanding his "return to school on a full-time basis . . . [purportedly] removed him from

the labor market" Hines v. Hendricks Canning Company, 263 S.C. 399, 211 S.E.2d 220, 223 (1975); and (d) an employer "can be relieved of the liability to pay . . . [temporary total disability compensation] by either offering or procuring" suitable employment for the injured worker. Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43, 46 (1965); See also, S.C. Code Ann. Section 42-9-190 (1976).

13. Essentially, "when the injured worker is under work restrictions, the employer must either offer suitable employment within the injured worker's capacity or pay temporary total disability compensation." Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E. 2d 430, 433 (2013) (Court indicated it "d[id] . . . not disagree with [this] . . . proposition"). In this instance, analysis of the evidence of record reveals: (a) Mr. McDuffie work status has been materially restricted as a consequence of his causally related symptoms; (b) these limitations are inconsistent with his regular/full duty work activities; (c) while Johnson Food Service, LLC has been afforded an opportunity to provide suitably restricted work activities, it has declined to do so; and (d) Mr. McDuffie has not yet reached maximum medical improvement. We consequently conclude he has been temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (2007), as a matter of law, since his last work date and remains so at this time.

14. It is axiomatic that the provisions of S.C. Code Ann. Section 42-17-40 (1976, as amended) simply oblige this Commission to make "findings of fact . . . upon the essential factual issues. . . ." Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970); Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E. 2d 804, 808 (1977). While these findings must "be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been correctly applied to those findings . . . [, n]o particular format is required." Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991).

15. Inspection of Commissioner Taylor's Order clearly verifies: (a) the presence of numerous findings which address all factual issues through exhaustive analysis of the evidence; (b) identification of the evidentiary basis for these factual determinations; (c) adherence to applicable law; and (d) its content obviously satisfies the requirements prescribed by Section 42-17-40, as construed by the South Carolina Supreme Court.

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) accept financial responsibility for all medical modalities previously provided/prescribed by any authorized healthcare specialists, as well as for the charges stemming from Dr. Mazoue's June 10, 2015 evaluation; (b) authorize the additional

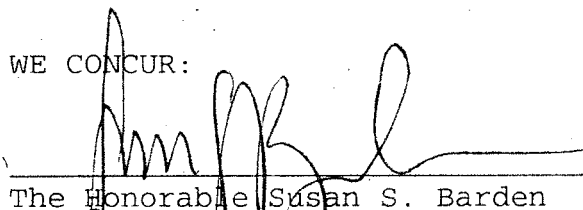
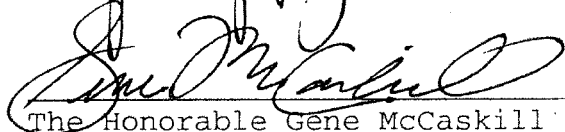
causally related medical treatment, medications, evaluations, diagnostic testing, evaluative procedures, physical therapy, surgical procedures, etc. provided/prescribed by Dr. Mazoue who is hereby designated as Mr. McDuffie's treating physician relative to the left knee injury component for the purposes of this claim; (c) accept financial responsibility for treatment of Mr. McDuffie's lumbar posttraumatic facet syndrome through an appropriate specialist of its choosing, who shall provide treatment for this condition as a causally related result of Mr. McDuffie's compensable accident; and (d) pay temporary total disability compensation effective the day following his last active work date until such time as this obligation is relieved by further Order of this Commission.

IT IS SO ORDERED.



The Honorable T. Scott Beck
Chairman
South Carolina Workers' Compensation
Commission

WE CONCUR:


The Honorable Susan S. Barden
The Honorable Gene McCaskill

CERTIFICATE OF SERVICE

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

By Kim Falls on October 12, 2016

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1413546
Carrier File #: 564615078
Carrier Code #:
Employer FEIN #:

Claimant's Name: Timothy McDuffie SSN: [REDACTED] Employer's Name: Johnson Food Services, LLC
Address: 2442 Washington Street Address: PO Box 10422
City: Columbia State: SC Zip: 29209 City: Fort Jackson State: SC Zip: 29207
Home Phone: () Work Phone: () Insurance Carrier: Great American Alliance Insurance Co.
Preparer's Name: E. Ros Huff, Jr. Law Firm: Huff & Hapeshis, LLC Preparer's Phone #: (803) 252-2232

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 09/20/14

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

See attached Addendum

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

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: Andrew N. Safran, Esquire address: PO Box 12089, Columbia, SC 29211 on the 1 day of June 2016 by: ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney
Title

roshuff@huffandhapeshis.com
Email

06/01/16
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Timothy McDuffie v. Johnson Food Services, LLC
WCC File No: 1402961
Form 30 Addendum

The Employer/Carrier appeal the May 16, 2016 Order of the Honorable Aisha Taylor, Commissioner upon the following grounds. Did the hearing Commissioner err in finding as a fact, concluding as a matter of law and ordering the following:

- 1) That the claimant sustained an injury to his right lower extremity?
- 2) That the claimant is entitled to medical treatment to the right lower extremity?
- 3) That the claimant is not at maximum medical improvement and thus entitled to continuing/ongoing medical treatment?
- 4) That the issue of temporary disability was proper before the Commission?
- 5) That the Defendants be financially responsible for ALL medicals provided and to also include further treatment to be provided by Dr. Mazoue?
- 6) That Dr. Mazoue as the authorized medical provider?
- 7) That Conclusion of Law No. 3 is not a conclusion of law as stated, but only a statement of some sort and should be stricken.
- 8) That Conclusion of Law No. 5 is not a conclusion of law as stated, but only a statement of some sort and should be stricken.
- 9) That Conclusion of Law No. 6 is not a conclusion of law as stated, but only a statement of some sort and should be stricken.
- 10) That ruling/ordering that medical treatment shall continue until this Commission determines he has achieved maximum medical improvement in that treatment is required only to lessen the claimant's disability?
- 11) That alleged/stated conclusions of law Nos. 7, 8, 9 are not properly stated/supported conclusions of law.
- 12) That because the issue of entitlement of temporary total disability benefits was not pled, raised or properly brought before the hearing Commissioner, the defendants/employer did not address the issue by presentation of evidence, thus denying them due process.

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 104
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803 253 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

June 12, 2015

HAND DELIVERED

The Honorable Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29201

Re: Timothy A. McDuffie v. Johnson Food Service, LLC. and
Great American Alliance Insurance Company/Strategic Comp.
W.C.C. File No.: 1413546

Dear Amy:

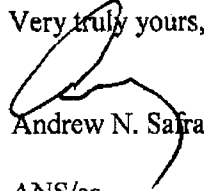
Enclosed please find a Form 50, which I am filing on behalf of Mr. Timothy A. McDuffie in connection with the above-captioned matter. As you will note, we are currently requesting a hearing for the purpose of obtaining further medical benefits as a result of injuries that have been attributed to his September 19, 2014 compensable accident.

By copy of this letter, I am serving a copy of this Form 50 on Ros Huff, counsel for Defendants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,


Andrew N. Safran

ANS/as

Enclosures

Cc: E. Ros Huff, Esquire



WCC File #:	1413546
Carrier File #:	
Carrier Code #:	
Employer FEIN #:	

Claimant's Name:	Timothy A. McDuffie	SSN:		Employer's Name:	Johnson Food Service, LLC
Address:	2442 Washington Street			Address:	3290 Forney Street
City:	Columbia	State:	SC	City:	Columbia
		Zip:	29204	State:	SC
				Zip:	29207
Home Phone:	() -	Work Phone:	() -	Insurance Carrier:	Great American Alliance Ins. Co.
Preparer's Name:	Andrew N. Safran, Esquire	Law Firm:	Andrew N. Safran, LLC	Preparer's Phone #:	803-256-6689

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: September 19, 2014

- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
- The claimant sustained an injuries to his back and left leg (Part(s) of Body Injured) on September 19, 2014 (Month/Day/Year) in Richland County, State of South Carolina.
 - Body part(s) affected are: Back and left leg.
Briefly describe how the accident occurred: Mr. McDuffie tripped on an exposed portion of pipe and stumbled at job site on Ft. Jackson.
 - Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 - The relationship of employer and employee existed at the time of injury.
 - At the time of the injury the claimant was performing services arising out of and in the course of employment.
 - Notice of the accidental injury was given to the Employer on _____ (Month/Day/Year) in the following manner: (Admitted accident).
 - ☒ Due to injury, the claimant is in need of (check one):
☐ a) medical examination and treatment for: _____
☒ b) additional medical examination and treatment for: Back and left leg injury components.
 - ☐ Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
 - ☐ Due to the injury, the claimant has permanent disability of the following nature and extent (check one):
☐ 1) General Disability: ☐ Total ☐ Partial ☐ 2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
 - ☒ A determination of permanent disability is premature at this time.
 - ☐ Due to the injury, the claimant has a serious bodily disfigurement consisting of: _____
 - At the time of the injury, the claimant was paid weekly wages of \$(Request actual wage data), and demands accounting of days worked and wages earned as provided by law.
 - Give names and addresses of all employers for whom the claimant has worked since the date of the accident: Johnson Food Service, LLC.
 - Further grounds or unusual aspects of claim: Commission designation of physicians to treat these injury components, as Defendants contend no further treatment is warranted for back component and have apparently not acknowledged need for focused treatment of the left knee component.
 - List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Christopher G. Mazoue, M.D., Columbia, SC; John F. Johnson, M.D., Mt. Pleasant, SC; Ezra B. Riber, M.D., Columbia, SC; Nancy R. Lembo, M.D., Columbia, SC; Kyle Gehres, D.O., Columbia, SC; Michael W. Peelle, M.D., Columbia, SC; Stewart Young, M.D., Columbia, SC; Palmetto Health Baptist, Columbia, SC.
 - To the best of your knowledge, did you have any prior permanent disability? Not to the best of my recollection.
If yes, describe: _____
 - Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
 - ☐ I am filing a claim. I am not requesting a hearing at this time.
 - ☒ I am requesting a hearing. A \$25 fee is required.
 - Estimated time needed for hearing: 1 hour.

☐ 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 certify I have served this document pursuant to Reg. 67-211 by delivering a copy to E. Ros Huff, Jr., Esquire, Post Office Box 1935, Irmo, South Carolina 29063, on the 12th day of June, 2015 by ☒ first class postage ☒ email ☐ certified mail ☐ personal service.

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

Preparer's Signature: Andrew N. Safran Attorney for Employee Title: msa6631@aol.com Email: June 12, 2015 Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-212 through 67-615 as well as Reg. 67-1801.

Form # 50
Revised 7/13

50

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

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 #: 1413546
Carrier File #: 564615078
Carrier Code #:
Employer FEIN #:

Claimant's Name: Timothy McDuffie SSN: [REDACTED]
Address: 2442 Washington Street
City: Columbia State: SC Zip: 29209
Home Phone: 803-476-5702 Work Phone:
Date of Injury: 09/20/14
Preparer's Name: E. Ros Huff, Jr. Law Firm: Huff Law Firm, LLC
Employer's Name: Johnson Food Services, LLC
Address: Building 11500 Dixie Road
City: Fort Jackson State: SC Zip: 29207
Insurance Carrier: Great American Alliance Insurance Company
Preparer's Phone #: 803-252-2232

Date of Injury or Illness: 9/20/2014

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

Estimated time for hearing: 1 hour

1. It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Body parts to be determined.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☒ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
Claimant has been released at MMI by authorized treating physician.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: Not an Issue
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
issue at hearing
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 222.35 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

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

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

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

Preparer's Signature

Attorney for Employer/Carrier
Title:

roshuff@colalaw.com
Email

7/10/2015
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from date of filing this form.

WCC Form # 51
Revised 07/13

51

Employer's Answer to Request for Hearing

076

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1413546

EMPLOYEE/CLAIMANT: TIMOTHY McDUFFIE

EMPLOYER: JOHNSON FOOD SERVICE

CARRIER: GREAT AMERICAN ALLIANCE INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 29TH DAY
OF OCTOBER, 2015, COMMENCING AT THE HOUR OF 11:16 A.M.,
IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA
TAYLOR, ATTENDED BY COUNSEL AS FOLLOWS:

**TIMMI A. PARRISH
VERBATIM REPORTER**

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

ANDREW N. SAFRAN, ESQUIRE, OF THE FIRM
ANDREW N. SAFRAN, LLC
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE CLAIMANT,

E. ROS HUFF, JR., ESQUIRE, OF THE FIRM
HUFF & HAPESHIS, LLC
POST OFFICE BOX 1935
IRMO, SOUTH CAROLINA 29063

ATTORNEY FOR THE EMPLOYER/CARRIER.

I N D E X

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CROSS EXAMINATION BY MR. HUFF.....	40
REDIRECT EXAMINATION BY MR. SAFRAN.....	45
CERTIFICATE OF NOTARY PUBLIC.....	50

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

5 * * * * *

6 **BY COMMISSIONER TAYLOR:**

7 TODAY IS THURSDAY, OCTOBER 29TH, 2015. WE ARE
8 HERE ON WORKERS' COMP FILE NUMBER 1413546. THIS IS
9 THE CLAIM OF MR. TIMOTHY McDUFFIE. HE IS PRESENT
10 HERE TODAY AND REPRESENTED BY MR. ANDREW SAFRAN.
11 THE EMPLOYER IS JOHNSON FOOD SERVICE, AND THE
12 CARRIER IS GREAT AMERICAN ALLIANCE INSURANCE
13 COMPANY. BOTH THE EMPLOYER AND CARRIER ARE
14 REPRESENTED TODAY BY MR. E. ROS HUFF, JR. I HAVE A
15 DATE OF ACCIDENT OF SEPTEMBER 20TH, 2014.

16 WE ARE HERE TODAY SET ON THE CLAIMANT'S FORM
17 50, REQUEST FOR HEARING. PRIOR TO THE HEARING THE
18 COMMISSION DID RECEIVE A MOTION TO POSTPONE FROM THE
19 DEFENDANTS. BEFORE GOING ON THE RECORD WITH
20 ARGUMENTS FOR BOTH THE MOTION AND THE HEARING ARE
21 THERE ANY OBJECTIONS TO THE APAs, JURISDICTION,
22 VENUE, OR ANY OTHER ITEMS? MR. SAFRAN?

23 **BY MR. SAFRAN:**

24 YOUR HONOR, I DON'T HAVE ANY OBJECTION TO
25 ANYTHING AS FAR AS ANY OF THOSE POINTS. I HAVE

1 INDICATED THAT I'M HAPPY TO WITHDRAW THE REPORT THAT
2 MR. HUFF FELT WAS WHAT WAS NECESSITATING TAKING
3 ANOTHER DEPOSITION OF DR. LEMBO. THAT DOCUMENT
4 WOULD BE LISTED AT PAGES 23 AND 24 OF MY APAs. SO I
5 HAVE NO PROBLEM REMOVING THAT. ADDITIONALLY, YOUR
6 HONOR, AS FAR AS MR. HUFF AND I HAD ALREADY TALKED,
7 I'M GOING TO -- STILL WORKING ON TRYING TO LOOK INTO
8 A LITTLE MORE ABOUT THIS COMP RATE. SO IN THE EVENT
9 OF PAYMENTS, THEY CAN PAY HIM AT WHATEVER RATE THEY
10 THINK. IF IT IS A NUMBER LATER THAT PROVES TO BE
11 SOMEWHAT HIGHER, WE'LL GET THAT STRAIGHTENED OUT,
12 BUT THAT WON'T STOP ANYTHING HAPPENING. BUT OTHER
13 THAN THAT, WE'RE FINE.

14 **BY THE COMMISSIONER:**

15 ALL RIGHT. THANK YOU. MR. HUFF.

16 **BY MR. HUFF:**

17 THANK YOU. COMMISSIONER, I GOING TO ADDRESS
18 THE ISSUE OF THE COMP RATE FIRST. I HAVE NO PROBLEM
19 WORKING WITH ANDY. IF WE HAVE THE WRONG COMP RATE,
20 WE WILL ADJUST IT. I THINK THAT'S ALLOWABLE UNDER
21 THE REGULATIONS, AND IT WOULD BE IMPROPER IF WE HAVE
22 PROPER DOCUMENTATION NOT TO DO THAT. I HAVE NO
23 PROBLEM WITH THAT.

24 OUR SITUATION TODAY IS THAT THIS ACCIDENT WAS
25 BACK IN 2014 AND SUBSEQUENTLY TO THE ACCIDENT --

1 THIS IS AN ACCEPTED ACCIDENT. MEDICAL TREATMENT HAS
2 BEEN PROVIDED FOR THE BODY PARTS AND WE GOT RELEASES
3 FROM THE BODY PARTS. I THINK THE LAST ONE OCCURRED
4 IN DECEMBER OF 2014. IN APRIL OR MAY -- IN MAY OF
5 2015 WE FILED A 21 TO PAY PERMANENCY, AND SUBSEQUENT
6 TO THAT THEN THERE WERE REFERRALS TO MEDICAL
7 PRACTITIONERS FOR OPINIONS BY ANDY, AND THEN ANDY
8 DID SUBMIT THOSE DOCUMENTS TO US. SUBSEQUENT TO
9 THOSE DOCUMENTS BEING SUBMITTED TO US AND HIS FILING
10 OF A 50 FOR A HEARING, WE PROCEEDED TO TAKE THE
11 DEPOSITIONS OF THE PROVIDERS. I HAVE THEM WITH ME
12 TODAY. WE ALSO TOOK THE DEPOSITION OF MR. McDUFFIE
13 IN JULY TO LEARN MORE FACTS BECAUSE THE MEDICAL
14 OPINIONS WERE IN JUNE, I BELIEVE, AND ONE MAY HAVE
15 BEEN EARLIER IN THE YEAR. AND WE TOOK DR. LEMBO'S
16 DEPOSITION ON SEPTEMBER 10TH. SUBSEQUENT TO THAT
17 DEPOSITION SOME NEW REPORTS CAME IN, SO WE
18 RESCHEDULED THE DEPOSITION, AND IT'S SCHEDULED FOR
19 NEXT MONTH, I THINK, ON THE 10TH OR THE 11TH. ALSO,
20 WE TOOK THE DEPOSITION OF DR. MAZOUÉ ON OCTOBER
21 19TH, AND WE HAVE THAT TODAY. WE HAVE THE
22 DEPOSITION OF DON JOHNSON THAT WAS DONE -- THAT WAS
23 DONE ON OCTOBER 12TH. WE HAVE THAT. AND THEN DR.
24 RIBER'S DEPOSITION WAS TAKEN ON OCTOBER 26TH OF THIS
25 YEAR SUBSEQUENT TO A REPORT.

1 WHAT WE ARE ASKING IS PURSUANT TO REGULATION
2 67-412, SUBSECTION "D," WHERE IT SAYS, "ANY REPORT
3 SUBMITTED TO THE OPPOSING PARTY..." IT DOESN'T SAY
4 SUBMITTED TO THE COMMISSION, "...SUBMITTED TO THE
5 OPPOSING PARTY..." NOW, ONCE HE SUBMITS IT TO ME
6 THEN HE WILL COME TO THE HEARING AND PUT IT IN
7 EVIDENCE. BUT IT SAYS, "ANY REPORT SUBMITTED TO THE
8 OPPOSING PARTY IN ACCORD WITH B-1 OR B-2 ABOVE SHALL
9 BE SUBMITTED..." IT'S NOT DISCRETIONARY. HE CAN'T
10 WITHDRAW IT UNLESS I CONSENT TO IT. "...SHALL BE
11 SUBMITTED AS AN APA EXHIBIT AT THE HEARING UNLESS
12 WITHDRAWN WITH THE CONSENT OF THE OTHER PARTY, AND
13 THE NONMOVING PARTY SHALL SUBMIT ONLY THE OTHER
14 REPORTS." I'VE GOT TO TALK TO MY CLIENT. I HAVEN'T
15 BEEN ABLE TO TALK TO MY CLIENT. ALL I'M ASKING OF
16 THIS COMMISSION IS WE'VE GOT THE DEPOSITION
17 SCHEDULED. I WILL HAVE IT EXPEDITED, TURNAROUND IN
18 ONE DAY. I'LL PAY THE EXTRA FEE TO HAVE IT DONE.
19 WE JUST WANT THE OPPORTUNITY TO DEPOSE. I'VE ALSO
20 SAID BEFORE WE WENT ON THE RECORD IF I HAVE AN
21 OPPORTUNITY TO TALK TO MY CLIENT AND THEY SAY WE
22 DON'T NEED IT, DON'T WORRY ABOUT IT. THEN GO TO
23 HEARING. I'M IN COLUMBIA. ANDY IS IN COLUMBIA.
24 THE EMPLOYER IS IN COLUMBIA. THE CLAIMANT IS IN
25 COLUMBIA. I'LL WAIVE NOTICE. JUST GIVE ME A ONE-

1 DAY NOTICE. THE ONLY DAY I'M NOT AVAILABLE NEXT
2 WEEK IS MONDAY. I'M AVAILABLE THROUGH FRIDAY. YOU
3 KNOW, IF I COULD GET THE DEPOSITION -- NOW, ANDY DID
4 HELP ME WHEN WE TOOK THE -- WHEN WE HAD THIS OTHER
5 OPINION THAT CAME IN FROM -- WAS IT RIBER, ANDY? HE
6 GOT IT SCHEDULED FOR US, AND WE TOOK IT AND GOT IT
7 DONE. SO, I'M WORKING TRYING TO GET IT DONE. WE
8 WANT OUR RIGHT PRESERVED, BECAUSE THE WAY THE
9 STATUTE READS IT DOESN'T SAY NEEDS PERMISSION. IT
10 SAYS ANY PARTY -- ANY REPORT SUBMITTED BACK TO THE
11 OPPOSING PARTY IN ACCORD WITH THESE SECTIONS SHALL
12 BE SUBMITTED AS AN APA EXHIBIT. ANY REPORT
13 SUBMITTED TO ME, NOT SUBMITTED TO YOU, SUBMITTED TO
14 ME. HE'LL BRING IT WHEN HE COMES HERE. I KNOW HOW
15 YOU'RE RULING, AND WITH ALL DUE RESPECT THAT'S ALL
16 I'M ASKING.

17 **BY THE COMMISSIONER:**

18 OKAY. ALL RIGHT.

19 **BY MR. SAFRAN:**

20 YOUR HONOR, CERTAINLY I'M NOT TAKING A POSITION
21 ONE WAY OR THE OTHER ON THIS, IF YOU WANT TO GIVE
22 HIM THE TIME TO TAKE TO HIS CLIENT.

23 **BY MR. HUFF:**

24 PLEASE DO.

25 **BY MR. SAFRAN:**

1 I THINK, ON THE OTHER HAND, I'VE GOT MR.
2 McDUFFIE HERE. I'D AT LEAST LIKE TO TAKE HIS
3 TESTIMONY, BECAUSE THE TWO ISSUES ARE SOMEWHAT
4 SEVERABLE, I THINK. CERTAINLY I HAVE NO PROBLEM
5 WITH MR. HUFF TALKING TO HIS CLIENT AND GETTING BACK
6 WITH YOU ABOUT WHETHER THEY WILL AUTHORIZE HIM TO DO
7 WHATEVER. THE ONLY THING I WILL SAY, JUST FOR THE
8 RECORD, MY BELIEF IS THAT -- AND I DON'T HAVE THAT
9 REG IN FRONT OF ME. BUT I BELIEVE, FRANKLY, THAT
10 THE PURPOSE BEHIND IT IS IF FOR SOME REASON SOMEONE
11 WANTED TO MAKE SURE SOMETHING WAS IN EVIDENCE AND
12 THEY WERE RELYING ON THE FACT THE OTHER PARTY HAD
13 SUBMITTED IT AND THE OTHER PARTY PULLED IT AT THE
14 LAST MINUTE, THEN THEY HADN'T LISTED IT IN THEIR
15 APAs, SO IT WOULD NOT GET IN. SO, THE POINT IS I
16 THINK IT'S TO REALLY STOP SOMEBODY FROM POTENTIALLY
17 AMBUSHING ANOTHER BY SAYING, "OH, YEAH, I PUT IT IN,
18 BUT NOW I'M GOING TO TAKE IT OUT, AND IT'S TOO LATE
19 FOR YOU TO PUT IT IN." THIS IS OBVIOUSLY NOT THAT
20 SITUATION. IF MR. HUFF WANTS TO PUT IT IN, THAT'S
21 FINE. I'M MORE THAN HAPPY FOR HIM TO DO IT, BUT I
22 THINK BY DOING SO THERE WOULD NOT BE ANY NEED FOR
23 THE DEPOSITION BECAUSE OTHERWISE I'M SAYING IT CAN
24 STAY OUT.

25 YOUR HONOR, I THINK THAT, JUST FROM A

1 STANDPOINT OF KIND OF WHERE WE ARE, I WOULD LIKE TO
2 GO AHEAD AND LET'S GET THIS PART AT LEAST DONE. I
3 HAVE NO PROBLEM IF YOU WANT TO GIVE HIM THAT OPTION
4 TO BIFURCATE THAT END OF IT. AS FAR AS THE
5 SITUATION IS CONCERNED, JUST FOR THE RECORD, WE ARE
6 SEEKING TREATMENT. WE ARE SEEKING TREATMENT FOR THE
7 BACK AND THE KNEE. WE ARE SEEKING TREATMENT FOR THE
8 KNEE FROM DR. MAZOUÉ, WHO HAS EXAMINED THIS
9 GENTLEMAN, WHO I THINK ONCE YOU READ HIS DEPOSITION,
10 YOU KNOW, HAS GIVEN A GREAT DEAL OF INSIGHT AS TO
11 EXACTLY WHAT'S GOING ON WITH THIS GENTLEMAN, AND
12 THAT THERE IS A SURGICAL NEED. I THINK YOU WILL
13 HEAR FROM HIM THAT HE WAS VERY FINE WITH DR. MAZOUÉ
14 IN TERMS OF THEM MEETING. AND I THINK ALL THIS DOES
15 IS ADD A LOOP TO IT. THERE IS NO WAY I THINK
16 ANYBODY CAN QUESTION DR. MAZOUÉ'S QUALIFICATIONS TO
17 DO A MENISCAL REPAIR. YOU KNOW, I THINK THIS COULD
18 BE DONE IN SHORT ORDER. THE MRI HAS TO HAPPEN.
19 FRANKLY, THE REASON I DIDN'T GET THE MRI WAS BECAUSE
20 I WAS CONCERNED THAT IF I DID I'D BE GETTING AN
21 OBJECTION FROM MR. HUFF'S CLIENT ABOUT, WELL, YOU
22 KNOW, IT WASN'T EMERGENT, YOU DIDN'T NEED TO GO PAY
23 FOR THAT, AND WE DON'T WANT TO HAVE TO FEEL LIKE
24 WE'RE RESPONSIBLE. YOU KNOW, THOSE AREN'T CHEAP.

25 THE OTHER THING THAT I WANTED TO POINT OUT IS,

1 CANDIDLY, THE REASON WHY HE HAD TO GO BACK TO SEE
2 THESE LOCAL DOCTORS, AND HE'LL TESTIFY TO THIS, IS
3 HE WAS MISSING SOME WORK AND WAS INSTRUCTED HE HAD
4 TO GET A SLIP TO COME BACK. THEY WANTED SOME
5 DOCTOR'S RELEASE. SO I SENT HIM BACK TO THEM SO HE
6 COULD TAKE SOMETHING BACK TO SAY, "OKAY, BEEN TO THE
7 DOCTOR; THESE ARE MY LIMITATIONS." THIS LETTER THAT
8 I'VE MENTIONED FROM MR. HUFF DOES, IN FACT,
9 ACKNOWLEDGE THAT HE PRESENTED THOSE. THEY CHOSE NOT
10 TO HONOR THEM AND SAID, YOU KNOW, "WE'RE NOT GOING
11 TO TAKE THEM BECAUSE THEY'RE NOT AUTHORIZED."

12 YOUR HONOR, I THINK, AGAIN, YOU WILL HAVE --
13 BECAUSE NONE OF THEM ARE EXCEPTIONALLY LONG. YOU
14 WILL HAVE AMPLE OPPORTUNITY IN THESE DEPOSITIONS TO
15 SEE REALLY HOW THREE DIFFERENT SPECIALISTS WHO --
16 YOU KNOW, THEY DON'T HAVE OVERLAPPING PRACTICES, BUT
17 THEY DO THE SAME THING -- HAVE ALL COME TO THE SAME
18 CONCLUSION IN TERMS OF CLINICAL EXAMINATIONS THAT
19 ALL LEAD TO THAT SPOT. AND, YOU KNOW, I THINK THAT
20 BECAUSE OF THAT AND BECAUSE OF THE FACT THAT THERE
21 HAS BEEN NO DESIRE ON THEIR PART WHATSOEVER TO
22 PROVIDE TREATMENT, THAT SEEING THAT HE GETS THIS
23 TREATMENT IN AN EXPEDITIOUS WAY WOULD REALLY BE
24 BEST, MORE OR LESS, ENHANCED BY -- I DON'T CARE IF
25 IT'S DR. RIBER, DR. LEMBO. I'VE TOLD HIM DR.

1 HUTCHINSON IS FINE, IF THEY HAVE TO HAVE SOMEBODY HE
2 HASN'T ALREADY SEEN. BUT THAT'S WHERE WE'RE COMING
3 FROM IN TERMS OF TREATMENT. WE'D LIKE IT DONE, YOU
4 KNOW, AS QUICKLY AS POSSIBLE BECAUSE, AGAIN, HE --
5 WE GOT THIS FIRST OPINION IN JANUARY. I GOT THAT,
6 AND BASICALLY, YOUR HONOR, I GET TOLD TOO MANY
7 TIMES, YOU KNOW, "YOU'RE GOING OUT AND DOING ALL
8 THIS STUFF." AND, YOU KNOW, THEY HAVEN'T BEEN GIVEN
9 AN OPPORTUNITY TO SEE HOW IT'S GOING TO BE. SO I
10 GAVE HIM A PERIOD OF TIME TO SEE IF IT WAS GOING TO
11 GET BETTER, LIKE HE UNDERSTOOD FROM THEIR GUY THAT
12 IT WOULD. UNFORTUNATELY, IT NEVER DID. SO WE
13 FOLLOWED UP, GOT SOME OTHER OPINIONS, BECAUSE, QUITE
14 FRANKLY, I DON'T CARE WHO I GET. I COULD GO GET THE
15 MOST QUALIFIED GUY IN THE WORLD, BUT IF I SEND THEM
16 THERE, THEY'RE NOT GOING TO BELIEVE THEM.
17 UNFORTUNATELY MY EXPERIENCE HAS BECOME THAT IF I
18 COME OVER HERE AND THEY'VE ALREADY PICKED A DOCTOR
19 AND I JUST BRING ONE, THEN IT'S LIKE, "WELL, YOU
20 KNOW, OURS SHOULD CARRY MORE WEIGHT." WELL, THAT
21 MIGHT BE. SO I'M BEING FORCED MORE OFTEN THAN NOT
22 TO HAVE TO GO GET MULTIPLE OPINIONS REALLY JUST SO
23 THE COMMISSION SEES IT'S NOT JUST A SIMPLE
24 DIFFERENCE OF OPINION BETWEEN TWO, IT MIGHT BE THREE
25 OR FOUR AND ONE, MAINLY SO I CAN PROVE THE POINT.

1 THAT JUST BECAUSE THEY'VE ANOINTED SOMEBODY DOESN'T
2 MEAN THEY'RE RIGHT. AND SO, THAT'S REALLY WHY THIS
3 WAS DONE IN THE FASHION IT WAS.

4 PLUS, I DISAGREE THAT HE EVER GOT ANY REAL
5 TREATMENT OR RELEASE FOR THE KNEE. THE ONLY DOCTOR
6 THAT I COULD TELL THAT THEY EVER SENT HIM TO THAT
7 LAID EYES OR HANDS ON THAT KNEE WAS DR. YOUNG, WHO
8 WAS BASICALLY A PRIMARY CARE DOCTOR. HE MADE A
9 REFERRAL AT THAT POINT. I DON'T THINK HE EVER
10 RELEASED HIM. HE SAID GO SEE AN ORTHOPEDIST. NOW
11 ALL THE ORTHOPEDISTS ARE RELATIVELY SPECIALIZED, AND
12 DR. PEELE IS A SPINE GUY. HE NEVER LAID EYES ON
13 THAT KNEE. HE NEVER TOUCHED THAT KNEE. AND THE
14 REASON I SENT HIM TO DR. MAZOUÉ IN ADDITION IS
15 BECAUSE, AGAIN, THEY'RE SPECIALIZED. MAZOUÉ IS AN
16 ORTHOPEDIC SPORTS MEDICINE SURGEON WHICH -- WHO
17 FOCUSES ON EXACTLY THAT. I DON'T THINK THEY'VE EVER
18 HAD ANYBODY DO THAT AS FAR AS HIS KNEE IS CONCERNED.
19 AND THIS IS NOT ONE OF THOSE THINGS WHERE A DOCTOR
20 SAYS, YOU KNOW, IT'S EQUIVOCAL. MAZOUÉ SAYS --
21 AGAIN, IT'S HIS OWN GRADING SYSTEM. HE PUT THREE
22 PLUSES NEXT TO IT, WHICH MEANS THE GUY HAD A VERY
23 PRONOUNCED RESPONSE TO THE VERY TEST THAT EVERYBODY
24 LOOKS AT AS THE GOLD STANDARD FOR A MENISCAL TEAR.
25 WE ARE JUST ASKING THAT SOMETHING GET DONE. AGAIN,

1 I'M NOT IN ANY WAY TRYING TO OBJECT OR IMPEDE HIS
2 ABILITY TO TAKE A FEW DAYS TO GET THAT CONSENT, BUT,
3 YOU KNOW, GOING AND DEPOSING HER AGAIN OVER
4 LITERALLY TWO WORDS TO ME IS KIND OF AN EXTREME.

5 **BY MR. HUFF:**

6 COMMISSIONER, WE'RE LOOKING AT -- LET'S BE
7 HONEST. I'VE BEEN DOING THIS FOR 40 YEARS. ANDY IS
8 A VERY GOOD ATTORNEY. I'M VERY GOOD AT WHAT I DO,
9 AND WE LITIGATE, BUT WE'RE POLITE TO EACH OTHER.
10 ONE OPINION, I CAN UNDERSTAND. TWO OPINIONS? OKAY.
11 THREE, FOUR OPINIONS? NOW, REALIZE THAT HE WAS
12 RELEASED IN DECEMBER. JANUARY HE GOES TO SEE ONE
13 PERSON, I THINK MAZOUÉ. NOBODY IN FEBRUARY, MARCH,
14 APRIL, MAY, ANYTHING, SO WE FILED TO GO TO A HEARING
15 TO GET THE PERMANENCY. NOW, I'M NOT GOING TO GO
16 INTO ANY COMMUNICATION BETWEEN MYSELF AND ANDY ABOUT
17 SETTLEMENT, IF THERE WAS OR IF THERE WAS NOT. BUT
18 THE ONLY THING I KNOW, THE NEXT THING I KNOW THREE
19 DAYS IN A ROW, THREE DIFFERENT OPINIONS. I HAVE THE
20 RIGHT TO CROSS EXAMINE THESE PEOPLE. I WANTED TO BE
21 -- I WOULD LOVE TO HAVE A CLEAN RECORD SO WE DON'T
22 HAVE TO DO ANY APPEAL. THIS IS AN ADMITTED CLAIM.
23 I JUST NEED SOME TIME. I'M NOT ASKING FOR THREE
24 MONTHS. I'VE SCHEDULED THE DEPOSITION. IF I CAN
25 TALK WITH MY CLIENT, MAYBE I CAN CANCEL THE

1 DEPOSITION. BUT I CAN'T CANCEL IT WITHOUT IT, AND
2 I'M TRYING TO AVOID ANY TYPE OF AN APPEAL. I DON'T
3 THINK WE NEED IT. THIS IS AN ADMITTED CLAIM. I
4 WANT TO GET THE DEPOSITION. I WANT TO SIT DOWN AND
5 TALK TO THE EMPLOYER, SEE IF WE CAN PUT HIM BACK TO
6 WORK, BECAUSE THE GUY DID WORK FOR A PERIOD OF TIME.
7 HE DID. I WOULD LIKE TO ACCOMMODATE HIM. I'M JUST
8 SAYING LET'S MAKE IT CLEAN IF WE COULD. IF I COULD
9 JUST GET TO NEXT WEEK, I'LL TRY TO DO IT. MAYBE
10 ANDY -- ANDY WAS NICE ENOUGH TO TALK WITH THE DOCTOR
11 AND GET THE DEPOSITION SCHEDULED SOONER ON THE OTHER
12 CASE. MAYBE HE CAN DO THIS ONE, ALSO, AND I'LL DO
13 IT SOONER. LIKE I SAY, HE WAS ABLE TO GET THE OTHER
14 ONE DONE. THAT'S WHY WE -- WE HAD TWO, AND WE GOT
15 THEM DONE. WE'RE NOT SITTING BACK DRAGGING OUR
16 FEET. BUT WE HAVE A RIGHT TO CROSS EXAMINE, AND I
17 THINK IT'S -- I THINK THE REGULATION IS CRYSTAL
18 CLEAR. IT'S NOT EVEN SUBJECT TO INTERPRETATION.
19 ANY REPORT SUBMITTED TO THE OPPOSING PARTY -- NOT TO
20 THE COMMISSION BUT TO THE OPPOSING PARTY, WHICH WAS
21 ME -- IN ACCORD, ABOVE, SHALL BE SUBMITTED, SHALL
22 BE. YOU CAN'T WITHDRAW IT. YOU DON'T HAVE THE
23 OPTION TO WITHDRAW IT. IT SHALL BE SUBMITTED AS
24 EVIDENCE WITHOUT THE -- UNLESS YOU HAVE THE CONSENT.
25 I CAN'T GIVE CONSENT. I PROBABLY COULD. BUT NOW

1 YOU KNOW, BECAUSE IT'S BEEN DISCUSSED, WHAT THE
2 DOCTOR SAID; YOU PROBABLY READ IT. IT'S PREJUDICIAL
3 IF I DON'T GET TO DO IT.

4 **BY THE COMMISSIONER:**

5 I HAVEN'T READ IT BECAUSE I DON'T HAVE THE APAS
6 YET. FOR THE RECORD ---

7 **BY MR. HUFF:**

8 OKAY. IT'S NOT THAT BIG OF A DEAL.

9 **BY THE COMMISSIONER:**

10 WELL, IT DEPENDS ON WHICH SIDE YOU -- WHOSE
11 PROSPECTIVE YOU'RE LOOKING AT.

12 **BY MR. HUFF:**

13 I UNDERSTAND THAT.

14 **BY THE COMMISSIONER:**

15 I WILL -- DR. LEMBO'S TESTIMONY AND HIS
16 TESTIMONY, THEY DON'T HAVE ANYTHING TO DO WITH EACH
17 OTHER. HE'S GOING TO TELL ME WHAT HE'S GOING TO
18 TELL ME REGARDLESS OF WHAT DR. LEMBO SAYS NEXT WEEK.
19 I'M GOING TO GO FORWARD WITH THE HEARING. I WILL
20 LEAVE THE RECORD OPEN FOR DR. LEMBO'S TESTIMONY. I
21 WILL NOT READ ANY MEDICAL EVIDENCE UNTIL THAT SECOND
22 DEPOSITION IS SUBMITTED, IF IT TAKES PLACE. SO I'LL
23 LOOK AT ALL THE MEDICAL EVIDENCE AT THE SAME TIME,
24 BUT I BELIEVE THAT I CAN TAKE MR. McDUFFIE'S
25 TESTIMONY HERE TODAY SINCE WE ARE ALL SET HERE AND

1 READY TO GO.

2 BY MR. HUFF:

3 ALL RIGHT.

4 BY THE COMMISSIONER:

5 ALL RIGHT. MR. SAFRAN, I BELIEVE YOU WENT INTO
6 MOST OF THE MERITS. IS THERE ANYTHING ELSE YOU WANT
7 TO PUT ON YOUR POSITION ON THE RECORD?

8 BY MR. SAFRAN:

9 NONE.

10 BY THE COMMISSIONER:

11 OKAY. MR. HUFF, ANYTHING OUTSIDE OF THE
12 MOTION?

13 BY MR. HUFF:

14 NOTHING, NO.

15 BY THE COMMISSIONER:

16 OKAY, VERY GOOD. MADAM COURT REPORTER, WILL
17 YOU PLEASE SWEAR MR. McDUFFIE.

18 BY THE COURT REPORTER:

19 SIR, IF YOU WILL RAISE YOUR 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 TIMOTHY McDUFFIE,

25 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS

1 FOLLOWS:

2 **BY THE COMMISSIONER:**

3 MR. SAFRAN.

4 **DIRECT EXAMINATION BY MR. SAFRAN:**

5 Q. SPEAK UP A LITTLE BIT, OKAY?

6 A. YES, SIR.

7 Q. WHAT'S YOUR FULL NAME?

8 A. TIMOTHY ADAM McDUFFIE.

9 Q. OKAY. MR. McDUFFIE, WHERE DO YOU LIVE?

10 A. GONZALES GARDENS, APARTMENT B-4.

11 Q. OKAY. HOW OLD ARE YOU?

12 A. THIRTY-SEVEN.

13 Q. ALL RIGHT. AND DO YOU HAVE ANY CHILDREN?

14 A. YES, SIR.

15 Q. AND HOW MANY?

16 A. ONE.

17 Q. AND DO YOU SUPPORT THAT CHILD?

18 A. YES, SIR.

19 Q. WHAT'S YOUR LAST LEVEL OF EDUCATION? WHAT I'M
20 SAYING IS, WHAT'S THE LAST GRADE YOU FINISHED?

21 A. TENTH.

22 Q. OKAY. I'M NOT GOING TO GO THROUGH A BUNCH OF
23 BACKGROUND. YOU WORK CURRENTLY AT JOHNSON FOOD
24 SERVICE?

25 A. YES, SIR.

1 Q. HOW LONG HAVE YOU BEEN THERE?

2 A. TWO AND A HALF YEARS.

3 **BY MR. HUFF:**

4 I COULDN'T HEAR HIM.

5 **WITNESS RESUMES:**

6 A. TWO AND SOME -- TWO AND A LITTLE BIT OF MONTHS, TWO
7 YEARS AND A COUPLE MONTHS.

8 **DIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

9 Q. A LITTLE OVER TWO YEARS?

10 A. MM-HMM.

11 Q. OKAY, ALL RIGHT. WHAT IS YOUR JOB OUT THERE?

12 A. I'M A COOK NOW, COOK II.

13 Q. ALL RIGHT. HOW LONG HAVE YOU BEEN A COOK II, JUST
14 ROUGHLY?

15 A. ABOUT A YEAR.

16 Q. OKAY. DID YOU PREVIOUSLY HAVE AN INJURY AT JOHNSON
17 FOOD SERVICE IN SEPTEMBER OF LAST YEAR?

18 A. NO, SIR.

19 Q. WHAT I'M SAYING, WHEN DID YOU HURT YOURSELF?

20 A. OH, SEPTEMBER LAST YEAR.

21 Q. OKAY, ALL RIGHT. LET ME ASK THIS. AT THAT TIME
22 WERE YOU IN THE SAME POSITION YOU ARE IN NOW AS A
23 COOK II, OR WERE YOU DOING SOMETHING ELSE?

24 A. A COOK II, YES, SIR.

25 Q. ALL RIGHT. NOW, AS A COOK II GENERALLY WHAT DO YOU

1 HAVE TO DO AS PART OF YOUR JOB DURING THE DIFFERENT
2 COURSE OF A DAY?

3 A. COOKING IN THE BIG POTS, CLEANING UP, PUTTING THE
4 POTS AND PANS, PUTTING THEM IN THE AISLES, PUTTING
5 THEM IN THE WARMERS, SERVING ON THE LINE, GOING TO
6 THE MEAT ROOM TO GET THE MEAT FROM THE -- WELL,
7 GOING TO THE MEAT ROOM TO GET THE BOX AND BRING IT
8 TO US. WE PUT THEM IN THE POTS. WE COOK THE FOOD,
9 AND THEN WE PUT THE FOOD IN THE PANS AND PUT IT IN
10 THE PREP BOX, AND THEN WE SERVE IT.

11 Q. LET ME ASK THIS. DURING THE COURSE OF A DAY ARE YOU
12 REQUIRED AT TIMES TO LIFT WEIGHTS, THINGS THAT WEIGH
13 DIFFERENT AMOUNTS?

14 A. YES, SIR.

15 Q. DO YOU HAVE TO LIFT MORE THAN TEN POUNDS?

16 A. YES, SIR.

17 Q. DO YOU HAVE LIFT MORE THAN 20 POUNDS?

18 A. YES, SIR.

19 Q. WHAT'S THE HIGHEST THAT YOU NORMALLY WOULD LIFT AS
20 FAR AS JUST DURING A REGULAR DAY?

21 A. I MEAN, ALL THE BOXES WEIGH LIKE DIFFERENT POUNDS,
22 LIKE 30 TO 25. SOMETIMES WE GET LIKE BOXES OF
23 CHICKEN. CHICKEN IS LIKE THE MOST HEAVIEST THING
24 THAT WE'LL PICK UP. IT'S PROBABLY LIKE 40 TO 45
25 POUNDS. IT'S GOT LIKE FIVE BAGS OF CHICKEN IN IT.

1 Q. OKAY. AND THAT'S A NORMAL DAY?
2 A. YES, SIR.
3 Q. DO YOU HAVE STAND?
4 A. YES, SIR.
5 Q. AND ARE THERE TIMES WHERE YOU HAVE TO DO THINGS
6 WHERE YOU HAVE TO BEND YOUR KNEE?
7 A. YES, SIR.
8 Q. ARE THERE OTHER TIMES WHERE YOU HAVE TO DO THINGS
9 LIKE TWIST IN ORDER TO MOVE THINGS?
10 A. YES, SIR.
11 Q. SO, YOU HAVE TO USE YOUR BODY?
12 A. YES, SIR.
13 Q. ALL RIGHT. TELL THE COMMISSIONER JUST VERY BRIEFLY
14 -- FIRST OF ALL, WHEN THIS HAPPENED, THIS MEANING
15 THE ACCIDENT WE TALKED ABOUT IN SEPTEMBER, I THINK
16 THE 20TH OF LAST YEAR. I THINK I HAD IT DOWN AS THE
17 19TH. SOMETIME, THE 19TH OR 20TH; IS THAT CORRECT?
18 A. YES, SIR.
19 Q. LET ME ASK YOU THIS. WERE YOU ON THAT PARTICULAR
20 DAY WORKING IN THE NORMAL PLACE, OR WERE YOU IN A
21 DIFFERENT PLACE?
22 A. I WAS IN A DIFFERENT PLACE.
23 Q. ALL RIGHT. WHERE WERE YOU WORKING?
24 A. I WAS IN A BUILDING CALLED ELEVEN FIVE, BUT I
25 NORMALLY WORK IN LIKE TEN FOUR ONE.

1 Q. OKAY. SO, WERE YOU -- I GUESS, WERE YOU
2 PARTICULARLY FAMILIAR WITH THAT BUILDING?

3 A. NO, SIR.

4 Q. ALL RIGHT. WHAT HAPPENED THAT DAY THAT WAS
5 DIFFERENT, I GUESS, THAN NORMAL FOR YOU?

6 A. IT BASICALLY WAS LIKE A NORMAL DAY, YOU KNOW. WE GO
7 TO DIFFERENT BUILDINGS, BUT WE STILL DO THE SAME
8 THING.

9 Q. OKAY. WHAT HAPPENED AS FAR AS ANY INJURY TO YOU?

10 A. I WAS CLEANING UP, AND I TURNED AROUND TO GO GET A
11 BROOM, AND IT WAS LIKE A TABLE IN THE AREA, AND I
12 GUESS SOMEBODY HAD TOOK THE TABLE -- 'CAUSE THE
13 TABLE GOT WHEELS ON IT -- TOOK THE TABLE AND USED
14 THE TABLE, AND I DIDN'T KNOW IT. SO I JUST TURNED
15 AROUND TO GO GET A BROOM, AND IT WAS A PIPE STICKING
16 OUT THE GROUND. I THINK IT WAS LIKE -- PROBABLY
17 LIKE AN OLD PLUG OR SOMETHING. I DON'T KNOW. BUT
18 IT'S PROBABLY ABOUT THAT LONG RIGHT THERE.

19 Q. WHEN YOU'RE SAYING THAT LONG, YOU'RE SAYING WHAT;
20 ABOUT FOUR OR FIVE INCHES?

21 A. THE PIPE. YEAH, ABOUT FOUR OR FIVE INCHES. SO, AND
22 I WAS JUST WALKING, AND THE PIPE HAD CAUGHT MY LEG,
23 AND I DIDN'T KNOW IT. BUT -- AND I JUST KEPT ON
24 WALKING. I WENT TO MOVE MY LEG FORWARD, AND I
25 COULDN'T, SO I WENT TO START TO FALL DOWN, BUT I

1 CAUGHT MYSELF WITH MY HANDS AND PULLED MY LEG, AND I
2 HEARD SOMETHING LIKE A POP. I JUMPED UP, LIKE, OH,
3 LORD, I ALMOST FELL, YOU KNOW, LIKE, I'M HOPING
4 NOBODY DIDN'T SEE THAT. THE LADY WAS LIKE, "I SAW
5 THAT. ARE YOU OKAY?" I WAS LIKE -- I WAS LIKE,
6 "YEAH." SO THEN I WENT TO GO BACK TO WORK, AND, YOU
7 KNOW, A LITTLE WHILE LATER I WAS PUSHING A BROOM,
8 AND THEN I TWISTED A LITTLE BIT, AND I FELT THE
9 PAIN, AND I WAS LIKE ---

10 Q. WHERE WERE YOU FEELING PAIN?

11 A. IN MY SIDE, IN MY BACK, LOWER BACK PART OF MY BACK.
12 AND I WAS LIKE, "OH." SO I WAS LIKE -- SHE WAS LIKE
13 "WHAT'S WRONG?" I WAS LIKE, "I DON'T KNOW." SO I
14 WENT TO DO IT AGAIN, AND I WAS LIKE, "OH." I HAD TO
15 LET THE BROOM GO THIS TIME. I WAS LIKE, "OH." SHE
16 WAS LIKE, "GRAB THE MANAGER," 'CAUSE THE MANAGER WAS
17 ABOUT TO LEAVE. SHE WAS LIKE, "GO TELL HIM WHAT
18 HAPPENED." SO I WENT AND TOLD HIM WHAT HAPPENED..

19 Q. TELL ME THIS. AT THAT POINT YOU'RE POINTING TO YOUR
20 AREA IN YOUR LOW BACK ON YOUR LEFT SIDE?

21 A. YES. YES, SIR.

22 Q. ALL RIGHT. WAS IT JUST THERE, OR WHERE WAS IT GOING
23 AT THAT POINT?

24 A. IT WAS JUST LIKE A -- I REALLY COULDN'T TELL 'CAUSE
25 IT WAS A PAIN.

1 Q. RIGHT.

2 A. YOU KNOW, WHEN IT JUST STARTED, I DIDN'T -- IT WAS
3 LIKE IT JUST WENT LIKE A PAIN, LIKE A LIGHTENING
4 PAIN, LIKE OH. I REALLY DIDN'T KNOW EXACTLY WHERE
5 IT WAS COMING FROM.

6 Q. WAS IT IN ONE SPOT, OR DID IT GO -- JUST SHOW US
7 WHERE IN YOUR PART OF YOUR BODY THAT YOU WERE
8 FEELING IT.

9 A. IT WAS LIKE FROM RIGHT HERE, LIKE ALL THE WAY DOWN
10 TO LIKE THE BACK OF MY KNEE RIGHT HERE.

11 Q. OKAY. SO ---

12 **BY MR. HUFF:**

13 COULD YOU DESCRIBE THAT BECAUSE THAT WOULD NOT
14 LOOK GOOD IN THE RECORD, RIGHT HERE TO RIGHT HERE.

15 **BY MR. SAFRAN:**

16 YES.

17 **DIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

18 Q. LET ME ASK THIS. YOU HELD YOUR HAND -- STARTED IN
19 YOUR BACK HERE, YOUR LOWER BACK?

20 A. AT MY LOWER BACK.

21 Q. ON THE LEFT SIDE?

22 A. DOWN TO MY -- DOWN TO MY HIP AND LIKE TO THE BACK OF
23 MY KNEE.

24 Q. OKAY. SO, FROM YOUR LOWER BACK DOWN INTO YOUR LEFT
25 HIP DOWN TO THE BACK OF YOUR LEFT KNEE?

1 A. YES, SIR.

2 Q. OKAY. YOU CAN SIT DOWN. THAT'S FINE. THANKS. SO,
3 THERE WAS -- YOU REPORTED IT TWICE BASICALLY, TO
4 WHOEVER WAS THERE, YOUR IMMEDIATE PERSON, AND THEN
5 TO ---

6 A. YEAH, HE -- I TOLD HIM. HE WAS ABOUT TO LEAVE OUT
7 THE DOOR, SO HE TOOK ME TO THE OTHER MANAGER. HE
8 WAS LIKE, I NEED -- HE WAS LIKE, "WOULD YOU WANT TO
9 GO TO THE HOSPITAL?" I WAS LIKE, "I DON'T REALLY
10 KNOW 'CAUSE IT'S NO..." -- I DON'T KNOW HOW -- LIKE
11 IT'S ABOUT NINE O'CLOCK. IT WAS ABOUT TIME TO GET
12 OFF. I SAID, "WELL, I DON'T KNOW. IT AIN'T THAT
13 BAD. I JUST WANTED TO LET YOU KNOW." SO, HE WENT
14 LIKE, "OKAY, LET ME GO IN HERE AND TELL THE OTHER
15 MANAGER." HE TOLD HIM, AND HE WAS LIKE, "WELL, JUST
16 MAKE A NOTE OF IT, THAT HE REPORTED IT." SO THEN
17 THE NEXT DAY I CAME TO WORK, AND I WAS -- ALL NIGHT
18 I WAS LIKE TOSSING AND TURNING, COULD NOT SLEEP. I
19 WAS LIKE, "OH, GOD," YOU KNOW, AND I WAS LIKE, "I
20 DON'T KNOW WHAT'S WRONG." SO, I SAID, "WELL, I'M
21 GOING TO TRY TO FIGHT IT OFF." I WENT BACK TO WORK,
22 GOT TO WORK, SIGNED IN, AND PICKED UP A PACK OF
23 MASHED POTATOES, A FULL PAN OF MASHED POTATOES, AND
24 SHE WAS LIKE, "WELL, TAKE THIS TO THE LINE." SO I
25 PICKED IT UP AND TRIED TO TAKE IT TO THE LINE, AND

1 SHE WAS LIKE -- SHE WAS LIKE, "UH-UH, YOU'RE IN
2 PAIN." I WAS LIKE, "MAN, I'LL BE ALL RIGHT. I'LL
3 BE ALL RIGHT." SHE WAS LIKE, "NO. GO TELL THE
4 MANAGER." SHE WAS LIKE, "GO TELL THE MANAGER 'CAUSE
5 YOU HURT." SO I WENT IN THERE AND TOLD HIM. SO
6 THEN HE WROTE UP THE INCIDENT REPORT. SO THEN HE
7 WAS LIKE, "I'M GOING TO HAVE TO TAKE YOU TO
8 MEDCARE."

9 Q. LET ME JUST ASK YOU A FEW THINGS HERE. THEY SENT
10 YOU TO MEDCARE, CORRECT?

11 A. YES, SIR.

12 Q. DID YOU DRIVE, OR DID THEY TAKE YOU?

13 A. THEY TOOK ME.

14 Q. ALL RIGHT. SO THEY TOOK YOU TO MEDCARE?

15 A. YES, SIR.

16 Q. WHEN THIS ACCIDENT HAPPENED, YOU SAID YOU CAUGHT
17 YOURSELF BEFORE YOU ACTUALLY FELL TO THE FLOOR?

18 A. MM-HMM.

19 Q. HAVE YOU EVER TOLD ANYBODY THAT YOU HIT THE FLOOR?

20 A. NO, SIR.

21 Q. ALL RIGHT. AND THE REASON I ASK IS MEDCARE SAID
22 SOMETHING ABOUT LANDING ON YOUR BACK. YOU DIDN'T
23 LAND ON YOUR BACK?

24 A. NO, I NEVER TOLD THEM THAT.

25 Q. OKAY. DID MEDCARE REALLY DO ANYTHING?

- 1 A. NO. ALL THEY DID WAS TAKE AN X-RAY. HE -- I SHOWED
2 THEM WHERE MY BACK -- I SHOWED THEM WHERE MY PAIN
3 WAS IN MY BACK, AND I TOLD THEM IT WAS GOING TO MY
4 KNEE, YOU KNOW. I WAS LIKE, "I'M HAVING A REAL BAD
5 PAIN GOING TO MY KNEE."
- 6 Q. AND DON'T SAY WHAT THEY SAID, BUT DID THEY REALLY DO
7 ANYTHING FOR YOU, ---
- 8 A. NO.
- 9 Q. --- OTHER THAN JUST DID THE X-RAY?
- 10 A. THE X-RAY; THAT'S IT. THEY GAVE ME SOME PILLS.
- 11 Q. ALL RIGHT. WITHIN THE NEXT FEW DAYS DID YOU GO
12 SOMEWHERE ON YOUR OWN?
- 13 A. YES, SIR.
- 14 Q. WHERE DID YOU GO?
- 15 A. TO THE EMERGENCY ROOM AT BAPTIST.
- 16 Q. AND WHERE DID YOU TELL THEM YOU WERE HAVING PAIN?
- 17 A. FROM MY LOWER BACK ALL THE WAY DOWN TO MY KNEE.
- 18 Q. ALL RIGHT. AND AT THAT POINT DID THEY REALLY DO
19 ANYTHING OTHER THAN MEDICATION?
- 20 A. NO; NO, SIR.
- 21 Q. ALL RIGHT. DID YOU TELL THE PEOPLE AT WORK YOU HAD
22 GONE ON YOUR OWN?
- 23 A. YES, SIR.
- 24 Q. AND WHAT WAS THEIR RESPONSE?
- 25 A. THEY GOT MAD AND SAID, "YOU'RE NOT SUPPOSED TO GO

1 NOWHERE ON YOUR OWN. YOU GOT TO GO WHERE WE TELL
2 YOU TO GO AT OR WE WON'T BE RESPONSIBLE FOR IT."

3 Q. SO DID THEY THEN SEND YOU SOMEWHERE?

4 A. YES, SIR.

5 Q. WHERE DID YOU GO?

6 A. FIRST CARE ON DECKER BOULEVARD.

7 Q. AND WHO WAS THE DOCTOR YOU SAW OVER THERE?

8 A. DR. YOUNG.

9 Q. OKAY. AND WE'LL SUBMIT THE RECORDS, BUT YOU SAW HIM
10 A FEW TIMES?

11 A. YES, SIR.

12 Q. WHEN HE WOULD EXAMINE YOU, WHERE DID HE BASICALLY
13 KIND OF LOOK AND PUT HIS HANDS?

14 A. ON MY BACK.

15 Q. OKAY. AND DID HE ALSO CHECK YOUR KNEE?

16 A. YEAH, HE LOOKED AT MY KNEE.

17 Q. ALL RIGHT. WERE YOU HAVING PROBLEMS -- WHEN HE
18 WOULD TOUCH YOUR KNEE, WAS IT SORE?

19 A. YEAH, I WOULD TELL HIM THAT IT WAS A PAIN ON THIS
20 SIDE AND ON THE OTHER SIDE.

21 Q. OKAY, ALL RIGHT. EVENTUALLY DID HE TRY YOU IN
22 THERAPY?

23 A. YES, SIR.

24 Q. DID THAT HELP OR NOT?

25 A. NO, IT MADE IT WORSE.

1 Q. ALL RIGHT. AT SOME POINT DID HE KIND OF QUIT SEEING
2 YOU?

3 **BY MR. HUFF:**

4 I'M GOING TO OBJECT TO THE LEADING.

5 **BY MR. SAFRAN:**

6 I'LL REPHRASE IT.

7 **DIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

8 Q. ONCE DR. YOUNG HAD GOTTEN TO A CERTAIN POINT, DID
9 YOU KEEP SEEING HIM, OR WHAT HAPPENED?

10 A. AFTER I WENT BACK AND TOLD HIM THAT THERAPY WAS
11 MAKING ME WORSE, HE HAD -- HE STOPPED THE THERAPY.
12 SO HE WAS LIKE, "WELL, I'M GOING TO REFER YOU TO A
13 BACK SPECIALIST."

14 Q. OKAY. DID YOU THEN GET SENT SOMEWHERE ELSE?

15 A. YES, SIR.

16 Q. WHERE DID YOU GO?

17 A. I CAN'T RECALL THE NAME OF IT, BUT IT WAS OVER THERE
18 OFF OF TWO NOTCH, OVER THERE BY -- BEHIND ARBY'S,
19 OVER THERE BEHIND ARBY'S. IT'S A BACK PLACE OVER
20 THERE SOMEWHERE.

21 Q. DID YOU END UP SEEING A DR. PEELE?

22 A. PEELE; THAT'S IT.

23 Q. OKAY. IS HE AT MOORE, MOORE CLINIC?

24 A. NO, NO. PEELE AT MOORE.

25 Q. RIGHT. THAT'S WHAT I'M ASKING YOU.

1 A. YEAH, I SAW HIM.
2 Q. OKAY. SO YOU SAW HIM?
3 A. YEAH.
4 Q. HE WAS THE ORTHOPEDIST YOU FIRST SAW?
5 A. YEAH.
6 Q. OKAY, OKAY. HOW MANY TIMES DID YOU SEE PEELE?
7 A. TWO TIMES.
8 Q. ALL RIGHT. AFTER THE FIRST ONE, DID YOU HAVE A TEST
9 DONE?
10 A. YES, SIR.
11 Q. ALL RIGHT. AND WHEN YOU WENT BACK AFTER THE SECOND
12 ONE, DID DR. PEELE OFFER YOU ANY MORE TREATMENT?
13 A. NO, SIR.
14 Q. ALL RIGHT. WHAT WAS YOUR UNDERSTANDING AT THAT
15 POINT AS FAR AS WHEN YOUR BACK WAS GOING TO GET
16 BETTER?
17 A. I COULD GO BACK TO WORK FULL DUTY.
18 Q. WERE YOU LED TO BELIEVE THERE WAS ANYTHING THAT WAS
19 GOING TO CONTINUE GIVING YOU PAIN?
20 A. NO.
21 Q. ALL RIGHT.
22 A. NO, SIR.
23 Q. DID YOU STILL HAVE PAIN?
24 A. YES, SIR.
25 Q. ALL RIGHT. AND AT SOME POINT IN THE NEXT MONTH OR

1 SO DID YOU SEE A DIFFERENT DOCTOR?

2 A. YES, SIR.

3 Q. WHO WAS THAT?

4 A. DR. -- DR. -- AT BAPTIST -- I MEAN PROVIDENCE. DR.

5 ---

6 Q. RIBER?

7 A. RIBER, YEAH.

8 Q. ALL RIGHT. WHEN DR. RIBER SAW YOU THAT FIRST TIME,
9 DID HE CHECK YOUR BACK?

10 A. YES, SIR.

11 Q. DID HE ALSO ACTUALLY CHECK YOUR KNEE?

12 A. YES, SIR.

13 Q. ALL RIGHT. HIS REPORT WILL SAY WHAT IT SAYS, BUT MY
14 QUESTION IS, WOULD YOU BE WILLING TO HAVE THE
15 INJECTIONS THAT HE MAY HAVE REFERENCED IN HIS
16 REPORT?

17 A. YES, SIR.

18 Q. UP TO NOW HAVE YOU REALLY HAD ANY INJECTIONS IN YOUR
19 BACK OR YOUR KNEE?

20 A. NO, SIR.

21 Q. HAVE YOU REALLY HAD ANYTHING OTHER THAN SOMEBODY
22 GIVING YOU MEDICINE?

23 A. NO, SIR.

24 Q. OTHER THAN HAVING SOME SCANS OR A SCAN TAKEN OF YOUR
25 BACK AND A LITTLE P.T.?

1 A. YES, SIR.

2 Q. YOU THEN LATER SAW SOME OTHER DOCTORS?

3 A. YES, SIR.

4 Q. ALL RIGHT. DID YOU SEE A LADY DOCTOR HERE IN THE
5 COLUMBIA AREA?

6 A. YES, SIR.

7 Q. WHO WAS THAT, IF YOU REMEMBER?

8 A. DR. -- I -- I'M NOT GOOD WITH NAMES, BUT...

9 **BY MR. HUFF:**

10 YOU CAN MENTION THE NAME, ANDY. I HAVE NO
11 PROBLEM.

12 **DIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

13 Q. DR. LEMBO?

14 A. LEMBO, YEAH, A LADY, RIGHT DOWN FROM HARBISON WAY.

15 Q. OKAY, ALL RIGHT. WHAT WAS THE FOCUS OF HER
16 EXAMINATION?

17 A. MY BACK.

18 Q. OKAY. YOU ALSO SAW DR. MAZOUÉ?

19 A. YES, SIR.

20 Q. NOW, WHO IS HE?

21 A. A DOCTOR DOWN IN CHARLESTON.

22 Q. MAZOUÉ.

23 A. MAZOUÉ?

24 Q. YES.

25 A. HOLD UP. OH, MAZOUÉ. OH, USC -- THE DOCTOR FROM

1 USC ABOUT THE KNEE.

2 Q. RIGHT. WHAT WAS THE FOCUS OF HIS EXAM WITH YOU?

3 A. MY KNEE.

4 Q. NOW, YOU DID LET HIM KNOW YOU HAD SOME BACK PAIN?

5 A. YES, SIR.

6 Q. TELL US JUST BRIEFLY, DID HE DO A -- DID HE SPEND
7 SOME TIME WITH YOU?

8 A. YES, SIR.

9 Q. DID HE PUT HIS HANDS ACTUALLY ON YOUR KNEE?

10 A. YES, SIR.

11 Q. DID HE MOVE IT AROUND?

12 A. YES, SIR.

13 Q. AT SOME POINT DID YOU EVER HAVE ANY PAIN WITH YOUR
14 KNEE WHEN HE WAS MOVING IT?

15 A. ABOUT THE WHOLE TIME.

16 Q. OKAY. AND I GUESS MY QUESTION IS, HOW DID YOU COME
17 AWAY FEELING AS FAR AS INFORMATION? DID HE GIVE YOU
18 KIND OF AN EXPLANATION ABOUT WHAT WAS GOING ON WITH
19 YOU?

20 A. YEAH.

21 Q. NOT WHAT HE SAID, BUT DID HE DO THAT?

22 A. YES, SIR. YEAH, HE MADE ME FEEL LIKE -- WELL, I
23 KNOW A LITTLE BIT WHAT'S GOING ON WITH IT, AND AT
24 FIRST I DON'T KNOW WHAT'S GOING ON WITH IT.

25 Q. OKAY. WAS SURGERY SOMETHING THAT AT LEAST CAME UP?

- 1 A. YES, SIR.
- 2 Q. DID YOU FEEL COMFORTABLE ENOUGH WITH HIM TO HAVE
- 3 SURGERY WITH HIM?
- 4 A. YES, SIR.
- 5 Q. OKAY. NOW, YOU ALSO DID SEE THE DOCTOR DOWN IN
- 6 CHARLESTON, DR. JOHNSON?
- 7 A. YES.
- 8 Q. WHAT WAS THE FOCUS OF HIS EVALUATION OF YOU?
- 9 A. MY BACK.
- 10 Q. OKAY. AND, AGAIN, IF INJECTIONS WERE MENTIONED, IS
- 11 THAT SOMETHING THAT YOU WOULD BE WILLING TO DO?
- 12 A. YES, SIR.
- 13 Q. REALLY, HAS THERE BEEN ANYTHING THAT WAS DONE THAT
- 14 WORKERS' COMP SENT YOU TO, WHETHER IT BE MEDCARE,
- 15 DR. YOUNG, THERAPY, OR DR. PEELE, THAT HAS MADE ANY
- 16 OF THIS REALLY ANY BETTER?
- 17 A. NO, SIR.
- 18 Q. WHEN YOU WENT BACK TO WORK ORIGINALLY, YOU WERE ON
- 19 LIGHT DUTY?
- 20 A. YES, SIR.
- 21 Q. WERE THERE TIMES YOU TRIED TO KIND OF DO MORE THAN
- 22 SIT THERE?
- 23 A. YES, SIR.
- 24 Q. WHY?
- 25 A. I'D RATHER WORK THAN JUST BE JUST SITTING THERE

1 DOING NOTHING.

2 Q. ALL RIGHT. AND SINCE YOU WERE RELEASED BY DR.
3 PEELE, TELL US, HAVE YOU GONE THROUGH EVERY DAY
4 DOING EVERYTHING YOU'RE SUPPOSED TO DO, OR HAVE
5 THERE BEEN THINGS DONE DIFFERENTLY?

6 **BY MR. HUFF:**

7 I'M GOING TO OBJECT TO LEADING AND VAGUE.

8 **BY THE COMMISSIONER:**

9 SUSTAINED.

10 **DIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

11 Q. LET ME ASK IT MAYBE A MORE DIRECT WAY. HAVE YOU HAD
12 ANY PROBLEMS DOING ANY OF YOUR WORK ACTIVITIES SINCE
13 YOU'VE BEEN RELEASED BY DR. PEELE?

14 A. YES, SIR.

15 Q. AND DESCRIBE WHAT'S GONE ON.

16 A. CERTAIN DAYS, LIKE I'LL BE COOKING, LIKE I MAY BE
17 DOING SOME CHICKEN OR SOMETHING LIKE THAT, AND MY
18 HEAD COOK, SHE'LL ASK ME AM I ALL RIGHT. I'LL BE
19 LIKE, "I'M HAVING A LITTLE BIT OF PAIN." SO SHE'LL
20 SEND SOMEBODY OVER THERE. OR LIKE WHEN I GO TO --
21 WHEN I'M STIRRING SOME MASHED POTATOES OR SOMETHING,
22 I'M LIKE, "MAN, I NEED A FIVE -- I NEED FIVE
23 MINUTES." YOU KNOW, "LET ME SIT DOWN FOR A MINUTE
24 AND GET MY BACK RIGHT." I SAID, "I FEEL LIKE IT'S
25 ABOUT TO LOCK UP." OR THERE HAVE BEEN DAYS LIKE,

1 YOU KNOW, I BEEN DOING MY WORK AND IT GOT TO THE
2 POINT WHERE I COULDN'T EVEN STAND UP, YOU KNOW,
3 STAND STRAIGHT UP. I HAD TO BE HELPED TO MY CAR OR
4 HAD SOMEBODY TO TAKE ME HOME BECAUSE LIKE MY BACK
5 HAD LOCKED UP, AND THEN I'D BE OUT FOR LIKE A DAY OR
6 TWO. I AIN'T BEEN HAVING NO MEDICINE TO TAKE, SO
7 I'VE BEEN LIKE USING LIKE VICKS VAPORUB AND ICY-HOT
8 AND SOME OTHER NEW STUFF, ALCOHOL I GOT TO RUB ON MY
9 BACK TO TRY TO LOOSEN IT UP. IT LOOSENED UP A
10 LITTLE BIT TO WHERE I CAN GO BACK TO WORK.

11 Q. HAVE YOU BEEN HAVING PROBLEMS WITH YOUR KNEE DURING
12 THAT TIME?

13 A. YEAH.

14 BY MR. HUFF:

15 LET ME OBJECT AGAIN TO A LEADING QUESTION.

16 BY THE COMMISSIONER:

17 SUSTAINED.

18 DIRECT EXAMINATION RESUMED BY MR. SAFRAN:

19 Q. WHERE, OTHER THAN YOUR BACK, IF ANYWHERE, HAVE YOU
20 BEEN HAVING PROBLEMS DURING THAT SAME TIME?

21 A. LIKE ON MY HIP DOWN ALL THE WAY DOWN TO LIKE MY
22 KNEE, TO THE BACK OF MY KNEE.

23 Q. YOU MENTIONED THAT THE KNEE PAIN WAS SOMETHING THAT
24 YOU HAD EARLY ON AFTER THIS HAPPENED?

25 A. TALKING ABOUT AFTER THE ---

1 Q. YEAH, WHEN THE ACCIDENT HAPPENED, YOU STARTED HAVING
2 PAIN DOWN TO YOUR KNEE?

3 A. YEAH, FROM THE BEGINNING.

4 Q. HAS IT CONTINUED TO BE IN THAT -- THE SAME THING
5 DOWN TO YOUR KNEE?

6 A. YES, SIR.

7 Q. OKAY. LET ME ASK YOU, ALSO. SO, THESE OTHER TIMES
8 WHERE YOU MIGHT GO HOME, HAVE TO LEAVE EARLY, YOU
9 WERE ABLE TO COME BACK TO WORK?

10 A. PROBABLY -- PROBABLY NOT THE NEXT DAY.

11 Q. BUT YOU WEREN'T GIVEN A PROBLEM COMING BACK, IS WHAT
12 I'M ASKING?

13 A. OH, NO. THEY JUST ASK ME AM I OKAY, AND I BE LIKE,
14 "YEAH, I'M PRETTY GOOD."

15 Q. ALL RIGHT. MORE RECENTLY DID YOU MISS A COUPLE OF
16 DAYS FROM WORK?

17 A. YEAH.

18 Q. AND WHY DID YOU MISS THOSE DAYS?

19 A. MY BACK WAS GIVING ME PROBLEMS.

20 Q. AND DID YOU CALL IN BEFORE YOU MISSED?

21 A. YEAH, I CALLED IN LIKE 10:00 EVERY MORNING.

22 Q. ALL RIGHT. DID YOU THEN AT SOME POINT TRY TO GO
23 BACK TO WORK?

24 A. YEAH, I HAD CALLED THEM LIKE ANOTHER DAY, AND I WAS
25 LIKE, YOU KNOW, "THIS IS McDUFFIE FROM ELEVEN --

1 FROM TEN FOUR ONE." YOU KNOW, WE WERE STILL OVER
2 THERE, YOU KNOW. "I WAS CALLING IN, YOU KNOW, TO
3 LET Y'ALL KNOW I WAS MISSING A COUPLE DAYS, YOU
4 KNOW. I WANT TO COME BACK." THEN HE WAS LIKE,
5 "WELL, NO, YOU CAN'T COME BACK UNTIL YOU GO TO GET A
6 DOCTOR'S NOTE."

7 Q. ALL RIGHT.

8 A. THEN HE SAID I HAD TO GO SEE MS. MILES.

9 Q. OKAY. SO, IN ORDER TO GO BACK TO WORK, AS I'M
10 HEARING YOU, THEY REQUIRED THAT YOU HAD TO GIVE THEM
11 A DOCTOR'S SLIP?

12 A. YES, SIR.

13 Q. HAD ANY DOCTOR SEEN YOU ---

14 A. YES, SIR.

15 Q. --- FOR THOSE TWO DAYS? I'M TALKING ABOUT ---

16 A. OH, THE DAYS?

17 Q. --- OTHER THAN THE ONES YOU HAD ALREADY BEEN.

18 A. NO.

19 Q. LET ME REPHRASE MY QUESTION. HAD YOU SEEN ANYBODY
20 ELSE FOR YOUR BACK OTHER THAN THE DOCTORS WE'VE
21 TALKED ABOUT TODAY?

22 A. NO, SIR.

23 Q. ALL RIGHT. AND WHEN YOU MISSED THOSE TWO DAYS, YOU
24 DIDN'T GO TO ANY OTHER DOCTOR?

25 A. NO, SIR.

1 Q. ALL RIGHT. DID I SEND YOU BACK TO THE TWO DOCTORS
2 HERE IN THE COLUMBIA AREA BECAUSE OF YOUR BACK?

3 A. YES, SIR.

4 Q. DID YOU GET SLIPS FROM THEM?

5 A. YES, SIR.

6 Q. DID YOU PRESENT THOSE SLIPS BACK AT WORK AS FAR AS
7 WHAT THEY HAD ASKED YOU TO DO?

8 A. YES, SIR.

9 Q. HAVE THEY LET YOU COME BACK TO WORK EVEN AFTER
10 PRESENTING THE SLIPS?

11 A. NO, SIR.

12 Q. SO YOU'RE STILL OUT NOW?

13 A. YES, SIR.

14 Q. DID YOU LET THEM KNOW YOU WERE READY TO COME BACK?

15 A. YES, SIR.

16 Q. AND YOU'RE WILLING TO COME BACK?

17 A. YES, SIR.

18 Q. AND WHAT WERE YOU TOLD AS FAR AS WHY YOU COULDN'T
19 COME BACK?

20 A. SHE TOLD ME THAT IT'S NOTHING SHE COULD TELL ME BUT
21 THE ONLY THING SHE COULD TELL ME WAS THAT I COULDN'T
22 COME BACK 'TIL THEIR INSURANCE PEOPLE TALKED TO MY
23 LAWYER. AND SHE SAID, "THAT'S ALL I CAN TELL YOU
24 RIGHT NOW."

25 Q. ALL RIGHT. LET ME ASK YOU JUST A COUPLE OF QUICK

1 THINGS. YOU ALREADY STOOD UP, BUT IS THE PAIN
2 YOU'RE STILL HAVING IN THAT SAME AREA AND LOCATION,
3 WHAT YOU ALREADY SHOWED US?

4 A. YES, SIR.

5 Q. AND, AGAIN, IT DOESN'T GO PAST JUST RIGHT BELOW THE
6 KNEE STILL?

7 A. YES, SIR.

8 Q. ALL RIGHT. YOU'VE ALREADY TALKED ABOUT DR. MAZOUÉ.
9 ARE YOU SATISFIED BASED ON THE TWO VISITS YOU'VE HAD
10 EACH WITH DR. LEMBO AND DR. RIBER AS FAR AS THEY'RE
11 CONCERNED?

12 A. YES, SIR.

13 Q. I MEAN, THEY'VE BOTH SEEN YOU TWICE?

14 A. YES, SIR.

15 Q. AND ARE YOU COMFORTABLE WITH EITHER ONE OF THEM?

16 A. YES, SIR.

17 Q. ALL RIGHT.

18 BY MR. SAFRAN:

19 THAT'S ALL I'VE GOT, YOUR HONOR.

20 BY THE COMMISSIONER:

21 OKAY. THANK YOU. MR. HUFF.

22 CROSS EXAMINATION BY MR. HUFF:

23 Q. THE LAST QUESTION YOUR ATTORNEY ASKED YOU WAS ABOUT
24 THE DOCTORS THAT HE SENT YOU TO, CORRECT?

25 A. YES, SIR.

1 Q. OKAY. CAN YOU TELL ME WHO YOU'VE TALKED TO WITH THE
2 EMPLOYER TO REQUEST TO GO BACK TO THE DOCTOR?
3 A. WHO I TALKED TO?
4 Q. YES, IF YOU DID.
5 A. FAR AS I KNOW, THAT I AIN'T -- THE ONLY PERSON I
6 TALKED TO IS LIKE MY HEAD COOKS AND MY FIRST COOK
7 AND THE PERSON THAT RUNS THE BUILDING. THEM THE
8 ONLY PEOPLE THAT, YOU KNOW, THEY'LL ALLOW US TO TALK
9 TO 'CAUSE THEY SAY WE HAVE TO GO THROUGH THE CHAIN
10 OF COMMAND.
11 Q. WHO IN THE CHAIN OF COMMAND DID YOU GO TO AND SAY,
12 "I WANT YOU TO SEND ME BACK TO THE DOCTOR"? I KNOW
13 YOUR ATTORNEY SENT YOU TO FOUR, BUT WHO DID YOU GO
14 TO THE EMPLOYER, IF YOU DID? I'M NOT SAYING YOU DID
15 OR DIDN'T. WHO DID YOU GO TO AND SAY, "I WANT TO GO
16 BACK TO THE DOCTOR"?
17 A. NOBODY.
18 Q. NOBODY. WHILE WORKING WITH OUR EMPLOYER, JOHNSON
19 FOOD SERVICE, DID YOU HAVE ANY OTHER JOBS WITH
20 ANYBODY ELSE, OR IS THIS YOUR ONLY SOURCE OF INCOME?
21 A. ONLY SOURCE OF INCOME.
22 Q. DO YOU KNOW HOW MUCH YOU WERE MAKING AN HOUR?
23 A. NINE THIRTY-TWO.
24 Q. ALL RIGHT. AND HOW MANY HOURS A WEEK WERE YOU
25 WORKING?

1 A. SUPPOSED TO BE EIGHT, BUT WE GET OUT THERE ABOUT
2 LIKE SIX AND A HALF, SEVEN.

3 Q. OKAY. AND AFTER YOU REPORTED THE ACCIDENT AND AFTER
4 YOU WERE HAVING THESE PROBLEMS, YOU TESTIFIED
5 EARLIER THAT YOU WENT AND TOLD YOUR MANAGER YOU WERE
6 HAVING PROBLEMS, CORRECT?

7 A. YOU SAID WHAT; RIGHT AFTER THE ACCIDENT?

8 Q. AFTER THE ACCIDENT YOU TOLD THEM YOU HAD A PROBLEM
9 ---

10 A. YES, SIR.

11 Q. --- WITHIN A DAY OR TWO, CORRECT?

12 A. NO, I TOLD HIM THE SAME DAY.

13 Q. AND THEY SAID, "WE'RE GOING TO TAKE YOU TO THE
14 DOCTOR," AND THEY TOOK YOU TO THE DOCTOR, CORRECT?

15 A. CORRECT.

16 Q. AND THEY GAVE YOU TREATMENT TO YOUR KNEE AND TO YOUR
17 BACK WITH TWO DIFFERENT DOCTORS, CORRECT?

18 A. NO, NOT CORRECT.

19 Q. WHO DID THEY GIVE YOU TREATMENT WITH?

20 A. THEY JUST GAVE ME TREATMENT FOR MY BACK, NOT MY
21 KNEE.

22 Q. WITH WHO?

23 A. WITH -- WITH MEDCARE THE FIRST DAY, MEDCARE, AND
24 THAT'S WITH THE FIRST DOCTOR. YOU SAID WHICH --
25 YOU WANT TO KNOW WHICH DOCTORS THEY HAD TREATED ME

1 WITH?

2 Q. WHAT DOCTOR TREATED YOUR BACK? WAS IT DR. PEELE?

3 A. NO.

4 Q. WHAT DID HE TREAT YOU FOR?

5 A. DR. PEELE, I DIDN'T SEE HIM FIRST. YOU SAID WHO I

6 WAS TREATED FIRST WITH?

7 Q. LISTEN TO MY QUESTION. YOU WENT TO SEE DR. PEELE,

8 CORRECT?

9 A. NOT AT FIRST.

10 Q. I DIDN'T SAY AT FIRST. LISTEN TO MY QUESTION. YOU

11 WENT AND SAW DR. PEELE; IS THAT CORRECT?

12 A. OH, YEAH, I SAW HIM.

13 Q. RIGHT, OKAY. AND HE TREATED YOU FOR A WHILE, RIGHT?

14 A. TWICE.

15 Q. TWO TIMES?

16 A. TWICE.

17 Q. TO WHAT BODY PART?

18 A. MY BACK.

19 Q. ALL RIGHT. WHO DID YOU SEE FOR THE KNEE?

20 A. NOBODY.

21 Q. WHO IS THE OTHER DOCTOR THAT YOU MENTIONED EARLIER;

22 DR. YOUNG? I SEE WHERE YOU SAW HIM ON SEPTEMBER

23 24TH THROUGH NOVEMBER 28TH. THEY SENT YOU TO DR.

24 STEWART YOUNG, DIDN'T THEY?

25 A. AIN'T NOBODY TREAT ME FOR MY KNEE.

1 Q. LET ME FIND THE REPORT, IF I MAY. WHO IS DR. PEELE
2 WITH; WHAT GROUP?

3 A. DR. PEELE?

4 Q. I'M SORRY; I MADE A MISTAKE. LET ME GO BACK AND
5 LOOK AT THIS REPORT. AT MEDCARE URGENT CARE WHO DID
6 YOU SEE?

7 A. I CAN'T REMEMBER. I SAW -- I WENT THERE ONCE. I
8 CAN'T REMEMBER THE GUY'S NAME. HE DIDN'T STAY IN
9 THERE VERY LONG, SO I CAN'T REMEMBER HIS NAME.

10 Q. WHEN YOU SAW DR. YOUNG, WHAT DID HE SEE YOU -- WHAT
11 BODY PART?

12 A. HE SAW ME FOR MY BACK.

13 Q. YOUR BACK. WHILE YOU WERE WORKING, YOU WERE
14 RELEASED IN DECEMBER, AND YOU WORKED IN JANUARY,
15 FEBRUARY, MARCH, APRIL, MAY, JUNE, AND FINALLY YOU
16 WENT TO SEE THESE DOCTORS IN JUNE: JOHNSON, LEMBO,
17 AND RIBER. WHAT DOCTOR DID YOU SEE BEFORE YOU WENT
18 TO THOSE THREE DOCTORS? BETWEEN BEING RELEASED IN
19 DECEMBER -- I WANT TO KNOW IN JANUARY, FEBRUARY,
20 MARCH, APRIL, MAY, WHO DID YOU GO SEE?

21 A. I DIDN'T GO SEE NOBODY.

22 Q. YOU WERE GOING TO WORK?

23 A. YES, SIR. THEY SAID I WAS CAPABLE TO GO BACK TO
24 WORK.

25 **BY MR. HUFF:**

1 I HAVE NOTHING FURTHER. THANK YOU.

2 **BY MR. SAFRAN:**

3 JUST VERY QUICKLY.

4 **REDIRECT EXAMINATION BY MR. SAFRAN:**

5 Q. YOU ACTUALLY SAW DR. RIBER IN JANUARY? I'M LOOKING
6 AT A REPORT THAT WAS DATED JANUARY 12TH, THE ONE BY
7 PROVIDENCE?

8 A. YES.

9 Q. SO YOU DID SEE HIM IN JANUARY?

10 A. IN JANUARY, YES.

11 Q. OKAY. YOU SAW HIM AGAIN MORE RECENTLY OR IN
12 OCTOBER?

13 A. MORE RECENTLY; YES, SIR. YES, SIR.

14 Q. OKAY. AND LET ME ASK THIS. DR. RIBER -- I'M NOT
15 GOING TO GO INTO WHAT'S IN HIS REPORT, BUT YOU TOLD
16 HIM AT THAT TIME WHAT WAS HURTING?

17 A. YES, SIR.

18 Q. OKAY. AND IT WAS HURTING THEN?

19 A. YES, SIR.

20 Q. WAS IT STILL HURTING WITH DR. LEMBO?

21 A. YES, SIR.

22 Q. WAS IT STILL HURTING WITH DR. JOHNSON?

23 A. YES, SIR.

24 **BY MR. HUFF:**

25 I'M OBJECTING TO LEADING.

1 **BY MR. SAFRAN:**

2 THAT'S NOT LEADING.

3 **BY MR. HUFF:**

4 IT'S LEADING.. ASK HIM WHAT YOU TOLD HIM.

5 YOU'RE TELLING HIM WHAT HE SAID.

6 **BY THE COMMISSIONER:**

7 SUSTAINED.

8 **REDIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

9 Q. WERE YOU HAVING ANY SYMPTOMS WHEN YOU SAW DR. LEMBO?

10 A. YES, SIR.

11 Q. WERE YOU HAVING ANY SYMPTOMS WHEN YOU SAW DR.
12 JOHNSON?

13 A. YES, SIR.

14 Q. WERE YOU HAVING ANY SYMPTOMS WHEN YOU SAW DR.
15 MAZOUÉ?

16 A. YES, SIR.

17 Q. WERE YOU HAVING ANY SYMPTOMS WHEN YOU SAW DR. RIBER
18 AND LEMBO AGAIN?

19 A. YES, SIR.

20 Q. OKAY. AND I THINK YOU'VE ALREADY TESTIFIED TO THIS.
21 WHILE YOU WERE WORKING BETWEEN SEEING DR. RIBER IN
22 JANUARY AND SEEING THE OTHER DOCTORS AGAIN LATER,
23 SEVERAL MONTHS LATER, ---

24 A. YES, SIR.

25 Q. --- WERE YOU STILL HAVING, SYMPTOMS?

1 **BY MR. HUFF:**

2 I OBJECT. ASK HIM. HE'S SUGGESTING ARE YOU
3 STILL HAVING SYMPTOMS.

4 **BY THE COMMISSIONER:**

5 I'M GOING TO OVERRULE THIS ONE BECAUSE HE
6 QUALIFIED THIS ONE. HE IS CLARIFYING. HE'S SHORING
7 UP TESTIMONY THAT HAS ALREADY BEEN PUT IN THE
8 RECORD.

9 **BY MR. HUFF:**

10 THANK YOU, MA'AM.

11 **REDIRECT EXAMINATION RESUMED BY MR. SAFRAN:**

12 Q. AND I GUESS MY QUESTION IS, WHEN WHAT YOU HAVE
13 DESCRIBED TO THE COMMISSIONER ABOUT THOSE TIMES
14 WHERE SOMEBODY WOULD TELL YOU TO SIT DOWN OR YOU
15 MIGHT ASK FOR SOME HELP OR THEY MIGHT GIVE YOU HELP
16 WITHOUT ASKING OR WHERE YOU MIGHT HAVE TO LEAVE
17 EARLY, WERE THOSE THINGS HAPPENING BETWEEN JANUARY
18 AND WHEN YOU SAW THESE DOCTORS IN JUNE?

19 A. YES, SIR.

20 Q. OKAY. SO, I GUESS MY SIMPLE QUESTION IS, HAD YOUR
21 SYMPTOMS EVER GONE AWAY BETWEEN SEEING DR. PEELE AND
22 SEEING THESE DIFFERENT DOCTORS WHO HAVE WRITTEN DOWN
23 WHATEVER WAS GOING ON WITH YOU?

24 A. NO, THEY HAVEN'T.

25 **BY MR. SAFRAN:**

1 OKAY. THANK YOU.

2 **BY THE COMMISSIONER:**

3 MR. HUFF?

4 **BY MR. HUFF:**

5 I HAVE NOTHING FURTHER.

6 **BY THE COMMISSIONER:**

7 THANK YOU VERY MUCH, MR. McDUFFIE. YOU MAY
8 SIT DOWN NEXT TO YOUR ATTORNEY. ANY OTHER FACT
9 WITNESSES FOR THE CLAIMANT?

10 **BY MR. SAFRAN:**

11 NO.

12 **BY THE COMMISSIONER:**

13 ANY FACT WITNESSES FOR THE DEFENDANTS?

14 **BY MR. HUFF:**

15 NO, MA'AM.

16 **BY THE COMMISSIONER:**

17 OKAY. AS I STATED EARLIER, THIS MATTER -- THE
18 RECORD WILL BE HELD OPEN IN THIS MATTER, BUT THIS
19 CONCLUDES THE HEARING TESTIMONY PORTION. BOTH
20 PARTIES ARE REQUESTED TO UPLOAD THEIR APA
21 SUBMISSIONS TO ECASE. I WILL TAKE ORIGINAL
22 DEPOSITION TRANSCRIPTS AT THIS TIME, AND I'LL HOLD
23 THE RECORD FOR THE SECOND DEPOSITION OF DR. LEMBO
24 SHOULD IT BE NECESSARY. I WILL ASK THE PARTIES TO
25 LET ME KNOW AS SOON AS POSSIBLE IF IT IS NOT

1 NECESSARY SO I CAN BEGIN REVIEW. THAT CONCLUDES
2 THIS MATTER. THANK YOU.

3 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARINGS WAS**
4 **CONCLUDED AT THE HOUR OF 12:00 P.M.)**

South Carolina Workers' Compensation Commission
WCC File # 1413546

Timothy McDuffie,	)	
	)	Deposition
Employee,	)	
	)	of
Claimant,	)	
	)	Timothy McDuffie
vs.	)	
	)	
Johnson Food Services, LLC,	)	
	)	
Employer,	)	
	)	
Great American Alliance	)	
Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Timothy McDuffie, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 10:20 a.m., Friday, July 10, 2015, at the law office of Andrew N. Safran, 1400 Pickens Street, Suite 300, Columbia, South Carolina.

COPY

Reported by
Janni S. Gaskins

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Appearances

For the Claimant: Andrew N. Safran, Esquire
Andrew N. Safran, LLC
1400 Pickens Street, Suite 104
Columbia, SC 29201

For the Employer/
Carrier: E. Ros Huff, Jr., Esquire
Huff Law Firm, LLC
7244 Woodrow Street
P.O. Box 1935
Irmo, SC 29063

Reported By: Janni S. Gaskins

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Timothy McDuffie, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: Please state your name for the record.

The Deponent: Timothy McDuffie.

Examination

By Mr. Huff:

Q Mr. McDuffie, my name is Ros Huff, and I am the attorney that represents your employer, Johnson Food Services.

A Yes, sir.

Q And have you ever given a deposition before?

A No, sir.

Q All right. All the deposition is, I ask you questions and you give me answers. It's going to take about one hour.

A Okay.

Q I've known your attorney for over 20-something

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- 1 years. You've got probably the best attorney in
2 the state doing workers' comp, and I'm not doing
3 that to fluff him up, but he's one of the best, --
- 4 A Okay.
- 5 Q -- if not the best. I'm here to learn facts about
6 your claim. Your claim has not been denied. It's
7 an accepted claim.
- 8 A Uh-huh.
- 9 Q It's just to find out some background information.
10 If I ask you a question that you do not understand,
11 ask me to repeat it and have me repeat it and
12 repeat it and repeat it until you understand it.
- 13 A Uh-huh.
- 14 Q Okay. And what I -- Some of my questions will be
15 yes/no questions. I'm not going to say you do
16 this, but it's happened in the past. I need you to
17 say yes or no because some people say uh-huh and
18 uh-uh, and they sound so much alike, and this lady
19 over here is trying to get it down.
- 20 A Okay.
- 21 Q And if you shake your head --
- 22 A Yeah. It's not helping.
- 23 Q You can't do that. Right. So, --
- 24 A I understand.
- 25 Q And if you give me an answer and you think you need

1 to give an explanation, you can give an
2 explanation, you know.

3 A Yes, sir.

4 Q You can say yes, but this or no, but this. You can
5 give -- This is for me to learn facts about you.
6 And there is a hearing coming up. We may continue
7 the hearing and postpone it or we may go forward.
8 I will know after I do the deposition today and
9 talk to my client. So, with that being said, can
10 you give me your full name.

11 A Timothy Adam McDuffie.

12 Q All right. And how old are you?

13 A Thirty-seven.

14 Q And what's your date of birth?

15 A [REDACTED]

16 Q Where were you born?

17 A In Columbia, South Carolina.

18 Q All right. Did you attend any schools in Columbia?

19 A Yes, sir.

20 Q Where did you go to high school?

21 A A.C. Flora.

22 Q All right. The Falcons.

23 A Right.

24 Q Yeah. That's where I took my bar review course to
25 get -- to take the bar exam, so I know where that

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1 is. Did you graduate from high school?
2 A No, sir.
3 Q How far did you go?
4 A To the eleventh grade.
5 Q All right. Did you get any education after that,
6 like a GED or any tech schools?
7 A I started one. I went to Denmark Tech, but I
8 didn't get to finish.
9 Q All right. Are you married?
10 A No, sir.
11 Q Have you ever been married?
12 A No, sir.
13 Q Do you have any children?
14 A Yes, sir.
15 Q How many?
16 A One.
17 Q How old?
18 A Six.
19 Q All right. Do you pay child support?
20 A No, sir.
21 Q What is your Social Security number?
22 A XXX-XX-XXXX.
23 Q That will not be printed. It will be redacted.
24 That means that I know it on my piece of paper, but
25 if this document ever gets in somebody's hand, it

- 1 will be removed, so don't worry about that.
- 2 A Okay.
- 3 Q All right. Could you give me your address.
- 4 A 1505 Garden Plaza.
- 5 Q What?
- 6 A 1505 Garden Plaza.
- 7 Q Garden Plaza. All right.
- 8 A Apartment V-4 -- I mean V-5.
- 9 Q Do you own an automobile?
- 10 A Yes, sir.
- 11 Q What type of auto?
- 12 A It's an Oldsmobile Alero.
- 13 Q What year?
- 14 A '94.
- 15 Q And what color?
- 16 A Blue.
- 17 Q Do you own any other vehicles?
- 18 A No, sir.
- 19 Q Do you live by yourself or with someone?
- 20 A With someone.
- 21 Q Who do you live with?
- 22 A My girlfriend.
- 23 Q Okay. Have you ever been involved in an automobile
- 24 accident?
- 25 A Yes, sir.

1 Q How many?
2 A Are you talking about like a -- What do you mean?
3 Like me driving or --
4 Q Well, no. Involved in an accident can mean you're
5 the driver or you could be a passenger or you could
6 be a pedestrian where a car hit you. That's still
7 an accident.
8 A Okay.
9 Q Any type of auto accident, a driver, passenger?
10 A Two in my life.
11 Q Two. When was the most recent one?
12 A A couple years ago.
13 Q What city?
14 A Columbia.
15 Q Can you tell me where it happened in Columbia?
16 A I can't remember the road, but off of Garners
17 Ferry.
18 Q Off of Garners Ferry. Okay.
19 A Yeah.
20 Q Were you driving or a passenger?
21 A Driving.
22 Q Tell me what happened.
23 A A car was in our lane, and I -- I swerved over to
24 miss it and got in the grass, and it was -- the
25 grass was wet, and we slid and hit a tree.

- 1 Q Did the other car stop?
- 2 A No. No. No, sir.
- 3 Q And you said we. Was there more than one person in
- 4 the car?
- 5 A Yes, sir.
- 6 Q How many were in the car?
- 7 A Two adults and two children.
- 8 Q Did you get any injuries from that car wreck?
- 9 A No, sir. I had a minor bruise and went to the
- 10 doctor and everything. They said I was okay.
- 11 Q Did you go more than one time or just one time?
- 12 A Just one time.
- 13 Q All right. And what was bruised?
- 14 A Like, my neck.
- 15 Q All right.
- 16 A From the seat belt.
- 17 Q All right. And you said there were two. When was
- 18 the other accident? What year do you think that
- 19 may have happened? You may be able to tell me
- 20 about -- maybe by how old you may have been at the
- 21 time.
- 22 A I probably was probably like fourteen.
- 23 Q All right. Were you the driver or a passenger?
- 24 A A passenger.
- 25 Q Tell me about how that accident occurred.

1 A Me and my mom and my aunt and my niece -- I mean --
2 not my niece, my cousin was riding on the highway,
3 and it was a traffic buildup, and a truck hit us
4 from behind.

5 Q Did you get medical treatment for that?

6 A No.

7 Q All right. Did you get any type of settlement?

8 A I can't recall. I don't think my mom did. I mean,
9 she was --

10 Q Okay. You were a minor back then?

11 A Uh-huh.

12 Mr. Safran: Try to say yes.

13 A I mean yes, sir. I keep forgetting.

14 Q At your current residence, how long have you been
15 there?

16 A About a month.

17 Q Are you planning on moving to another apartment?

18 A Yes, sir.

19 Q When are you going to move to the new apartment?

20 A After I save up a little bit of money.

21 Q Okay. At Johnson Food Services, how long have you
22 been employed there?

23 A Two and -- Two years and a couple of months.

24 Mr. Huff: Andy, you did a subpoena to
25 us, and I pulled the documents. Did they ever

1 get them over to you?

2 Mr. Safran: Yeah. I just got them
3 yesterday.

4 Mr. Huff: All right.

5 Mr. Safran: They're here.

6 Mr. Huff: If you need anything else that
7 I didn't give you or you think that you need,
8 just let me know and I'll give it to you.

9 Mr. Safran: Sure. No. That's fine.

10 Mr. Huff: Did I give you the payroll
11 records that showed each check and everything?

12 Mr. Safran: The only thing -- We can go
13 off the record.

14 Mr. Huff: No. You can put it on the
15 record. I don't mind.

16 Mr. Safran: Yeah. The only thing that
17 I'm going to need -- Because I went over
18 these briefly because I was in Charleston
19 until last night on something.

20 Mr. Huff: All right. Tell me what you
21 need.

22 Mr. Safran: These things are broken
23 down. He gets paid biweekly.

24 Mr. Huff: All right.

25 Mr. Safran: There were just a couple of

1 weeks where the hours were relatively short
2 compared to what was probably a norm, so to
3 speak.

4 Mr. Huff: Right.

5 Mr. Safran: I would like to know --
6 Because it could be that he may have worked
7 one of those two weeks, because I've dealt
8 with Johnson over the years in other cases.
9 They have periods where they get shut down
10 because they don't have troops there --

11 Mr. Huff: Right.

12 Mr. Safran: -- and they say, okay, y'all
13 take a leave or a furlough, and that's why I
14 would like to see, because they may be sent
15 home a week here and there. That's really it.

16 Mr. Huff: I'm going to put down, in the
17 short pay weeks, you want to know why.

18 Mr. Safran: Or just if they can tell me
19 if -- Because, again, these are --

20 Mr. Huff: Was there a --

21 Mr. Safran: -- broken down every two
22 weeks. I can't tell whether he worked seven
23 hours one week and none the next week or --
24 you know, or this -- this obviously -- because
25 what I'm saying, Ros, is on the 5 -- or on the

1 20, they put 52, and, for instance, I just
2 glanced and saw one where he had a grand total
3 of 7.5 hours over a two-week period. It makes
4 me think he probably only worked part of the
5 one week.

6 Mr. Huff: Right.

7 Mr. Safran: That's it.

8 Mr. Huff: Because I would like for us,
9 if we -- You know, if the hearing goes
10 forward, --

11 Mr. Safran: Sure.

12 Mr. Huff: -- I want to make sure we can
13 stipulate.

14 Mr. Safran: That's fine.

15 Mr. Huff: All right.

16 Q While working at Johnson, did you work anywhere
17 else, or was that your only job?

18 A Only job.

19 Q Are you currently working?

20 A Yes, sir.

21 Q Generally, in a normal workweek for you, how many
22 hours a week do you work?

23 A About 35.

24 Q All right. So, approximately 35?

25 A Approximately.

- 1 Q It could be 37, couldn't it?
- 2 A It could be. It depends.
- 3 Q Yeah. But it's somewhere around 35?
- 4 A Yeah. Around 30, 35.
- 5 Q All right. That's no problem. Are you paid every
- 6 two weeks?
- 7 A Every two weeks.
- 8 Q What is your job title with Johnson?
- 9 A I'm a cook II.
- 10 Q Cook II.
- 11 A Yes, sir.
- 12 Q Did you go to any type of school or learn how to
- 13 cook or was it on-the-job training, or how did you
- 14 become a cook?
- 15 A On-the-job training.
- 16 Q Where did you work before Johnson?
- 17 A Oh. Nowhere for a long time.
- 18 Q So, you were unemployed?
- 19 A Yes, sir.
- 20 Q About how long do you think you were unemployed, a
- 21 month, a year, two years? How long?
- 22 A I can't really even recall. The last job I had was
- 23 -- I was working for a landscaping company and --
- 24 let's see -- when my son was probably about two
- 25 years old, and he's six now.

- 1 Q So, about four years ago?
- 2 A About four years ago, about.
- 3 Q So, if you worked there four years ago and you've
- 4 been working for Johnson for about two and a half,
- 5 do you think you were unemployed for about a year
- 6 or a year and a half or longer?
- 7 A Oh. It was longer than that.
- 8 Q All right.
- 9 A Yeah.
- 10 Q Well, why were you unemployed that period of time?
- 11 A I couldn't find no work.
- 12 Q All right. The job that you had before Johnson,
- 13 you said, was landscaping?
- 14 A Uh-huh.
- 15 Q How long did you -- You need to say yes or no.
- 16 A I'm sorry. I'm sorry.
- 17 Q That's okay. We'll remind you. That's okay.
- 18 A Yes.
- 19 Q How long did you do the landscaping work?
- 20 A Almost two years. A year -- Almost three years.
- 21 Almost three years.
- 22 Q Almost three.
- 23 A Yeah.
- 24 Q Why did you leave that job? Were you laid off or
- 25 fired?

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- 1 A Yeah, laid off.
- 2 Q All right. Where did you work before that?
- 3 A At Jacobs Automotive, a car dealership.
- 4 Q What was the name of the company again?
- 5 A Jacobs Automotive.
- 6 Q Jacobs. Where is it located?
- 7 A It was off of North Main Street.
- 8 Q How long did you work there?
- 9 A Almost like ten years.
- 10 Q Ten years?
- 11 A Almost. Almost ten years. About, yeah, ten years.
- 12 Q What did you do there?
- 13 A I started off washing cars, then went to helping
- 14 them basically do everything around there, clean
- 15 up, wash cars, go out of town to help them go get
- 16 cars.
- 17 Q All right. Did you sell?
- 18 A No, sir.
- 19 Q So, you were not a salesman. Have you ever had
- 20 surgery before?
- 21 A No, sir.
- 22 Q Have you ever had a broken bone?
- 23 A Yes, sir.
- 24 Q What have you -- What's been broken?
- 25 A About nine of my fingers at different times.

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- 1 Q I was going to say was it -- on which hand, but
2 it's got to be more than one hand unless you're not
3 -- you're funny-looking, but no. What happened?
- 4 A In high school, playing sports, where I -- you
5 know, doing kid -- kid things, riding a bike. I
6 mean, it was not -- it was, I mean, not -- It's
7 like not over the same course of years. It was
8 like years -- one year I might break a finger here
9 and --
- 10 Q Oh, I got you. So, it could have been multiple
11 accidents?
- 12 A Uh-huh.
- 13 Q Yes or no?
- 14 A Yes, sir.
- 15 Q Okay. No problem. We'll keep -- I'll keep
16 reminding you. Anything other than having broken
17 fingers that you can think of? Any broken arms or
18 legs?
- 19 A No, sir. I got the tip of my finger cut off, the
20 tip of it. That's about it, like the tip cut.
- 21 Q What did they do? Were they able to --
- 22 A No. They sewed it up.
- 23 Q Sewed it up?
- 24 A (Nods head.)
- 25 Q Which finger?

- 1 A (Indicating.)
- 2 Q I'm not trying to be rude (indicating), but --
- 3 A No, not the middle.
- 4 Q -- I had -- I had that finger cut off, and they had
- 5 it sewn back on.
- 6 A No. I ain't had -- I didn't get it cut off, but
- 7 just cut the tip off.
- 8 Q Yeah. Mine was cut off.
- 9 A That's about the only other thing I could think of.
- 10 Q Okay. No problem. All right. Please don't be
- 11 offended, but this is a question I ask everybody,
- 12 and your attorney knows that I ask it, and most
- 13 other attorneys like me will ask it.
- 14 A Yes, sir.
- 15 Q Have you ever been arrested?
- 16 A Yes, sir.
- 17 Q How many times?
- 18 A Three.
- 19 Q Can you tell me why you were arrested?
- 20 A The first time I was arrested for actually breaking
- 21 up a fight and then somebody included me in the
- 22 fight. Then, come to find out, they found out I
- 23 wasn't, I was trying to actually break it up. That
- 24 was dismissed.
- 25 Q All right. Okay. When was the second time?

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1 A The second time was my girlfriend had -- Yeah. My
2 girlfriend -- My baby mother kind of like jumped
3 on me, and I was like kind of holding her down to
4 break her up. I was trying to keep her from
5 hitting me, and I scratched her, but she hit me in
6 the head. But the police came and said her -- her
7 bruise looked more worser [sic], so they took me to
8 jail, but then they dismissed that.

9 Q All right. When was the third time?

10 A The third time was -- I was at home. My cousin
11 came over for me to put a radio in his car, and I
12 was putting a radio in his car, and the police came
13 out of nowhere and came over there and -- and
14 drew [sic] down on us and put us in the back of
15 the car and then asked him all kind of questions.
16 They didn't ask me nothing. I had my ID showing
17 that I did stay there, and then I showed them the
18 car that I was putting the radio in, and they took
19 us to jail. We had been in jail for three days.
20 Then -- Then they come to find out -- They just
21 dismissed that, too.

22 Q Okay.

23 A That was it.

24 Q All right. Today you have Mr. Safran as your
25 attorney.

- 1 A Yes, sir.
- 2 Q Have you ever in your life had an attorney
- 3 represent you in any of the criminal matters or any
- 4 matters?
- 5 A Yes. One.
- 6 Q All right.
- 7 A In the last one -- the last one I just told you
- 8 about.
- 9 Q With the -- With the radio in the car?
- 10 A Yes, sir.
- 11 Q Do you remember who that attorney was?
- 12 A Todd Rutherford.
- 13 Q Have you ever had a situation where someone has
- 14 sued you, filed a lawsuit against you?
- 15 A No, sir.
- 16 Q What shift do you work?
- 17 A Afternoon shift.
- 18 Q What time do you come in and what time do you get
- 19 off?
- 20 A It varies from 12:00 to 12:30. I get off at
- 21 sometimes 6:30, 7:30, 8:00. 8:30 is the latest.
- 22 Q All right. In the last year, have you worked any
- 23 overtime?
- 24 A No, sir. They don't let you work overtime.
- 25 Q Your attorney has informed me that there may be

1 occasion -- Like some of the paychecks that you
2 received, it showed one or two days of work or
3 seven hours worth of work. Is there -- Has there
4 been, in the last year, a situation where you were
5 sent home because of the lack of work?

6 A Yes, sir.

7 Q Okay. How often does that happen?

8 A Not very often. Like it happened like in the last
9 nine weeks. There wasn't any soldiers in training.

10 Q Yes, sir.

11 A Like when they get ready to graduate, you know,
12 they will be in the field, or then like if we'll do
13 something, we'll do a couple hours and then they'll
14 send us home. We'll feed -- fix them food for the
15 field, and after we package up, we'll clean up, and
16 then they will send us home or send us to another
17 building.

18 Q Okay.

19 A But most of the time they will send us to another
20 building.

21 Q And how much do you make an hour?

22 A 11.24 -- 23.

23 Q Does your girlfriend work?

24 A No, sir. She just finished school.

25 Q What school?

- 1 A Midlands Tech.
- 2 Q Have you ever been in the military?
- 3 A No, sir.
- 4 Q Do you have a family doctor?
- 5 A No, sir.
- 6 Q Has there -- As a result of this injury that you
- 7 had that occurred on September 20th of 2014, -- Is
- 8 that the day that it happened, September 20th?
- 9 I've seen 19th, the 20th.
- 10 A It happened on -- It happened on the 19th.
- 11 Q All right. The accident is the 19th.
- 12 A Yeah.
- 13 Q Okay. Do you know what time of day it happened?
- 14 A I can't really recall what exact time it was, but
- 15 it was in the afternoon. But I can't really
- 16 recall.
- 17 Q All right. Now, you mentioned your finger getting
- 18 hurt and it was sewn up. Other than that, have you
- 19 ever had any type of surgery?
- 20 A No, sir.
- 21 Q All right. I may have asked that. I just didn't
- 22 remember a surgery. Okay. In these car wrecks
- 23 that you had, were any of the cars totaled?
- 24 A The truck was totaled. The -- That's when I hurt
- 25 my neck with the seat belt.

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1 Q All right. Let's talk a little bit about the --
2 the accident that we're here about today. What
3 part of the building were you in when the accident
4 occurred?

5 A I was in the kitchen.

6 Q Was there any other coworkers in the kitchen with
7 you?

8 A Yes, sir.

9 Q Tell me what happened.

10 A I was cleaning -- cleaning up over there where --
11 called the tip grill. I was cleaning the tip
12 grill, and I finished cleaning up everything, so I
13 went to go get the -- get the broom that was -- get
14 the broom so I could clean up around on the floor.
15 And, so, I went to turn around and go get the --
16 get the broom, and I didn't know that there was --
17 it was a pipe exposed.

18 Q All right.

19 A You know, I didn't know, and -- because it normally
20 will be something right there, but this, you know,
21 ain't my building, though. This is my first time
22 in this building. And I turned around and tripped
23 and caught myself before I hit the ground and felt
24 something like a pop. And -- you know, and one of
25 the coworkers is like, "Oh. Are you okay?" I was

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1 like, "Yeah," you know, kind of laughed it off,
2 like, whoa, I almost fell, and went to go back to
3 work. And -- And when I -- I made a motion, kind
4 of like I felt the pain in my back, and then like
5 it succeeded all the way down to like -- to my
6 calf, and I was like, "Oh." And I was like, "Oh."
7 So, I did it again, and when I did it again, the
8 coworker was like, "Hon, you need to go tell the
9 manager," so --

10 Q And who was that, that you were talking to?

11 A Ms. -- Ms. -- I can't think of her name. Ms. --
12 What's her name? I know her name. I just can't
13 recall it right now.

14 Q Maybe it will come back to you.

15 A Yeah.

16 Q All right. So, when you heard a pop, where did the
17 pop occur? What part of your body, your knee, your
18 back, your shoulder? Where was the pop?

19 A At that time I -- At the time when I was falling,
20 I really didn't -- couldn't tell where it was
21 coming from because, you know, it was like -- it
22 was like somebody just came out of nowhere and just
23 pushed me down, you know. And then -- And I felt
24 and I heard it, but I couldn't really tell where it
25 was coming from, but I know it just came from like

1 on this side (indicating).
2 Q Which side? ,
3 A On my left side.
4 Q Left side.
5 A Yeah.
6 Q All right. Did you go report the injury?
7 A Yes, sir.
8 Q Who did you report it to?
9 A To the manager of the building.
10 Q Do you know who it was by name?
11 A I can't recall his name, you know. That was my
12 first time being in that building. I don't even
13 really know their names.
14 Q Did they have you fill out any type of report of
15 how you got hurt or --
16 A Yeah. He took me to the office and took me to
17 another manager that was in there and told him to
18 take a report. So, he was like -- I was like, you
19 know, "I ain't really want to --" I said, "I don't
20 really want to do no report. I just want to let
21 y'all know that I did do this," and he was like,
22 well, just write down that I came to him and let
23 him know that I did have an accident. And then I
24 was like, you know, "I'm -- I'm going to go home,
25 but I think I'll be okay." So, all that night I'm

1 in pain until the next morning. I get up to come
2 to work, and I'm still in pain, still trying to
3 work. So, I come to work. There was a little bit
4 of pain, but, see, they put me on mashed potatoes,
5 so I started doing mashed potatoes. And the lady
6 was like -- like, "Uh-uh. No." The same lady that
7 saw it, she was like, "No. You need to go put that
8 down and go in there and tell them to take you to
9 the doctor." I was like -- you know, I was trying
10 not to go because like, you know, I didn't really
11 want to -- They have this thing going on now where
12 if you don't get hurt, you get a little money and
13 the building get a little bit of money, like a
14 reward for not getting hurt, so I didn't want to
15 mess their chances up.

16 Q I got you.

17 A But I had to go, you know, and they took me to the
18 first care. Then they did the accident report that
19 -- on the 20th.

20 Q They took you to the doctor?

21 A Yes, sir.

22 Q Do you know where you went?

23 A MedCare.

24 Q All right.

25 A Off -- On Garners Ferry.

1 Q All right. And then the next day after the
2 accident -- Because you went home, you came back.
3 The next day, they filled out the report?

4 A Yeah. The next day, they -- before they -- They
5 filled the report out before they took me to the
6 doctor.

7 Q All right.

8 A And then took me to MedCare. MedCare, I told them
9 what happened. I told them I was having a pain
10 from my back all the way down to my calf, and so
11 they kept on focusing on my back, you know. Like
12 -- I'm like, "Man, my knee is like really
13 hurting," and they was like, "Well, the knee pain
14 is coming from your back. It will go away. It
15 will subside a little bit." Then he was like,
16 "Well, I'm going to give you some meds to go home
17 and take." So, I took the meds, and I still was in
18 a lot of pain, so I went to the emergency room.
19 And the emergency room told me that I had a pulled
20 muscle in my -- in my butt and -- and what the -- I
21 sprung something in my knee. So, they was like,
22 "Continue taking the meds and do what the other
23 doctor told you to do." So, I continued doing
24 that, and then I went back -- went back home the
25 next day. The doctor told me -- Well, somebody

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1 from the job called me and said I can't be going to
2 the emergency room like that and doing this, I had
3 to go wherever they tell me to go at. So, then she
4 was like, "Well, I'm going to send you to Doctors
5 Care." So, she took me to Doctors Care. Then, you
6 know, I went to Doctors Care, told Mr. Young what
7 was going on.

8 Q Who is Mr. Young?

9 A The doctor that saw me.

10 Q All right. Okay.

11 A You know, and he did a lot of diagnoses. He told
12 me that, you know, there is something going on with
13 my back and -- and there is something going on in
14 my knee. So, he was like, well, he's going to send
15 me to physical therapy. So, I went to physical
16 therapy. I was doing that pretty good. Then I
17 kept telling them that, you know, my pain, it's --
18 the pain is getting worser [sic] every time they
19 had me do the exercise. I'm like, "It's hurting.
20 It's hurting." So, then they did some kind of like
21 ultrasound on my knee, and I was like, "Oh, my
22 knee, it feels real good." I was like, "I can't
23 really feel nothing." But she said it's supposed
24 to be numbing the pain. So, it was feeling good.
25 By the time I got home, it was like I couldn't even

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1 stand up once that -- I guess it wore off. It hurt
2 so bad. I couldn't hardly stand up. So, then I
3 went back to Dr. Young. So, Dr. Young sent me to
4 -- to the other doctor.

5 Q Was this a specialist?

6 A Yeah. He sent me to the specialist.

7 Q All right.

8 A But first he had me do an EKG, MRI, whatever, like
9 of my back. Then he went over -- they sent me over
10 there. So, I'm telling him about what's going on
11 and where the pain at, and he's like, "Well," --
12 you know, he kind of like brushed -- he brushed --
13 Like I'm telling him like my knee is like really,
14 really hurting. He kind of looked at it. He was
15 like, "Well, you know, it's coming from your back.
16 We're going to focus on your back." So, he kind of
17 brushed my knee off. So, then he was like, "Well,
18 just -- I don't see nothing wrong." It was like he
19 flipped through it real quick. He was like, "Well,
20 I don't see nothing wrong with your back. It's
21 just a little bit of this. Well, I can put you out
22 -- put you down for 20 percent disability, but your
23 job probably going to fire you." So, I was like --
24 Well, no. He didn't say fire. He was like, "Your
25 job probably won't keep you because you only could

1 do 20 percent, and your job mainly dealing with
2 lifting." I was like, "Well, I don't want to be
3 out of work because I do like my job and I like the
4 work." So, he was like, "Well, I'm going to give
5 you some pain pills to help with the pain, and the
6 more you work with it, it should -- it should go
7 away, because, you know, I don't really see nothing
8 wrong within your back." And, you know, I was
9 like, "Well, I'm -- I'm feeling pain." And he was
10 like, "Well, it will go away." So, I took his word
11 for it because, you know, he's the doctor, you
12 know. So, then I went back to full duty, and every
13 day, you know, it's -- it constantly hurts, you
14 know. Some days better than most days, you know.
15 And I talk to my head cook and I'm telling them, or
16 the cook that's in front -- over me, that I'm in
17 pain, I need to sit down or, you know, can you give
18 me a little break for a little minute, and they're
19 like, "Yeah. Go ahead and cool off for a little
20 bit," because I don't like my back getting
21 agitated. And there's only so much -- allow me to
22 bend so much, you know, and I tell them like my
23 knee hurt. She's like, "Well, go sit down for a
24 little bit. You rest your knee." You know, I've
25 been telling like all my head people that's over me

1 that it is -- you know, like I am in pain. They do
2 know, you know. Everybody that work around me know
3 that I'm in pain, but, you know, I do try because,
4 you know, I've been working basically all my life,
5 and -- and, you know, I just want to get better
6 because, like I said, I ain't never had no pain
7 like this before because, you know, I'm pretty
8 healthy, you know. I love the work, and I be at
9 work. It's like I used to give like 100 percent.
10 Now it will take me a little longer because I have
11 to like maneuver around the pain. But -- But, you
12 know, that's -- I love it. That's my passion,
13 cooking.

14 Q What type of things do you cook?

15 A Well, we cook all kinds of stuff. Chicken, you
16 know, a thousand different ways of chicken,
17 lasagna, shepherd's pie, mashed potatoes, string
18 beans. We cook like a turkey, all different types
19 of turkeys, make pizzas, make -- we do all the
20 salads and stuff by hand, you know. We do -- We
21 cook all of it. Basically it depends on whatever
22 the -- the recipes come in front of us. That's
23 what we have to cook for that day.

24 Q Okay. When this accident happened, tell me what
25 body parts you injured.

1 A When it happened, I felt the pain in my back, my
2 butt, and my knee, and like down to my calf on my
3 left side.

4 Q All right. As we sit here today, tell me what
5 problems you're having now, to what body parts.

6 A Like right now it's in like my butt. It feels like
7 it's like -- it will go numb. I have to keep
8 rotating. That's why I keep moving, and I can't
9 really like -- If I sit straight up, my back will
10 start hurting. And my leg, I have to like bend it,
11 keep it bent for a few minutes and then straighten
12 it out, and it's like I can't -- I really can't sit
13 for a long period of time in one spot because it
14 will start -- start hurting.

15 Q All right. You have told me -- You've used three
16 body parts. You said butt, leg. All right.
17 That's two, butt and leg. Anything --

18 A And my back.

19 Q And your back. Okay. And that's your right or
20 left side of the back?

21 A Left side.

22 Q Upper, middle or low back?

23 A Like lower -- Like middle, lower part. Like the
24 lower part of my left back.

25 Q So, we've got your back, the butt area, and your

1 leg, and you said it goes down to your -- to your
2 knee to the left calf area?

3 A Uh-huh. Yes, sir.

4 Q Any other --

5 A Yes, sir.

6 Q Any other body part that you're having problems
7 with right now?

8 A No, sir.

9 Q Before you had this accident with Johnson, had you
10 ever had any medical treatment for your butt, your
11 left leg or low back?

12 A No, sir.

13 Q Before the accident with Johnson, had you ever
14 injured your butt, your left leg or your low back
15 on the left side?

16 A No, sir.

17 Q Now, I have been provided some records by your
18 attorney, and it appears that you have been seen by
19 some other doctors to examine your back and your
20 hip and your leg. Is that correct?

21 A Yes, sir.

22 Q All right. I've got a Dr. Riber. Where is Dr.
23 Riber located?

24 A Dr. Riber?

25 Q Yes. Dr. Ezra Riber at Palmetto Pain Management.

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- 1 A That's --
- 2 Q What city?
- 3 A Hold on. Which one is that, Dr. Riber?
- 4 Q Pain management.
- 5 A That was when --
- 6 Q I'm showing you were seen there on January 12th of
- 7 2015, the first part of the year. Do you remember
- 8 going? And you may not. Do you remember?
- 9 A Yeah. I mean, I went to a couple doctors. That's
- 10 why I said I can't really recall their names.
- 11 Q He's in Columbia, though, isn't that true, Riber?
- 12 A Dr. Riber? Yeah.
- 13 Q All right. How did you get to Dr. Riber's office?
- 14 Did you drive or did someone take you?
- 15 A I drove.
- 16 Q All right. You also went to Carolina Spine &
- 17 Sports Rehab and saw Dr. Nancy Lembo. Do you
- 18 remember seeing Dr. Lembo?
- 19 A Yes. Yes, sir.
- 20 Q Where is Dr. Lembo located?
- 21 A In Columbia.
- 22 Q All right. And then you went to USC Orthopaedics,
- 23 --
- 24 A Yes, sir.
- 25 Q -- Dr. Mazoue. Where is that located?

- 1 A In Columbia.
- 2 Q All right. And then you saw Dr. Don Johnson at SC
- 3 Spine. Where is that located?
- 4 A In Charleston, South Carolina.
- 5 Q Did anybody take you for these visits or did you
- 6 drive yourself?
- 7 A I drove.
- 8 Q Are you capable of driving?
- 9 A Yeah. But going to the one in Charleston, I just
- 10 realized that I really ain't capable of like
- 11 driving long distance.
- 12 Q Are you scheduled to see any doctors? Have you got
- 13 any appointments with any doctors?
- 14 A No, sir, not at this time.
- 15 Q Have you seen anything -- Have you seen anybody
- 16 other than a doctor, like a chiropractor or an
- 17 acupuncturist or anybody like that?
- 18 A Since it happened?
- 19 Q Yes, after the accident.
- 20 A Yeah, after. I went to a chiropractor.
- 21 Q Okay. Who was that?
- 22 A Dr. Young had sent me to a chiropractor. It's --
- 23 I can't really recall it, but it's right down the
- 24 street from here, on --
- 25 Q And who sent you?

- 1 A Dr. Young.
- 2 Q In downtown Columbia?
- 3 A Yes, sir.
- 4 Q Do you know when you may have gone there, what
- 5 month? I don't need the exact date.
- 6 A I really can't recall what date -- what month.
- 7 Q All right.
- 8 A But I know it was last year. No. Wait. It wasn't
- 9 last year. It was -- Yeah. It was last year,
- 10 around about -- I think last year sometime. Yeah.
- 11 Q And you're currently working full-time?
- 12 A Yes, sir.
- 13 Q And you're working full duty?
- 14 A Yes, sir.
- 15 Q And to be fair to you, sometimes when you're
- 16 working, you have to slow down and sit down for a
- 17 while?
- 18 A Yes, sir.
- 19 Q And your supervisor lets you do that?
- 20 A Yes, sir.
- 21 Q Okay. And about approximately how many hours a day
- 22 do you work?
- 23 A Approximately six -- six to six and a half.
- 24 Q And how many days a week do you work?
- 25 A Five.

- 1 Q Do you think you still need medical treatment?
- 2 A Yes, sir.
- 3 Q What do you need medical treatment -- To what body
- 4 parts and what problems do you need medical
- 5 treatment for?
- 6 A To the areas that I -- that I initially hurt. I
- 7 mean, I can't really tell. I mean, I know my leg
- 8 and my butt and my back -- all of that still do
- 9 hurt.
- 10 Q All right. Can you, for me, -- Let's go with the
- 11 leg, the butt, and the back. If you had zero being
- 12 no pain and ten being pain so bad that I'm going to
- 13 go find a doctor or an emergency room or somebody
- 14 to treat me, where would you rate your leg pain on
- 15 an average day?
- 16 A On an average day, probably five or six.
- 17 Q All right.
- 18 A When I'm not doing nothing.
- 19 Q When you're not doing anything?
- 20 A Uh-huh.
- 21 Q What happens if you do something?
- 22 A It's probably about a seven or an eight.
- 23 Q All right. How about the -- your butt pain? Where
- 24 would that be if you were doing nothing?
- 25 A That really don't hurt until I like be sitting

1 down.

2 Q It hurts sitting down?

3 A Uh-huh. I have to like lean on my right side to
4 kind of like keep it elevated.

5 Q I got you. So, you kind of shift to one side?

6 A Uh-huh. Yes, sir.

7 Q All right. What we've got left now is the back.

8 Tell me about the back pain. Where would you rate
9 that?

10 A I mean, that constantly hurt. I mean, it's
11 probably like a -- If I move a certain way, it's
12 probably about like a nine, but on an average day
13 at work or something, it's probably like a six,
14 seven, sometimes eight.

15 Q I may have asked this before, but I want to make
16 sure I've got it right. Are you scheduled to see
17 any type of medical practitioner or anybody for
18 your back problem?

19 A I'm not -- not scheduled.

20 Q All right. Did you actually fall to the floor or
21 were you able to catch yourself?

22 A I caught myself with my hands.

23 Q Which hand?

24 A Both hands.

25 Q Both hands. So, you didn't fall actually to the

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1 floor?

2 A No, sir.

3 Q Okay.

4 A But when I caught myself, my leg was like still
5 stuck on the pipe, and I didn't actually know, so I
6 -- I yanked it, and then that's when I felt the
7 pop.

8 Q You felt the pop where?

9 A I said that's when I felt the pop. I didn't really
10 know exactly where it was coming from at the time.

11 Q All right. Did you miss time from work after the
12 accident?

13 A No, sir.

14 Q Pardon?

15 A No, sir. They sent me to the doctor, and the only
16 days I missed was when I was going to the doctor.
17 But other than that, they had me on light duty, so
18 I wouldn't really miss no time at work. Then after
19 the doctor gave the review saying that -- you know,
20 then they took me off of light duty.

21 Q How would you describe your job? Is it sedentary?
22 Is it physical? Is it light physical, medium
23 physical, heavy physical? How would you describe
24 your job?

25 A Physical meaning like?

- 1 Q Well, you know, I'm an attorney and I sit at a desk
2 all day. The heaviest thing I would normally pick
3 up is a briefcase, so I'm finding -- In your job,
4 is your job -- When I say physical -- and describe
5 this, and you can tell me it means I have to walk,
6 I have to stand, I have to turn, I have to twist, I
7 have to lift, I have to stoop over, I have to bend
8 over. See what I -- And sometimes I sit down,
9 sometimes I -- How would you rate your job as far
10 as being physical or not physical?
- 11 A Standing up all day.
- 12 Q All right. That's good. Standing all day.
- 13 A It's picking up, bending over and constantly doing
14 something unless you're on break. That's the only
15 time you're not doing something.
- 16 Q All right. How many -- How many breaks do you get
17 a day?
- 18 A One.
- 19 Q How long?
- 20 A Thirty minutes.
- 21 Q Do you get a lunch hour or dinner hour?
- 22 A Yeah. We get -- About like 3:00 in the day.
23 Every day we take our break at 3:00 and come back
24 at 3:30 or take it at 3:30 and come back at 4:00.
- 25 Q Is that when you eat or is that just a break time?

- 1 A That's just a break time.
- 2 Q And how -- What time do you get for lunch or
3 dinner?
- 4 A I mean, that is our lunch. I mean, that is our --
- 5 Q Your lunch?
- 6 A -- time to eat, our lunch hour.
- 7 Q Time to eat. Okay. Do you get any other time?
- 8 A Uh-uh. No, sir.
- 9 Q Okay. After this accident happened, you said your
10 employer worked with you and gave you lighter work.
- 11 A Yes, sir.
- 12 Q What type of work did they give you?
- 13 A Sitting in the office all day.
- 14 Q What did you do?
- 15 A Sometimes I do calorie cards, but most of the time
16 I just be sitting there.
- 17 Q Just sitting doing nothing?
- 18 A Yes, sir. And I -- And if I get up, they be like,
19 "No. You got to go back and sit down." I'll be
20 like, "Man, I can't sit down too long." And
21 they'll be like, "Well, you've got to sit down.
22 You can't be up walking around." I'll be like, "I
23 have to, because like if I sit too long, it gets
24 very uncomfortable to me." "Well, you got to take
25 that up with the people at the office. They told

1 us to tell you to sit down." I'll be like, "All
2 right." So, you know, versus doing that, I really
3 -- And I'm a type of person I like to work, you
4 know. And, so, when he said, you know, that my
5 pain was going to get better, I took his word for
6 it, so I was like, well, I get to go back to work,
7 it's going to get better.

8 Q Did you -- After the doctor released you, I think,
9 in December -- Does that sound right, that the
10 doctor that was treating you, by the employer, --

11 A Yes, sir.

12 Q -- released you in December?

13 A That sounds about right.

14 Q All right. Did you ever request of your employer
15 if you could go back to another doctor?

16 A I told them that Dr. Young told me if he need -- I
17 needed him, to come back and see him. But they was
18 like -- basically they was like they was done with
19 it, but then I tried to -- I was having pain and I
20 tried to go back to Dr. Young, but I had to come
21 out of pocket and pay it, and I really couldn't.
22 It was like they wasn't paying for it, and it's not
23 up under workers' comp because they don't let it --
24 they released me. And I was like, "Well, no, he
25 never really kind of like released me. He just

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- 1 told me to come back if I needed him," so --
- 2 Q Of the injuries that you have right now, which one
- 3 is giving you the most problem?
- 4 A I really can't say. All three of them. Well, I'll
- 5 say my back and my -- my knee is the worse -- the
- 6 worst.
- 7 Q And which knee is that again?
- 8 A My left knee.
- 9 Q Had you ever injured your back or left knee while
- 10 playing sports?
- 11 A No, sir. I have injured -- I had hurt my back
- 12 before, you know. Like I was working -- doing some
- 13 work, moving -- I was moving a TV in the house,
- 14 and I kind of like injured my upper back.
- 15 Q When did that happen?
- 16 A I was young. I really can't recall.
- 17 Q Okay.
- 18 A But it was nothing. It was like, well, it will get
- 19 better, but I ain't never -- It was a couple years
- 20 ago, but I ain't never had no problems with it
- 21 before -- I mean ever again.
- 22 Q Did you seek medical treatment?
- 23 A Yes. I went to the doc -- to the hospital.
- 24 Q Which hospital?
- 25 A Providence. But playing sports, I never hurt --

- 1 hurt my knee or my back.
- 2 Q Are you currently attending any schools?
- 3 A No, sir.
- 4 Q Tell me what you do when you get off work.
- 5 A I really don't -- can't really do too much. I
- 6 mean, I go home and sit down and relax myself, get
- 7 ready for the next day, or sometimes I go -- get
- 8 off and go see my son.
- 9 Q All right. Let's talk about this year, because
- 10 this happened at the end of 2014 and we're in 2015.
- 11 A Uh-huh.
- 12 Q This year, 2015, other than going to Charleston to
- 13 see the doctor, have you left the city of Columbia?
- 14 A No, sir.
- 15 Q I always ask this question. I think I know the
- 16 answer. Have you left the state of South Carolina?
- 17 A No, sir.
- 18 Q All right. Have you -- In the year 2015, have you
- 19 been on a plane?
- 20 A No, sir.
- 21 Q Have you been on a boat?
- 22 A No, sir.
- 23 Q Have you been to the lake in 2015?
- 24 A No, sir.
- 25 Q In 2015, have you taken any vacation?

- 1 A No, sir. No, sir.
- 2 Q Pardon?
- 3 A No, sir.
- 4 Q All right. In 2015, have you applied for work
5 anywhere other than where you are working, with
6 Johnson?
- 7 A No, sir.
- 8 Q In the year 2015, have you had any other accidental
9 injuries?
- 10 A No, sir.
- 11 Q Has your weight changed at all in 2015?
- 12 A No, sir.
- 13 Q Are you left- or right-handed?
- 14 A Right-handed.
- 15 Q Are you able to take care of your daily hygiene?
16 By that I mean you can take a shower, you can brush
17 your teeth, you can dress yourself.
- 18 A Yes, sir.
- 19 Q Do you pay child support?
- 20 A No, sir. I take care of my son willingly.
- 21 Q Pardon?
- 22 A I said I take care of my son willingly.
- 23 Q Okay.
- 24 A That's what I work for.
- 25 Q Have you had any other accidents after the accident

- 1 with Johnson?
- 2 A No, sir.
- 3 Q Has the employer, in the year 2015, Johnson, --
- 4 have they taken any personal actions against you?
- 5 Have they done anything regarding your personal job
- 6 there?
- 7 A No, sir.
- 8 Q All right. Have they written you up for anything
- 9 or anything like that or punished you in any
- 10 fashion that you can think of?
- 11 A You're talking about written up? Like what you
- 12 mean by you that?
- 13 Q Pardon?
- 14 A You're talking about written up like --
- 15 Q Yeah. Have you gotten a warning or a reprimand for
- 16 anything on the job in 2015?
- 17 A Yeah.
- 18 Q What for?
- 19 A Me missing -- A no call/no show on a time sheet
- 20 violation.
- 21 Q Tell me about the no call/no show. What happened?
- 22 A I -- My back was hurting one day.
- 23 Q All right.
- 24 A Well, a couple times my back was hurting, and I
- 25 took some pill -- took the pill that they gave me

1 to take at night, but I was in so much pain I took
2 it like that morning and fell asleep and didn't
3 wake up until work was over. I told them about it,
4 and they was like, well, I still should have
5 called. I was like, "Well, the day was over with,
6 you know."

7 Q Okay.

8 A And they said, "Well, you still --" But they was
9 -- That's about it.

10 Q Have you had to leave work early or anything like
11 that?

12 A Yes, sir.

13 Q Did you get any type of reprimand for that, or is
14 that -- did you just tell them and go home?

15 A Yeah. I just -- I told them that -- Well, a
16 couple times I told them I was hurting and they let
17 me go home. And one time my -- my supervisor had
18 to kind of like help me to the car, and they was
19 about to call the ambulance, but I was like, "No.
20 Let me sit right here for a minute. It will
21 subside a little bit," just so I could be able to
22 drive. And I drove home, and then I told -- then
23 they like had me out of work. Like the next two
24 days I was out because my back had like froze up on
25 me.

- 1 Q Okay. Are you scheduled to take any trips out of
2 the state of South Carolina?
- 3 A No, sir.
- 4 Q Are you scheduled to take any trips out of the city
5 of Columbia -- outside of Columbia?
- 6 A No, sir.
- 7 Q When was the last time you took a vacation?
- 8 A I can't even recall.
- 9 Q Are you capable of doing your job duties that
10 you're doing presently?
- 11 A Yeah. I could do it, but with pain.
- 12 Q And where is the pain?
- 13 A In the same areas.
- 14 Q Same three areas?
- 15 A Yes, sir. It just depends on how far I move or
16 which way I move, you know. But I've been working
17 with it so long, I kind of like learned to kind of
18 try to maneuver around it so it don't hurt as much,
19 so at least -- so I can do my job.
- 20 Q Do you know Tonya Miles with the employer?
- 21 A Ms. Miles?
- 22 Q Yes.
- 23 A Yes, ma'am -- yes, sir.
- 24 Q Who is Ms. Miles?
- 25 A I think she's a supervisor.

- 1 Q Okay. Who is the first person that you reported
2 your accident to?
- 3 A I guess they -- you call him a foreman over the
4 building.
- 5 Q Do you know who that -- what his name is?
- 6 A I can't really -- I really don't know his name. I
7 know he's in building 11 -- 11-5. I know he's the
8 manager over 11-5.
- 9 Q Do you know a person by the name of Ernest out
10 there?
- 11 A Ernest? I mean, we go by last names out there.
- 12 Q Was his name Roberts?
- 13 A Roberts. That's it.
- 14 Q Ernest Roberts?
- 15 A Yeah. That was the -- That's the one that took
16 the report.
- 17 Q Okay.
- 18 A Yeah. That's the one I -- Wait a minute. No.
19 That's the one I told. That's the one I told when
20 I first did it. Yeah. He's the tall one.
- 21 Q Was he an assistant manager out there, to your
22 knowledge, or do you know?
- 23 A I can't -- I just know he's a manager. What he
24 is, I don't know.
- 25 Q Do you get a paycheck every two weeks?

- 1 A Every two and a half weeks.
- 2 Q All right. Do you know how much you make a week?
- 3 A 11.24. No. 11.23. I'm sorry.
- 4 Q An hour times about 35 hours?
- 5 A You said how much I make like on -- how much my
- 6 check be?
- 7 Q Yeah, your check. How much?
- 8 A Oh. It varies. Sometimes it will be like four-
- 9 something. I may even have a three -- 300-dollar
- 10 check. The highest I had so far was like a 700-
- 11 dollar check.
- 12 Q Those were nice, weren't they?
- 13 A Yeah. That was real nice. I enjoyed it. That was
- 14 -- That's when we had a full -- a full pay period,
- 15 like we worked all our hours.
- 16 Q What do you do for recreation?
- 17 A Sit at the house, watch TV. I might drink a beer
- 18 or two every now and then, whenever I can. Well,
- 19 actually I might drink a beer or two, but other
- 20 than that, be at the house. Well, a lot of times
- 21 be with my son.
- 22 Q Where does he live?
- 23 A He lives off of Decker.
- 24 Q Does he come to see you or do you go see him?
- 25 A I go see him. But other than that, I really don't

- 1 do nothing. I mean, I'm scared I'm going to cause
2 --
- 3 Q Pardon?
- 4 A Be scared I'm going to do more harm to myself, so I
5 be scared to go out and do anything.
- 6 Q Do you have any pets?
- 7 A No, sir.
- 8 Q Do you file your taxes, income tax, federal and
9 state?
- 10 A Yes, sir.
- 11 Q And is your current address 2442 Washington Street?
- 12 A No longer.
- 13 Q What's the new address then?
- 14 A 1505 Garden Plaza, V-5.
- 15 Q Is the street called Garden Plaza?
- 16 A Yes, sir.
- 17 Q All right. I think once or twice while we were
18 doing the deposition you did ask me to repeat a
19 question, didn't you?
- 20 A Yes, sir.
- 21 Q And that's because you didn't understand the
22 question; is that true?
- 23 A Yes, sir.
- 24 Q After I repeated the question, you answered the
25 question. Did that mean you understood the

1 question when I repeated it?

2 A Yes, sir.

3 Q All right. Did you answer any questions that you
4 did not understand?

5 A Not to my knowledge.

6 Q Have all of your answers been truthful?

7 A Yes, sir.

8 Q Do you want to change any answers?

9 A No, sir.

10 Q Okay. So, the answers that you gave me today were
11 truthful responses to answers you -- to questions
12 you understood?

13 A Yes, sir.

14 Mr. Huff: All right. With that, I'm
15 finished. Your attorney may have some
16 questions; he may not. If he has some, then I
17 get to follow up.

18 Mr. Safran: Just very briefly.

19 Examination

20 By Mr. Safran:

21 Q As I understand it, when this first happened, you
22 were having pain in your back and you reported pain
23 in your leg down to your calf.

24 A Yes, sir.

25 Q And I think that's what this Ernest gentleman wrote

- 1 down. Does that sound consistent with you?
- 2 A Yes, sir.
- 3 Q Okay. And when you actually got to some doctors
4 within the next few days, as far as somebody
5 focusing it all on your knee, was Dr. Young, the
6 first one, I guess, that actually was doing
7 something with your knee itself?
- 8 A Yes, sir.
- 9 Q And I noted that there were a couple times in his
10 reports where at least it looked like he was doing
11 something, although I don't know how much. But at
12 least did he look at your knee?
- 13 A Yes, he looked at it.
- 14 Q Okay. And before -- After you saw Dr. Young, did
15 -- Dr. Peele, when you got over to see him, did he
16 do anything really with your knee at all?
- 17 A No. No, sir.
- 18 Q Until you saw Dr. Mazoue, was anybody really doing
19 what we call a focused examination on your knee?
- 20 A No, sir.
- 21 Q So, really Dr. Young looked at it and then Dr.
22 Mazoue did?
- 23 A Yes, sir.
- 24 Q As far as the situation, you talked with Dr. Peele,
25 and I think his report said something about y'all

1 talked about going back and you agreed to go back
2 to full duty.

3 A Yes, sir.

4 Q Is that your remembering?

5 A Yes, sir.

6 Q Okay. And I think you said you preferred to do
7 that than kind of just sitting in an office.

8 A Yes, sir.

9 Q And I know when they have people out there on light
10 duty, if they've got something to give you, -- You
11 said you were doing calorie cards or something.

12 A Yes, sir.

13 Q So, that's something they gave you to do?

14 A Yes, sir.

15 Q But they didn't always have something really to
16 give you to do?

17 A No, sir.

18 Q So, if they didn't have anything to give you,
19 that's when you're talking about just kind of
20 sitting there?

21 A Yes, sir.

22 Q So, when you were given the option by Dr. Peele you
23 can either stay on some kind of restriction or try
24 to do your regular job, you chose to do your
25 regular job?

- 1 A Yes, sir.
- 2 Q You didn't argue with him about that?
- 3 A No, sir.
- 4 Q As I understood it, you -- you -- it was at least
5 your impression from him that your back was
6 supposed to be getting better over time?
- 7 A Yes, sir.
- 8 Q And has it?
- 9 A No, sir.
- 10 Q Let me also ask you, has the knee gotten better
11 over time?
- 12 A No, sir. It actually got worser [sic].
- 13 Q Okay. Let me just ask a couple other quick things.
14 I think Mr. Huff asked you about your job, and you
15 said that your job involves being on your feet.
- 16 A Yes, sir.
- 17 Q Again, are you continuing to try to get through
18 your job?
- 19 A Yes, sir.
- 20 Q Would you rather be doing what you're doing than
21 sitting in the room?
- 22 A Yes, sir.
- 23 Q Does that mean you're not hurting?
- 24 A No. I hurt all the time.
- 25 Q Now, you've sat here with me today, I think across

- 1 from Mr. Huff, but I've noticed that your left leg
2 -- when you're sitting, you've got your left leg
3 kind of straight out. Why do you do that?
- 4 A If I hold it too long, it will start hurting, so
5 like --
- 6 Q Okay. So, basically, when you hold it out, it --
7 it takes some of the pain?
- 8 A And then after I hold it out too long, it will
9 start hurting again, --
- 10 Q Okay.
- 11 A -- so I have to bend it back.
- 12 Q Okay. All right. I got you. Just a couple last
13 things. You described a situation where at least
14 one day they let you go home early, but somebody
15 actually had to take you out to your car.
- 16 A Yes, sir.
- 17 Q Who walked out there with you?
- 18 A My supervisor.
- 19 Q And who was that?
- 20 A Her name is Cora. I can't really --
- 21 Q Cora?
- 22 A We call her Cora.
- 23 Q Okay.
- 24 A She is like one of the -- the first cooks.
- 25 Q Okay. And when you're asking a cook at times if

1 you -- you know, if they let you sit or, you know,
2 take it -- take some time to kind of let the pain
3 back off, who are you generally working with when
4 they do that?

5 A My head cook or my first cook or one of my
6 coworkers.

7 Q Okay. And who -- who were these people that might
8 know that you're having problems?

9 A Well, basically everybody do know, but like Miss
10 Peaches, Ms. Vines. I think that's her name, Ms.
11 Vines.

12 Q And Miss Peaches, is that the same as Ms. --

13 A Ms. Vines.

14 Q -- Vines?

15 A Yeah.

16 Q I mean, has she -- have you talked to her about
17 your problem before?

18 A Uh-huh.

19 Q And does she try to help you out as far as saying
20 you can take a seat or whatever?

21 A Yes, sir. Yeah. She will let me -- She will let
22 me sit down for a little while or she will start
23 doing it or put somebody else on it for a little
24 bit, and then come back -- you know, I'll be like,
25 "I need like five." I just go to her and be like,

1 "I need five minutes." She'll be like, "Go ahead.
2 Go ahead." So, she will give me about five minutes
3 to go let it calm down a little bit and then come
4 back. She will be like, "Are you ready to come
5 back?" I'll be like, "Yeah, I'm ready."
6 Q Okay. But, again, you're still trying to do your
7 job, though?
8 A Uh-huh.
9 Q Okay. As far as the -- the back treatment, I know
10 some doctors that you've seen here that I had sent
11 you to had talked about, you know, doing some
12 injections. Are you willing to go forward with
13 that in your back?
14 A If it's -- If it will make me better.
15 Q Okay. I think I also saw that Dr. Mazoue had
16 talked to you about needing an MRI for your knee.
17 A Yes, sir.
18 Q To this date, you have not had an MRI in your knee?
19 A No, sir.
20 Q Okay. Assuming that the MRI gets done and a doctor
21 were to tell you you've got something that needs to
22 be, you know, treated with surgery, are you willing
23 to consider doing that, too?
24 A Yeah. I ain't never been in surgery, but if it's
25 going to make me better, I'm willing to do it.

1 Mr. Safran: Okay. Ros, I don't have
2 anything else.

3 Mr. Huff: I have nothing.

4 (Whereupon the deposition was concluded at
5 11:32 a.m.)

6 (Deponent has waived reading and signing.)

South Carolina Workers' Compensation Commission
WCC File # 1413546

Timothy McDuffie,	)	
	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Nancy R. Lembo, DO
	)	
Johnson Food Services, LLC,	)	
	)	
Employer,	)	
	)	
Great American Alliance	)	
Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	
	)	

Deposition of Nancy R. Lembo, DO, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 4:27 p.m., Thursday, September 10th, 2015, at the offices of Carolina Spine and Sports Rehabilitation Specialists, 1 Harbison Way, Columbia, South Carolina.

COPY

Reported by
Sandra M. Austin

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Sandra M. Austin

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Exhibits

Marked as Defendant's Exhibit Number 1; letter and questionnaire dated July 15, 2015, and clinical note; four pages.	3
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Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken.

Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

(Prior to going on the record, the following exhibit was marked.)

Marked as Defendant's Exhibit Number 1; letter and questionnaire dated July 15, 2015, and clinical note; four pages.

Mr. Huff: By stipulation, Andy, we're waiving the reading and signing?

Mr. Safran: Yeah. It's up to her. Certainly.

Mr. Huff: Yeah.

The Deponent: I don't need to.

Whereupon,

Nancy R. Lembo, DO, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Nancy Rose Lembo.

Examination

By Mr. Huff:

1 Q One thing I didn't cover. Your specialty is what,
2 Dr. Lembo?

3 A Physical medicine and rehabilitation, pain medicine
4 and sports medicine.

5 Mr. Huff: Andy, do we have any objection
6 to stipulating to her qualifications --

7 Mr. Safran: None.

8 Mr. Huff: -- in that field?

9 Mr. Safran: No.

10 Mr. Huff: That just makes it easier, and
11 we don't have to pull out resumes and things
12 like that. We will stipulate to your
13 qualifications in your expert field.

14 The Deponent: Are we still off the
15 record --

16 Mr. Huff: We're still on the record, but
17 we can go off for a minute if you need to.

18 [Off the record at 4:28 p.m.;
19 back on the record at 4:29
20 p.m.]

21 Examination Continues

22 By Mr. Huff:

23 Q Doctor, did you -- Lembo, did you have an
24 opportunity -- I left my notes -- to see Mr.
25 McDuffie, and, if so, did you -- when did you --

1 how many times did you see Mr. McDuffie?

2 A I saw Mr. McDuffie on June 9th, 2015, just one
3 visit.

4 Q All right. How did you come about seeing him? Did
5 he make his own appointment, did someone refer him,
6 or how did he come here?

7 A He was referred, I believe, from his attorney.

8 Q That would have been who, Mr. Safran?

9 A Yes.

10 Q To your knowledge, have you ever had any other
11 patients referred to you by Mr. Safran?

12 A Yes.

13 Q Do you know approximately -- I don't need the
14 exact number. Do you know approximately how many
15 referrals you've received?

16 A No, I don't know.

17 Q Do you think it's more than ten or less than ten?

18 A Total?

19 Q Yes, ma'am.

20 A Since I've been practicing?

21 Q Yes, ma'am.

22 A More than ten.

23 Q Do you know approximately how many referrals you've
24 had from Mr. Safran in this calendar year?

25 A I do not.

1 Q Do you think it's more than ten or less than ten?

2 A I'm not sure. I don't always know where they're
3 being referred from if they're just coming in for a
4 consult.

5 Q Okay. And it looks -- it appears to me -- I have
6 a report that says the date of visit -- and mine's
7 a little -- I think it says June 9th of 2015.

8 Does that sound correct?

9 A Yes.

10 Q Okay. When you saw him on June 9th, 2015, do you
11 know how long you spent with him personally?

12 A It was probably 20 to 40 minutes -- I'm not sure
13 exactly --

14 Q All right.

15 A -- when I saw him.

16 Q When someone comes to see you, do they fill out any
17 type of questionnaire or documents before you
18 actually see them?

19 A Yes.

20 Q How many pages is that document?

21 A I'm looking. They fill out the standard HIPAA
22 forms and Release of Information forms --

23 Q All right.

24 A -- and then the actual -- It looks like it's 11
25 pages total.

- 1 Q All right. In those pages, do you -- are there any
2 questions that would indicate whether or not the
3 patient had prior injuries or complaints to the
4 body part that they presented to you with
5 complaints, like a prior history?
- 6 A Yes.
- 7 Q All right. And, from looking at your report of
8 June 9th, it appears -- and if I'm wrong, please
9 correct me -- that he was complaining of a back
10 problem and some radiating into the left leg. Does
11 that sound right?
- 12 A When I saw him, yes.
- 13 Q All right. Was that lower back or upper back? Do
14 you remember?
- 15 A Lower back.
- 16 Q All right. Lower. And left leg?
- 17 A Yes.
- 18 Q Did he give any history of ever having any problems
19 like that before?
- 20 A No.
- 21 Q Was that important to you when you rendered your
22 opinion as to causation for the June 9th of 2015
23 visit?
- 24 A Yes.
- 25 Q Why would that be important to you, that he had no

- 1 prior back or leg -- left leg problems?
- 2 A It would -- To see how he was treated in the past.
- 3 Q Would it make any difference to you if, in fact, he
- 4 had prior back or leg problems at all?
- 5 A It depends.
- 6 Q But you need to know that so you can make a
- 7 decision whether it's important or not, correct?
- 8 A Yes.
- 9 Q And since you put down there there is no prior
- 10 history of similar symptoms, does that mean that
- 11 the topic was at least raised and discussed?
- 12 A Yes.
- 13 Q Because, otherwise, you wouldn't put it down?
- 14 A Yes.
- 15 Q And the only way you would know there was no prior
- 16 history of similar symptoms, then he must have told
- 17 that to you or somebody on a piece of paper or
- 18 verbally, correct?
- 19 A Yes.
- 20 Q When Mr. McDuffie came to see you, did he bring any
- 21 medical records from any other providers for your
- 22 review?
- 23 A He brought a CD with the MRI on it.
- 24 Q Anything else?
- 25 A I don't -- Let's see. Not really, no.

- 1 Q I didn't ask you this, Doctor. How long you been
2 practicing medicine?
- 3 A I graduated from medical school in 1993, --
- 4 Q Okay.
- 5 A -- my fellowship in 1998.
- 6 Q And have practiced basically --
- 7 A Since then.
- 8 Q All right. In the Columbia area or --
- 9 A No. Columbia since 2005.
- 10 Q And where before that?
- 11 A Pennsylvania --
- 12 Q Okay.
- 13 A Yeah.
- 14 Q So, you wanted to come south, huh?
- 15 A Yes.
- 16 Q Okay. Did Mr. McDuffie give you a history of how
17 he was injured?
- 18 A Yes.
- 19 Q What did he tell you?
- 20 A He was working in the kitchen, helping to clean,
21 when he tripped over a pipe.
- 22 Q Is that all he told you?
- 23 A Pretty much. He was -- He reached out to catch
24 himself from falling, but that's about it.
- 25 Q Did he tell you whether or not he actually fell to

1 the ground or --

2 A He -- His hands --

3 Q -- caught himself?

4 A He caught himself with his hands.

5 Q He caught himself with his hands. And did he catch
6 his self with his hands against an object or the
7 floor, or do you have any notations, or do you
8 remember?

9 A I don't have that notated. I'll see if it's in the
10 questionnaire form. I don't have that notated.

11 Q Okay. Looking at the history, it says, "He was
12 able to reach out with hands to catch himself," but
13 it doesn't make any mention of hitting the floor or
14 hitting his back or leg against any object, does
15 it?

16 A No.

17 Q Okay. Do you know, after he had this accident in
18 September 2004, -- and you saw him in June, roughly
19 nine months later. Do you have any notation
20 whether or not he missed any time from work?

21 A I don't have any notation of that. Initially, it
22 looks like, he tried to keep working that day, but
23 I think that was related to the day it happened.

24 Q So, you don't have any notation or any notes that
25 would indicate that the injury he had prevented him

1 from working. Would that be true?

2 A That's true.

3 Q All right. Can you tell me -- Of course, you can.

4 You're the doctor. Would you tell me, if he has

5 pain that radiates to the posterior left thigh to

6 his knee, what nerves involvement would you have

7 there?

8 A Well, it doesn't have to be a nerve.

9 Q All right. What could it be, then?

10 A It could be a muscle.

11 Q All right. So, --

12 A It could be the lower lumbar joints. It could be

13 the sacroiliac joint.

14 Q That's right. Thank you. Matter of fact, I think

15 your assessment was that he had -- he had no nerve

16 injury or sensory problems, --

17 A That's --

18 Q -- that you thought it was more muscular or

19 mechanical?

20 A Yes.

21 Q Do you still believe that?

22 A Well, I haven't seen him since, so yes.

23 Q All right. When you -- You did have an

24 opportunity -- because you mention in your report

25 that you did review an MRI?

- 1 A Yes.
- 2 Q And the copy of that result was provided to you
- 3 today by Mr. Safran?
- 4 A Yes.
- 5 Q What does that mean to you? What did it reveal to
- 6 you, and how did you interpret it regarding his
- 7 complaints or symptoms?
- 8 A Just looking at the MRI itself, I didn't see any
- 9 disc changes or disc herniation.
- 10 Q I was telling Andy before we started I had a young
- 11 boy, seventeen-year-old boy, run a stop sign and T-
- 12 bone me, and I've got three discs that need working
- 13 on next week. So, I know about discs. So, you
- 14 didn't see any type of disc herniation involved?
- 15 A I did not.
- 16 Q Did that play any part in your ultimate conclusion
- 17 on this first report that it could be something
- 18 more muscular or mechanical in nature?
- 19 A Yes.
- 20 Q Based upon the type of symptoms that you saw in the
- 21 examination, where you indicated there's no discs
- 22 but more muscular or mechanical, what type of
- 23 symptoms would you normally expect a person to have
- 24 with the -- with the type of accident he had?
- 25 A I thought the -- the way he described the injury

1 was consistent with having a -- the mechanical
2 injury. So, the only way to know, at that point
3 going forward, would be to do an injection and --
4 to confirm it.

5 Q So, in other words, based on the way he described
6 the accident to you, the complaint of his symptoms
7 and what you saw was consistent?

8 A Yes.

9 Q Okay. Would part of that opinion be based upon the
10 fact that he had no prior history of similar
11 symptoms?

12 A Even if he had a prior history with a pretty normal
13 MRI, I think it would still be the same because the
14 mechanism is the same.

15 Q Okay. Now, I notice that you -- it has a section
16 called General Appearance, and you say, "Affect is
17 appropriate." What do you mean by affect is
18 appropriate?

19 A Oh, they're not overly emotional or flattened.

20 Q All right. Would affect have anything to do with
21 symptom magnification or with facial --

22 A Sometimes, but normally it's more for, like, people
23 that are very anxious or tearful or --

24 Q Okay. And gait, what did you find when you had
25 gait, and what did that mean to you on your

1 findings?

2 A He wasn't limping. He was able to walk, a toe
3 walk, heel walk. So, everything was normal that
4 way.

5 Q How about balance?

6 A He had the same. You know, he didn't have any loss
7 of balance during the examination.

8 Q Would that be consistent with the physical findings
9 of no herniation or nerve involvement in the legs
10 or hips?

11 A Yeah, you could have a herniation and have normal
12 balance, so --

13 Q Okay. All right. Then it looks at the spine
14 examination, and you say that you do not see any
15 evidence of the thoracolumbar shift. What does
16 that mean?

17 A It's a curve or a tilting of the spine, one -- one
18 side to the other.

19 Q Does that appear to be normal?

20 A Yes.

21 Q All right. What would affect the body of mechanics
22 where you would have that tilt? What type of
23 injury would you expect to cause that?

24 A It could be a muscle spasm or a disc herniation,
25 typically.

- 1 Q Well, you've already discussed disc herniation.
2 Did you find any muscle spasms?
- 3 A Yeah. On the left side, he did have some.
- 4 Q How would you describe those muscle spasms? Would
5 they be minor, mild, moderate, severe?
- 6 A I didn't document it. I don't usually grade it, --
- 7 Q All right.
- 8 A -- typically.
- 9 Q If he had complained a great deal about it, would
10 you have documented it, or if you saw a big change,
11 would you have documented it you think?
- 12 A Like, I -- I don't usually grade a --
- 13 Q Okay.
- 14 A -- spasm. Like, if I see a shift and a curve, then
15 -- or posturing because of it, I will document it,
16 but --
- 17 Q Okay. Do you know -- Back up there at the bottom
18 -- at the top, under History of Present Illness, it
19 -- you did say, "The symptoms are aggravated by
20 sitting, standing, bending and twisting." What
21 type of aggravated symptoms did he talk about?
- 22 A I'm not sure I understand.
- 23 Q Okay. You said, under History of Present Illness,
24 about eight or nine lines down, --
- 25 A Mm-hmm.

- 1 Q -- "The symptoms are aggravated," and the -- the
2 symptoms that I -- I think what you said, a
3 symptom would be radiating of pain. Well, I'm
4 trying to find out --
- 5 A Now, -- Oh. So, what that means -- So, we
6 usually ask them what makes your pain worse, what
7 makes your pain better. So, that's all that is.
- 8 Q So, that's just what he told you?
- 9 A Yeah.
- 10 Q Okay.
- 11 A Yeah, that's exact -- That comes right from the
12 questionnaire he filled out.
- 13 Q All right. So, you didn't do any type of testing
14 to look at that or anything?
- 15 A Well, we did range-of-motion testing, but --
- 16 Q What was the --
- 17 A -- I didn't time him or see what he could --
- 18 Q What did your range-of-motion testing show?
- 19 A That he had pain with extension but not with
20 forward, bending forward.
- 21 Q All right. What about right and lateral rotation?
22 Any pain with that?
- 23 A I don't think I tested that, --
- 24 Q All right.
- 25 A -- just forward and backwards.

1 Q What about right and left flexion?

2 A Well, the flexion, I just did forward bending and

3 backward bending --

4 Q All right.

5 A -- for him.

6 Q And the only thing you found that -- that was some

7 positive was what, again, please, ma'am?

8 A It reproduces pain when he bent backwards.

9 Q When he bent backwards. Okay. When you say

10 there's no point tenderness in midline, did you

11 actually, like, put your hands on and palpate?

12 A Mm-hmm.

13 Q And you asked him --

14 A Yes.

15 Q -- if he had any symptoms or complaints or --

16 A Yeah, I usually press from the top of their spine

17 down to the bottom and ask them if it's tender

18 anywhere --

19 Q And his came back --

20 A -- in the middle -- in the middle, right over the

21 spinous processes.

22 Q And it came back none?

23 A Yes.

24 Q What does that mean to you?

25 A So, usually it's a sign they don't have a fracture.

- 1 Q All right. Thank you. When it says there's no
2 tenderness over the PSIS, explain that for the
3 commissioner who will be reading this.
- 4 A Posterior superior iliac spine. So, that's where
5 the -- if you put your hands on your hips from
6 behind, where your thumbs would sit kind of
7 posteriorly over the sacroiliac joints.
- 8 Q And it was?
- 9 A Negative. No tenderness.
- 10 Q No pain at all?
- 11 A No.
- 12 Q All right. Then you did a neurologic exam?
- 13 A Yes.
- 14 Q And you said you did an examination of the lower
15 extremities, the right and left leg?
- 16 A Yes.
- 17 Q And tell me what you found when you did that.
- 18 A It was pretty unremarkable. Everything tested
19 symmetrically and normal.
- 20 Q All right. What about his -- "Calves are
21 nontender." What did that tell you about his
22 injury?
- 23 A Nothing really related to his injury. It's just a
24 standard part of the exam.
- 25 Q Motor strength, 5/5 is normal?

1 A Yes.

2 Q And do you find any diminution in -- in motor?

3 A No.

4 Q DTR is deep tendon reflexes?

5 A Yes.

6 Q Hypoactive and symmetrical, what does that mean?

7 Was that normal?

8 A Decreased, but if they're symmetrical, they're

9 normal for him. They were decreased one side

10 versus the other. It was pretty simple. So, we

11 don't worry about it if it's on both sides.

12 Q What does it tell you when you get a sensory

13 examination is normal? Would it indicate there was

14 no injury from this near fall?

15 A No. It just means his sensation is intact to

16 testing.

17 Q All right. Did you find diminution in his

18 sensation at all?

19 A I did not.

20 Q Okay. Slump testing, what do you do in slump

21 testing to determine --

22 A That's a test of neural tension -- neural tension.

23 Q Okay.

24 A It's like a straight-leg raise, but that's a seated

25 version of a straight-leg raise.

- 1 Q And it was normal?
- 2 A Yes.
- 3 Q What does that reveal to you, then?
- 4 A There's no neural tension in his -- on exam.
- 5 Q Did you find any injury because of the accident?
- 6 A The -- Well, the -- I think the things that I
- 7 found that were consistent with his symptoms were
- 8 the left-sided lumbar paraspinal hypertrophy and
- 9 the pain with extension.
- 10 Q All right. And the next exam, Musculoskeletal
- 11 Examination, "Palpation over the greater
- 12 trochanteric --" is that trachantria -- tric --
- 13 "bursa does not reproduce typical pain." Now, that
- 14 kind of got my attention, typical pain. What type
- 15 of typical pain should it have produced, if any?
- 16 A It didn't produce any.
- 17 Q No pain at all. Okay. When you did the range of
- 18 motion of the hips, no pain, just pain-free?
- 19 A Mm-hmm. Yes.
- 20 Q All right. I think I found the answer to that.
- 21 I'm almost near the end. About another ten minutes
- 22 and I'll be finished, and I can turn it over to Mr.
- 23 Safran. As a result of what you -- Let me ask you
- 24 this. I don't use foreign terms. 90.72 kilograms,
- 25 what would you say that body weight would be,

1 roughly?

2 A 190 pounds to 200. It's 2.2 --

3 Q Six foot -- So, he wasn't morbidly obese or

4 anything like that, that you saw?

5 A Oh, we didn't weigh him. That was the weight that

6 he gave us. We don't --

7 Q Oh.

8 A We ask them for the height and weight, --

9 Q I got you.

10 A -- and we plug it in, and the computer generates

11 it. So, I'm sorry about that. We did their -- his

12 blood pressure and heart rate, though.

13 Q But a person that's six-foot-two at 190 pounds

14 wouldn't be --

15 A No. A BMI of 25, so --

16 Q Okay. And then you came up with a diagnosis, did

17 you not?

18 A Yes.

19 Q And what was your diagnosis? Well, I think it was

20 three.

21 A Low back pain, -- sorry -- lumbar facet pain, and

22 myofascial pain.

23 Q Now, is -- Did you perform any tests that could,

24 in fact, definitively prove whether or not he's in

25 pain or not as it -- or was it more so that he

- 1 would respond that he's in pain in certain
2 movements or palpations or examination?
- 3 A Part of it was the response to movements, but he --
4 he did have the paraspinal hypertrophy, and that's
5 not something that's subjective. That's something
6 you can see.
- 7 Q Now, tell the commissioner what that term means.
- 8 A So, just the muscle in one side looks bigger than
9 the other, --
- 10 Q Like a bulge, --
- 11 A -- and that --
- 12 Q -- spasm?
- 13 A Yes. Yes.
- 14 Q Like a knot?
- 15 A A knot, yes.
- 16 Q I know exactly what you're talking about. I've got
17 that from a car wreck here. Now, let's look at the
18 activities that you looked at, your Plan, the
19 options. It says you gave him some options. What
20 options did y'all discuss?
- 21 A We were talking about some treatment for it going
22 forward.
- 23 Q What type of treatment?
- 24 A So, you can do nothing.
- 25 Q Pardon?

- 1 A You can do nothing at all.
- 2 Q Yes, ma'am.
- 3 A You can -- If we wanted to see -- confirm or rule
4 out the pain generator being the facet joints, --
- 5 Q Right.
- 6 A -- you can do a diagnostic block where we just use
7 lidocaine.
- 8 Q All right. And is that used for diagnostic
9 purposes or is it medical that would tend to lessen
10 disability?
- 11 A The -- Well, the medial branch block would be the
12 lidocaine block, just diagnostic.
- 13 Q All right.
- 14 A The facet joint could be just diagnostic, or you
15 can put steroid in to try to treat it.
- 16 Q Okay. And then I think you also recommend Naprosyn
17 -- and what was the -- and Robaxin. What were
18 those for, those drugs?
- 19 A So, Naprosyn is an anti-inflammatory, and it's a
20 pain medication, as well, an analgesic. And
21 Robaxin is an analgesic and for -- and it's also a
22 muscle relaxer.
- 23 Q At that time, did you make a -- an opinion about
24 his ability to return to work, and, if so, would
25 you place any restrictions on him?

1 A I gave him lifting restrictions.

2 Q All right. And what was the max that you said it
3 would be safe for him to lift?

4 A Thirty pounds.

5 Q All right. I do notice that you don't do any other
6 restrictions, like any restriction on how long he
7 could stand or how long he could walk. Is that
8 correct?

9 A I didn't. I didn't address anything other than
10 weight.

11 Q All right. No restrictions on -- on his -- his
12 bending or twisting?

13 A I didn't.

14 Q Okay. And that's the one time that you've seen
15 him?

16 A Yes.

17 Q Subsequent to that appointment, June 9th of 2015, I
18 think Mr. Safran wrote a letter to you, dated July
19 15th, asking four questions. Are you familiar with
20 that questionnaire?

21 A I believe I have that.

22 Q If not, --

23 A Yes.

24 Q -- I've got an extra copy, if you need it. Just
25 let me know.

- 1 A I have it.
- 2 Q All right. Between the appointment -- Well, no.
- 3 Let me say this. At any time -- I've got these two
- 4 written documents from you -- have there been any
- 5 oral communication from you or your office with Mr.
- 6 Safran?
- 7 A I don't remember. I don't recall speaking to Mr.
- 8 Safran about this gentleman.
- 9 Q All right. That's fine. I'm not implying. I'm
- 10 just -- Thank you.
- 11 A So, there may have been -- He may have called the
- 12 office to let them know he was sending the
- 13 questionnaire over, but --
- 14 Q Okay.
- 15 A -- other than --
- 16 Q But you don't -- you don't have any memory of any
- 17 communication you would have regarding treatment,
- 18 diagnosis or opinion. Would that be a true
- 19 statement?
- 20 A Yes.
- 21 Q Okay. Thank you very much.
- 22 A Do you have a copy of the questionnaire?
- 23 Q Yes, ma'am. I've got it right here.
- 24 A I have a different one.
- 25 Q Where did I just put it --

- 1 A Sorry.
- 2 Q It's right here.
- 3 A I may have a different one. Yeah, I think --
- 4 Q I have -- There's so much --
- 5 (Attorney Huff presents document to the
- 6 deponent.)
- 7 A Thank you.
- 8 Q You're welcome. I always try to bring extra ones.
- 9 It makes it easier for everybody.
- 10 A Yeah. There you go.
- 11 Q I'm looking at the -- the letter dated July 15th,
- 12 2015, and I am looking at the second full paragraph
- 13 on page one where Mr. Safran has given an outline
- 14 or statement before he asks -- before the
- 15 questions, and there's a statement here that says,
- 16 "He's continued to experience lumbar and left knee
- 17 symptoms which negatively impact upon his ability
- 18 to perform his job duties." How did it negative --
- 19 negatively impact his ability to do his job duties?
- 20 What knowledge do you have of that?
- 21 A I don't think that was one of the questions I was
- 22 asked.
- 23 Q No. I'm -- I'm saying, though, this information
- 24 was provided to you by Mr. Safran.
- 25 A Oh. Right.

1 Q Mr. Safran said this. This -- It's paragraph
2 number two. It says, "Since that time, Mr.
3 McDuffie has continued to experience lumbar and
4 left knee symptoms which negatively impact upon his
5 ability to perform his job duties." I want to know
6 what knowledge do you have that it would negatively
7 impact his ability to do his job duties and what
8 were the lack of job duties he could do.

9 A The only restriction I had was the 30-pound
10 lifting.

11 Q All right. So, you're not familiar with any other
12 symptoms that negatively impacted his ability to do
13 his job, then; is that --

14 A Well, that -- that would be a restriction to go
15 back to his job, but --

16 Mr. Safran: Yeah, let me --

17 A -- other than that, --

18 Mr. Safran: I think I need to make --

19 A -- I guess --

20 Mr. Safran: -- an objection.

21 Mr. Huff: Okay.

22 Mr. Safran: The objection is -- is that
23 I made representation to her that that was
24 what was going on. You took his deposition,
25 and he told you that. Now, certainly, the

1 letter, in and of itself, doesn't go into
2 detail. However, if we need to go into his
3 deposition where he went into that himself,
4 that's fine, but I just want to make sure, for
5 the record, that you're not basically
6 suggesting to the doctor that he didn't
7 testify to that because, frankly, in order to
8 pose the question, I think I have to have a
9 factual basis, which you and I are both
10 intimately familiar with. So, I'm just
11 asking, you know, for the purpose -- for the
12 commissioner, are you representing to Dr.
13 Lembo that he did not testify to that effect?

14 Mr. Huff: All right. Let me -- In
15 response to -- to Mr. Safran, with all due
16 respect, I'm not obligated to answer that, and
17 I will not answer that.

18 Q If you would, --

19 Mr. Safran: And for the record -- I'm
20 putting on the record he's not answering that,
21 presumably to mislead the doctor. So, we'll
22 have the record to get that.

23 Mr. Huff: That -- That's fine, Andy.
24 Yeah, that -- that's no problem.

25 Q But my question to you would be, are you familiar

1 with any other things, other than the restriction
2 you put upon him of 30 pounds, where his knee or
3 back injury were negatively impacted upon his
4 ability to perform his job duties?

5 A Just the questionnaire, with the sitting, standing,
6 bending --

7 Q All right.

8 A -- that he gave me --

9 Q Okay.

10 A -- as far as what made the pain worse.

11 Q Please tell me, if you would, what are his job
12 duties?

13 A I don't have a job description for his work.

14 Q So, you don't know what his job duties are?

15 A Uh-uh.

16 Q Is that a -- You need to say yes or no for me.

17 A No, I don't know --

18 Q Okay. Thank you.

19 A -- the job description.

20 Q So, you have no knowledge of what his job duties
21 are. Is that a true statement?

22 A Only that he's -- was working at Johnson Food
23 Service in the kitchen. So, I have a vague idea of
24 what they are. They weren't -- It wasn't a
25 sedentary job, as far as I was --

1 Q But you don't know how long he has to stand each
2 day, do you?
3 A I don't.
4 Q Do you know --
5 A I don't have any of those specifics, no.
6 Q You don't know the minimum or maximum weights that
7 --
8 A No.
9 Q -- he has to lift?
10 A No.
11 Q You don't know the frequency of lifting?
12 A No, --
13 Q You don't know how many breaks he --
14 A -- I do not.
15 Q You just know nothing about the job other than --
16 A Well, that he's working at Johnson Food Service and
17 just there in the kitchen cleaning, --
18 Q Okay.
19 A -- so --
20 Q Okay.
21 A -- that's usually not a sedentary job.
22 Q All right. It says here, too, under B, since that
23 time, Mr. McDuffie has "attempted to remain
24 working, despite encountering problems sustaining
25 this activity." What problems did he sustain?

1 What problems did he encounter in trying to perform
2 his jobs -- job?

3 A His -- He has pain, and he has difficulty sitting,
4 standing, walking, bending.

5 Q All right. Now, let's go down, if we may, to the
6 questions. Dr. Lembo, just like when Andy did his
7 objection, -- we're just doing our jobs
8 respectfully -- I'm going to ask these next
9 questions because I have to preserve this for the
10 discovery and to present to the commission.

11 Mr. Huff: But so as not to waive any
12 objections I'm going to have at the hearing to
13 this document, I'm now going to place an
14 objection on the record that I'm going to
15 object, at the time of the hearing, of the
16 submission of this document on grounds that
17 will be raised at the hearing.

18 Q So, with that being said, I'm then going to ask you
19 some questions, and we'll see where we go from
20 there. Question number one, subject to my
21 objection as being an improper question as a
22 leading question -- and the question I'll read for
23 the record, so that we can then discuss it. Number
24 one, "Do you believe, to a reasonable degree of
25 medical certainty, that the posttraumatic lumbar

1 facet syndrome you have diagnosed proximately
2 results from Mr. McDuffie's September 19th, 2014
3 compensable accident?"

4 Mr. Safran: Before you answer, for the
5 record, it's not a leading question. That is
6 a standard question that is not suggesting
7 anything, and, so, I dispute Mr. Huff's
8 characterization. Secondly, if he, in fact,
9 is basically claiming, assuming, that it is
10 leading, he's here for cross-examination, so
11 he has the opportunity to cure any potential
12 problem with the question. I also think, for
13 the purposes of the record, -- and, you know,
14 we can play this game all day long -- because
15 I know the commissioner, frankly, will not be
16 very happy with it if we're going to do this.
17 I want Mr. Huff to state for the record
18 whatever objections he's got because we are
19 here for the purpose of curing anything. If,
20 in fact, he refuses to do so, not only am I
21 going to ask to reconvene the deposition, I'm
22 going to ask for costs in order to do so.
23 Now, Mr. Huff, you go right ahead.

24 Mr. Huff: Well, I'll just put for the
25 record, for some reason it appears it's a

1 personal attack, but I'm not going to go down
2 that road.

3 Mr. Safran: It's not a personal attack,
4 Mr. Huff. We are here basically to take a
5 deposition. This has nothing to do with you
6 whatsoever. This is nothing personal. If you
7 testify -- or state for the record that you
8 are doing this at the behoove -- behoovement
9 of your client, then so be it. I think there
10 is a agenda from your client that is, frankly,
11 nonsensical, but, beyond that, you go right
12 ahead and respond.

13 Q All right. Back to the question. "Do you believe,
14 to a reasonable degree of medical certainty, that
15 the posttraumatic lumbar facet syndrome you have
16 diagnosed proximately results from Mr. McDuffie's
17 symptoms of September 19th, 2014 compensable
18 accident?" That's the question. So, for me,
19 please -- please define -- I need to know this.
20 When you -- When the term post-matic --
21 Posttraumatic lumbar facet syndrome, that term was
22 written in the letter. You didn't make that --
23 What do you interpret that to mean, posttraumatic
24 lumbar facet syndrome? When you answered that
25 question, what did you interpret that to mean?

- 1 A Facet pain coming from a injury.
- 2 Q And do you know what level the facet was?
- 3 A I don't.
- 4 Q All right.
- 5 A I would assume it would be the lower ones, just
- 6 based on the referral patterns, but --
- 7 Q Would an MRI show facet injuries?
- 8 A Only if there's a fracture. It doesn't typically
- 9 show pain or inflammation.
- 10 Q Okay. And this is, from what we know, -- You have
- 11 no doubt in your mind that he -- he complains of a
- 12 pain problem?
- 13 A Yes.
- 14 Q And a pain problem could be symptomatic to the type
- 15 of injury that he told you he had?
- 16 A Yes.
- 17 Q And, to your knowledge, even with the pain problem
- 18 that he has, he still continues to work?
- 19 A I wasn't -- I don't -- I'm not sure about the
- 20 work status at -- right now. I'd have to go back
- 21 to the questionnaire.
- 22 Q Do you -- Do you know whether or not the pain
- 23 syndrome that he manifested that day to you was to
- 24 such an extent that you would have written him out
- 25 of work?

- 1 A No, I probably wouldn't have.
- 2 Q Did you indicate whether he could continue to work?
- 3 A I thought he could go back to work with a lifting
4 restriction, --
- 5 Q Okay.
- 6 A -- just based on that one examination.
- 7 Q Thank you. Let's go to the next question, if we
8 could, please, Doctor, question number two. Again
9 I will read it for the record so it'll be right
10 there before the commissioner. Question number two
11 on page two of this July 20th response -- Ah,
12 happens to be my birthday. So, let's see. "Based
13 on your examination, do you believe, to a
14 reasonable degree of medical certainty, that
15 without treatment, Mr. McDuffie's causally related
16 lumbar symptoms will most probably remain
17 problematic and materially/negatively impact his
18 ability to sustain work activities?" All right.
19 What work activities, in your opinion, will it
20 materially or negatively impact?
- 21 A The lifting, but if we -- You know, we could
22 expand upon that based on his facets, but --
- 23 Q But the only thing -- The only restriction that
24 you put upon him was the --
- 25 A That's right.

- 1 Q -- not lifting more than 30 pounds?
- 2 A That's correct.
- 3 Q You didn't restrict the number of hours he could
- 4 work, did you?
- 5 A No, I did not.
- 6 Q Or the ability to stand, shift weight, bend over,
- 7 twist, turn, push, --
- 8 A I --
- 9 Q -- pull or anything like that, did you?
- 10 A I did not.
- 11 Q Okay. You didn't use the word -- because it's in
- 12 the questionnaire. It says problematic. What does
- 13 problematic mean to you?
- 14 A Oh, that he was going to have continued symptoms.
- 15 Q And the symptoms were pain; --
- 16 A Yes.
- 17 Q -- is that correct?
- 18 A Yeah, the symptom -- the -- the lower back pain
- 19 symptoms and the radiating symptoms, it looks like.
- 20 Q At any time did you ask him or did he volunteer any
- 21 information whereby you could grade the pain, like
- 22 from zero pain -- I've seen those, you know,
- 23 photographs -- those pictures, --
- 24 A Yeah.
- 25 Q -- where you have zero pain, you've got a smiling

1 face, and pain ten, they've got the -- you know,
2 the frown on your face. What level pain did he
3 complain of? Do you have any notation?

4 A I don't think we notated that when I saw him. Let
5 me see if he did on the questionnaire. No, we
6 don't have a pain level.

7 Q At any time that you saw him, did he ever indicate
8 to you or voluntarily tell you that I'm in so much
9 pain that I can't do this or I can't do that? Did
10 he ever bring up pain to you other than saying the
11 general term I'm in pain?

12 A Well, just when I asked him what -- what the
13 limitations are, like what makes the pain worse,
14 that type of thing.

15 Q I got you. I got you. Thank you. Question number
16 three, if I may, again -- Like I stated earlier,
17 this is all subject to objections that would be
18 made at the time of the hearing. "Do you believe,
19 to a reasonable degree of medical certainty, that
20 the course of treatment you have recommended for
21 Mr. McDuffie's lumbar injury component is
22 reasonably medically necessary and geared toward
23 lessening the ultimate period of disability
24 produced by the September 19th, 2014 compensable
25 accident?" My question is what period of

1 disability does he have if he's working?

2 A I don't know what -- I don't know his work status,
3 whether he was working light duty or full duty or
4 --

5 Q Okay.

6 A And it may not be a work disability either, right.

7 Q And do you know when the word period of disability
8 is being used whether that refers to a temporary
9 period of disability or a permanent period of
10 disability?

11 A Well, there's no mention of that.

12 Q Okay. Thank you, ma'am. And the last question, I
13 think, is question number four. I'll read that
14 again subject to my objections. "Do you believe,
15 to a reasonable degree of medical certainty, that
16 Dr. Mazoue's --" is that Mazoue -- is that how you
17 pronounce this name --

18 A I think it's Mazoue.

19 Q -- Mazoue's -- I couldn't -- I don't have my
20 glasses, and that's -- "treatment recommendations
21 relative to the left knee injury component are,
22 likewise, reasonably medically necessary and geared
23 toward lessening the ultimate period of disability
24 produced by Mr. McDuffie's September 19th, 2014
25 compensable accident?" What left knee symptoms did

1 he have -- because I -- It said that he was having
2 pain radiating down the posterior left thigh to his
3 knee. Would it -- You didn't make any mention of
4 a knee injury?
5 A I didn't examine his knee.
6 Q All right. Okay. And I -- I did -- because I
7 want to make sure when the commissioner reads this
8 -- because I didn't write it all down. Your area
9 -- because I want to stipulate to what your area
10 is.
11 A Mm-hmm.
12 Q I did hear the word -- Did I hear earlier
13 vocational?
14 A No.
15 Q What -- What -- Could you state, just for the
16 record, what your expertise is again?
17 A I'm board-certified in physical medicine and
18 rehabilitation, --
19 Q Okay.
20 A -- pain medicine --
21 Q Yes, ma'am.
22 A -- and sports medicine.
23 Q Thank you, ma'am. Do you have any knowledge of
24 what Mr. McDuffie's prior work history is?
25 A Other than working at the Johnson --

1 Q This employer?

2 A Yes. Other than this one, no, I do not.

3 Q So, no knowledge of any other work experience or

4 training that he has; is that true?

5 A Let's see. When he filled out his questionnaire,

6 --

7 Q Yes, ma'am.

8 A -- he just put cooking as an occupation and that

9 his highest level of high -- of grade was twelfth

10 grade.

11 Q Okay. In your practice, can you please tell me

12 where your -- your medical practice is located,

13 like the address that we're at and city?

14 A This -- I have -- This office is 1 Harbison

15 Boulevard. Is it Columbia or Lexington?

16 Q Okay. I know where you're talking about.

17 A And then the other one is in Summerville, 763

18 Travelers Boulevard, Summerville, South Carolina.

19 Q All right. And I know in the legal profession I

20 work long hours, and I know you do, too. About how

21 many hours a week do you work?

22 A More than 50.

23 Q Okay. That -- That's more than enough. And the

24 patients that you see, do they come to you by

25 referral? I know you probably see some for -- for

1 -- to give opinions, but would the vast majority of
2 your practice be treating patients or giving --

3 A Yes.

4 Q -- an opinion?

5 A No. The vast majority is treatment.

6 Q Yes, that's what I've heard. Okay. Have you ever
7 appeared personally at a hearing before the
8 workers' compensation commission?

9 A No.

10 Q I know -- I want to make sure all of your -- Did
11 -- All the answers you gave me today were truthful
12 answers to questions that you understood, and if
13 you didn't understand it, I think once or twice,
14 you may have asked me to repeat it. Is that
15 correct?

16 A That's correct.

17 Q Did you answer any question you did not understand?

18 A No.

19 Q Have all your answers been truthful to the best of
20 your ability?

21 A Yes.

22 Mr. Huff: All right. With that, I am
23 finished. Mr. Safran is going to ask some
24 questions, and then I get to ask a few more if
25 I need to. I may not. Then he gets to go

1 again, too. And I thank you for your time,
2 Doctor.

3 The Deponent: Okay.

4 Examination

5 By Mr. Safran:

6 Q Dr. Lembo, let me just begin by asking you just a
7 few questions about the examination of this
8 gentleman. I think Mr. Huff asked you questions
9 that were focusing on, I think, a notion of disc
10 protrusion, disc herniation, nerve root. As I
11 understand it, you did not find that he was
12 displaying that by an MRI scan or symptomatically?

13 Mr. Huff: I want to object to the form
14 of the question as being a leading question.
15 This is his -- I did cross-examination. Your
16 -- For the record, your medical questionnaire
17 was his direct. He's now doing re-direct, so
18 I will object to the question as being
19 leading.

20 Mr. Safran: Sure.

21 Mr. Huff: And that's just for formality.
22 You still answer his question.

23 Q Let me just ask the question in a different way.
24 Did the MRI scan, at least in your review, show any
25 evidence of a disc herniation or nerve root --

- 1 A No.
- 2 Q -- compression?
- 3 A No, it did not.
- 4 Q All right. When you do a physical exam, are there
- 5 different conditions of the spine that you are
- 6 looking for?
- 7 A Yes.
- 8 Q Did those include symptoms that would come from the
- 9 facet joints?
- 10 A Yes.
- 11 Q Is facetogenic pain a type of symptom that you see
- 12 commonly in your practice?
- 13 A Yes.
- 14 Q Is facetogenic pain something that is really
- 15 diagnostic through an MRI scan?
- 16 A No.
- 17 Q What is basically what -- what you would consider
- 18 to be the gold standard for facet pain?
- 19 A A diagnostic block.
- 20 Q All right. Is that what you've recommended in this
- 21 situation?
- 22 A Yes.
- 23 Q So, I guess my other question would be -- and I
- 24 think you answered this. Based upon the mechanism
- 25 of injury here, which I believe you said was he

1 tripped and then fell forward but caught himself,
2 would facetogenic pain be consistent with that
3 mechanism of injury?

4 A Yes.

5 Q Were the clinical findings of extension
6 difficulties significant in your diagnosis?

7 A Yes.

8 Q Is an extension deficit of the nature this
9 gentleman displayed consistent with a facet pain
10 generator?

11 A Yes.

12 Q All right. Are you aware of any other source of
13 his facet symptoms other than the trauma that we
14 have discussed today?

15 A No.

16 Q Now, Mr. Huff asked you earlier about history being
17 important. Would the history have to be relevant,
18 not just in terms of location of pain but timing of
19 symptoms, in order to have any bearing on your
20 diagnosis?

21 A Yes.

22 Q I'm looking at pages 43 and 44 of Mr. McDuffie's
23 deposition when Mr. Huff asked him, "Have you ever
24 injured your back or left knee while playing
25 sports?" "No, sir. I have injured -- I had hurt

1 my back before, you know. Like I was working,
2 doing some work, moving -- I was moving a TV in the
3 house, and I kind of like injured my upper back."
4 Mr. Huff asked, "When did that happen?" He says,
5 "I was young. I don't -- can't really recall, but
6 it was nothing. It was like, well, it will get
7 better, but I ain't never -- It was a couple years
8 ago, but I ain't never had problems with it before
9 -- I mean ever again." "Did you seek medical
10 treatment?" "Yes. I went to the hospital."
11 "Which hospital?" "Providence." Assuming it was a
12 higher level in his back, would that really be
13 anything that would change your opinion?

14 A No.

15 Q And assuming he was, by all -- any accounts, not
16 experiencing any visible symptoms or complaining of
17 any symptoms or in any way having issues with his
18 back prior to this injury, can you point to any
19 source, at this point, of his symptoms other than
20 the trauma we've discussed today?

21 Mr. Huff: I'm going to object at this
22 time as to the form of the question, also that
23 it is leading. You still answer, Doctor.

24 Mr. Safran: Well, I'm going to ask it
25 again. And I think I'm here to cure it.

1 Q Doctor, assuming for the purpose of my question
2 that this gentleman was working full duty, making
3 no complaints of pain and indicating in every way
4 he was having no symptoms, based upon that history
5 as well as the history of injury, do you still
6 believe to a reasonable degree of medical certainty
7 that the trauma we're here about from September
8 19th of 2014 is most likely the source or most
9 probably the source of his symptoms?

10 Mr. Huff: Again, object to the --

11 Mr. Safran: That's fine.

12 Mr. Huff: -- question. I object to the
13 form of the question as leading. You still
14 answer.

15 Mr. Safran: Go right ahead.

16 A Yes.

17 Mr. Safran: I think if -- if I'm asking
18 a hypothetical question, under the law, the
19 Chapman case, you're obliged to tell me how
20 it's deficient. If you don't want to do it,
21 again, we can come back here after we see the
22 commissioner.

23 Mr. Huff: Again, I'm not answering your
24 questions --

25 Mr. Safran: No. Well, no, I think

1 legally you are required to, by -- by law,
2 under the Supreme Court ruling, to tell me how
3 it's deficient, and you can look it up while
4 we're sitting here if you'd like, Chapman
5 versus Foremost Dairies. If I ask a
6 hypothetical and you object to it, you are
7 obliged to tell me how it is deficient. If
8 you refuse to do that, we will suspend the
9 deposition today and come back.

10 Mr. Huff: Whatever you want to do.

11 Mr. Safran: Okay. For the record, and
12 I'm going to seek cost for this.

13 Q Let's go on to the next thing. Mr. Huff was, I
14 think, suggesting to you that there was nothing
15 this gentleman was having issues with, particularly
16 as he was doing his job. I want to ask you to
17 review pages 30 and 31 as well as pages 47, 55, 56
18 and 57 from his deposition.

19 (The deponent reviews documents.)

20 A It just got smaller there. I need my cheaters.

21 Q Yeah, that last one, I'm not sure why it came out
22 so small.

23 A That's okay. Okay.

24 Q Does Mr. McDuffie talk about any difficulties
25 working, as far as his symptoms, when -- in those

1 pages?

2 A Yes.

3 Q Does he discuss having to ask for accommodations?

4 A Yes.

5 Q All right. Does he also reference at least one
6 occasion where he was hurting bad enough to have to
7 go out and they were going to talk about calling an
8 ambulance?

9 A Yes.

10 Q Would you -- In your estimation, do those
11 references or statements appear to be indicative of
12 an ongoing problem with his back?

13 Mr. Huff: I'm going to object to the
14 form of the question and object it's, again,
15 leading.

16 Mr. Safran: All right.

17 Q You can answer the question.

18 A Yes.

19 Q All right. And, I guess, how would you
20 characterize those references as they relate to his
21 back symptoms?

22 A That he was still having back pain.

23 Q And is it more than something minor or would you
24 just characterize it as -- as minor? You choose.

25 A It's -- Yeah, that's -- becomes more subjective,

1 but it was interfering with his daily activities,

2 --

3 Q Okay.

4 A -- so --

5 Q And given that fact, -- Let me just go back
6 through this questionnaire. Is the diagnosis of
7 posttraumatic lumbar facet syndrome consistent with
8 what you diagnosed and what your findings were?

9 A Yes.

10 Q So, is question number one accurate?

11 A Yes.

12 Q For number two, based upon what I've shown you,
13 would that be indicative of this gentleman -- as I
14 think I referenced in my letter to you, negatively
15 impact upon his ability to perform his job, --

16 Mr. Huff: I'm going to object to --

17 Mr. Safran: Please let me finish the
18 question.

19 Mr. Huff: Well, I thought you -- I
20 apologize. I thought you were, Andy. I'm not
21 trying to be rude.

22 Q Let me ask you this. Would my statement in number
23 A, the paragraph Mr. Huff asked you about on the
24 first page of the letter, be consistent with what
25 you just read from the deposition?

1 A Yes.

2 Q Okay. So, having looked at that, is your answer to
3 question number two on the questionnaire still
4 accurate?

5 A Yes.

6 Q All right. Now, if we were to consider this
7 gentleman's ability to continue employment without
8 limitation in his pre-injury job, would the lack of
9 treatment have an impact on his capacity to do so?

10 Mr. Huff: I'll object to the question,
11 object --

12 Mr. Safran: Sure.

13 Mr. Huff: -- to the form of the question
14 --

15 Mr. Safran: Sure. Go right ahead.

16 Mr. Huff: -- as leading.

17 A Yes.

18 Q All right. And would you anticipate that, without
19 treatment, yes, no, maybe -- I mean, I don't want
20 to ask a question Mr. Huff finds problematic.
21 Would you anticipate these symptoms, at this time
22 frame after an injury, are likely to improve on
23 their own?

24 A Most likely not.

25 Q Okay. And I guess my question is, given the fact

1 that he is already reporting issues as they relate
2 to his being able to do his job, is that likely to
3 change absent treatment?

4 A Most likely not.

5 Mr. Huff: I'm going to object to the
6 form of the question as leading.

7 Mr. Safran: For the record, for the
8 commissioner, when I ask a question is
9 something likely to change, --

10 Q I'll ask it again. Is it most probable that --/
11 that the condition, i.e. his symptoms affecting his
12 job, are likely -- or -- Well, excuse me. Let me
13 rephrase the question. Is it most probable that
14 the symptoms that are affecting his ability to
15 work, as referenced in the deposition, will change
16 or not change over time absent treatment?

17 A They're most likely not going to change, --

18 Q Okay.

19 A -- but the question is we don't know what -- We
20 haven't done any treatment yet, so --

21 Q Okay. And, so, at this point, would you --

22 A It's unknown.

23 Q Would you have recommended treatment if you didn't
24 think it was appropriate?

25 A Oh, no. At this point, we're recommending

1 treatment because he's continued to have symptoms.

2 Q Okay. And, as I understand it, the first line of
3 treatment would be the injections involving the
4 facet joints?

5 A Yes.

6 Q Okay. Let me ask you just a few other things, and
7 I think we'll be done. I think you already
8 mentioned this, but when you find muscle spasm, is
9 that an objective versus a subjective finding?

10 A It's objective.

11 Q Okay. So, this is something, from what I'm
12 understanding, that is not faked or manipulated,
13 that type of thing?

14 A Yeah. You can't -- I don't think you can control
15 those muscles voluntarily.

16 Q Okay. And is the finding of spasm something that
17 is clinically significant to you?

18 A It's consistent --

19 Mr. Huff: Object to the form of the
20 question. Object to it as being leading.

21 Q All right. You can answer.

22 A The muscle spasm being in the same area where he's
23 complaining of pain is consistent with his history.

24 Q Okay. So, I guess my question, to ask it a
25 different way, what is the clinical significance of

- 1 that finding?
- 2 A There may be a pain generator there.
- 3 Q Okay. And we don't know, I'm assuming, unless we
- 4 do the injection as you've recommended?
- 5 A Correct.
- 6 Q And when you refer to mechanical in your report,
- 7 does that include the diagnosis of the facet pain?
- 8 A Yes.
- 9 Q Mr. Huff asked you about this. The absence of
- 10 tenderness at midline, is that in any way
- 11 inconsistent with the facet pain that you've
- 12 diagnosed?
- 13 A No.
- 14 Q And the no tenderness at the PSIS, is that in any
- 15 way inconsistent with the facet pain that you've
- 16 diagnosed?
- 17 A No.
- 18 Q Does the lack of decreased sensation or neural
- 19 tension in any way exclude a diagnosis of the facet
- 20 pain or syndrome?
- 21 A No.
- 22 Q Doctor, do you believe, to a reasonable degree of
- 23 medical certainty, that the course of treatment
- 24 that you have recommended is aimed toward improving
- 25 Mr. McDuffie's back symptoms?

1 Mr. Huff: Object to the form of the
2 question. Object as to being leading.

3 A Yes.

4 Q You can answer.

5 A Yes.

6 Q If, in fact, there is some concern or indication
7 that Mr. McDuffie will not be able to sustain work
8 without accommodations long term. Would the
9 treatment that you've recommended be aimed towards
10 eradicating that problem, i.e. making it where he
11 could return to work without limitations or
12 restrictions from you?

13 Mr. Huff: Again, object to the question.
14 Object as to the form of the question. Object
15 to the question as being leading.

16 Mr. Safran: That's fine. Go right
17 ahead.

18 A So, the goal of the treatment recommendations would
19 be to identify the pain generator and treat it so,
20 hopefully, he could go back to work full duty with
21 no restrictions. So, yes.

22 Q And, at this point, you felt his condition was of
23 the nature that you ended up assigning a
24 restriction at least as to lifting?

25 A Yes.

1 Q Okay. All right. Just give me one second. I may
2 be done. Based upon what I showed you in the
3 deposition, I think, did you -- did it appear that
4 Mr. McDuffie was trying to work through his
5 symptoms at least at this point?

6 A Yeah, that's what he mentioned in the intake.

7 Q Okay. And, so, basically, even though he's
8 technically working his job, from what I showed you
9 in the deposition, he is still having to ask for
10 certain types of accommodations regardless of that?

11 A Yes.

12 Q Okay. And if you're getting accommodations, would
13 that be consistent with unrestricted work
14 activities?

15 A No.

16 Q Okay. Are all the answers to my questions to a
17 reasonable degree of medical certainty?

18 A Yes.

19 Q Most probably?

20 A Yes.

21 Q All right. Let me just ask you one -- I
22 apologize. I just want to ask you one other thing.
23 I know there were references -- and we didn't get
24 into this. Just quickly, I wanted to show you
25 reports from, I think, Dr. Johnson and Riber that

1 were both referenced in there.

2 A Okay.

3 Q If you'd take a look, and I just have a couple of
4 quick questions to ask you.

5 (The deponent reviews document.)

6 A Okay. Okay.

7 Q Just quickly -- And I'm not going to go through
8 all the details. I just have a couple of quick
9 things. When -- At least based on that, is there
10 -- did they describe a mechanism of injury that's
11 consistent with your understanding of the
12 mechanism?

13 A Yes.

14 Q Are their physical exams similar to yours --

15 A Yes.

16 Q -- in terms of their findings?

17 A Yes.

18 Q Do they reach the same diagnosis that you reached
19 in terms of the most likely source of the pain
20 generator?

21 A Yes.

22 Q Do they make similar recommendations to what you
23 have identified in your report as far as treatment?

24 A Yes.

25 Mr. Safran: Thank you. I don't think I

1 have anything else.

2 The Deponent: Okay. You want this back?

3 Mr. Safran: Yes. Oh. One last

4 question. I apologize.

5 Q I found an e-mail where I think I had sent some
6 records over here on the day of the examination,
7 where I sent them to Tyla. Do you know if, in your
8 system, whether they are loaded or whether they are
9 --

10 A I didn't get any records.

11 Q Okay. All right. Well, just for the record, I can
12 -- I think an e-mail was sent on the 9th with
13 records that were generated as of that date.

14 A Oh. Okay.

15 Q I'm more than happy to provide them to you today if
16 you need them, so --

17 A That's okay.

18 Re-examination

19 By Mr. Huff:

20 Q The only restrictions that you placed upon this
21 gentleman regarding his ability to work is a 30-
22 pound weight limitation?

23 A Yes.

24 Mr. Huff: Nothing further. Thank you.

25 Appreciate it.

1 Mr. Safran: That's it. Thank you.
2 (Whereupon the deposition was concluded at
3 5:32 p.m.)
4 **(Deponent has waived reading and signing.)**

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July 15, 2015

Nancy R. Lembo, D.O.
Carolina Spine & Sport Rehabilitation Specialists, P.A.
763 Travelers Boulevard, Suite D
Summerville, South Carolina 29485

RE: Timothy McDuffie
Date of Birth: [REDACTED]

Dear Dr. Lembo:

As you will recall, on June 9, 2015, you evaluated Mr. Timothy McDuffie for lumbar symptoms that began in the aftermath of a compensable accident he previously experienced on September 19, 2014 while employed as a cook by Johnson Food Service. At that time, you: (a) noted his history involved a tripping injury that was followed by back and left knee pain; (b) learned Mr. McDuffie continued to experience persistent symptoms involving the back and left leg, including the knee, which worsened with sitting, standing, bending and twisting; (c) observed he exhibited pain with lumbar range of motion testing (particularly extension) and left sided lumbar hypertrophy; (d) determined his lumbar symptoms were likely indicative of a posttraumatic lumbar facet syndrome; and (e) recommended facet-directed treatment, while limiting his lifting to 30 pounds.

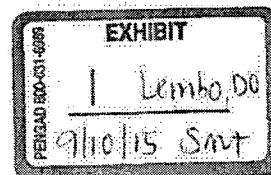
Since that time, Mr. McDuffie has: (a) continued to experience lumbar and left knee symptoms which negatively impact upon his ability to perform job duties; (b) attempted to remain working, despite encountering problems sustaining this activity; (c) not received the facet-directed treatment you, Dr. Ezra Riber and Dr. John Johnson have recommended; and (d) obtained a focused left knee orthopaedic examination by Dr. Christopher Mazoue, who believes the September 19, 2014 accident also produced meniscal pathology.

At this time, I would greatly appreciate your answering the following questions so that the parties to Mr. McDuffie's pending workers' compensation claim, as well as the South Carolina Workers' Compensation Commission, will fully understand your opinions as to these material issues:

1) Do you believe, to a reasonable degree of medical certainty, that the posttraumatic lumbar facet syndrome you have diagnosed proximately results from Mr. McDuffie's September 19, 2014 compensable accident?

Yes ☒

No ☐



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243

Nancy R. Lembo, D.O.
July 15, 2015
Page 2

2) Based on your examination, do you believe, to a reasonable degree of medical certainty, that without treatment, Mr. McDuffie's causally related lumbar symptoms will most probably remain problematic and materially/negatively impact upon his ability to sustain work activities?

Yes ☒ No ☐

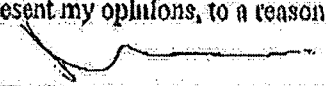
3) Do you believe, to a reasonable degree of medical certainty, that the course of treatment you have recommended for Mr. McDuffie's lumbar injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by his September 19, 2014 compensable accident?

Yes ☒ No ☐

4) Do you believe, to a reasonable degree of medical certainty, that Dr. Mazoue's treatment recommendations relative to the left knee injury component are likewise reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by Mr. McDuffie's September 19, 2014 compensable accident?

Yes ☒ No ☐

I, Nancy R. Lembo, D.O., hereby certify that my responses to the above-listed questions represent my opinions, to a reasonable degree of medical certainty, as to each issue.


Nancy R. Lembo, D.O.

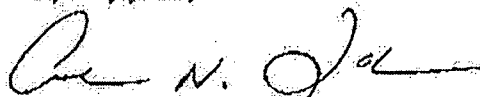
7/20/15
Date

At this time, I would greatly appreciate your answering each of the above-listed questions and executing the certification as soon as possible.

Thank you for your assistance.

With kindest regards, I am

Very truly yours,


Andrew N. Saftan

ANS/as



Jun. 12. 2015 11:14AM

Cervical Spine

No. 0981 P. 1

Medical Note

Re: Timothy McDuffey

DOB: [REDACTED]

Age: 37

Date of Visit: 6/9/2015

HISTORY OF PRESENT ILLNESS:

Patient presents today for an initial consultation.

He was injured at work Sept 2014 - he was working in kitchen helping to clean when he tripped over a pipe - he was able to reach out with hands to catch himself.

He tried to keep working but pain increased.

The pain was left sided lower back.

It does radiate into the posterior left thigh to his knee.

The pain is described as sharp, throbbing.

There is no numbness or tingling.

The symptoms are aggravated by sitting, standing, bending, twisting.

He denies any bowel or bladder changes.

There is no prior history of similar symptoms.

His treatment has consisted of Doctors Care, Moore Clinic, Dr. Peels, PT for 7 wks, medication, MRI

General Appearance:

Well developed, well nourished male.

Affect is appropriate.

Gait is not antalgic or widened.

Balance is normal.

Spine Examination:

Examination of the spine does not reveal any evidence of a thoracolumbar shift.

There is no point tenderness in the midline.

There is left sided lumbar paraspinal hypertrophy.

Range of motion is painful in extension.

There is no tenderness over the PSIS.

Neurologic Examination:

Examination of the lower extremities reveals no evidence of atrophy, fasciculations or erythema.

Calves are nontender.

Motor strength is 5/5.

DTR's are hypoactive and symmetrical.

Sensory examination is normal.

Slump Testing is normal.

Musculoskeletal Examination:

Palpation over the greater trochanteric bursa does not reproduce the typical pain.

Range of motion of the hips is symmetrical and painfree.

Review of Systems:

CONSTITUTIONAL: No Fever/chills; No Weight loss

CARDIOVASCULAR: No Shortness of breath; No Chest pain; No Peripheral edema

RESPIRATORY: No Cough; No Dyspnea; No Wheezing

GASTROINTESTINAL: No Abdominal pain; No Nausea/vomiting; No Change in bowel habits

GENITOURINARY: No Dysuria; No Urgency; No Incontinence

NEUROLOGICAL: No Mental status changes; No Motor weakness; No Sensory changes

MUSCULOSKELETAL: See CC and HPI

SMOKING HISTORY:

Tobacco Assessment: Smoking Status: Current every day smoker; Tobacco User: Yes; Counseling on tobacco cessation: Discussed Smoking/Tobacco Use Cessation Strategies

VITAL SIGNS:

Jun. 12. 2015 11:14AM

Carolina Spine

No. 0981 P. 2

Clinical Note

Weight 90.72 kg; Height 6 ft 2 in BMI 25.7

06/09/2015 11:07 AM (EST)

Heart Rate 64 bpm; Blood Pressure 135 / 75 mm/Hg

DIAGNOSIS:

1. LBP
2. Lumbar Facet Pain
3. Myofascial Pain

PLAN:

Physical Activity Counseling

1. Discussed treatment options and reviewed available records including MRI lumbar spine
2. reassured patient it appears to be more mechanical - no evidence of disc pathology
3. rec lumbar facet joint injection vs. medial branch block to identify pain generator - consistent with Physical exam and imaging findings
4. rec resuming naprosen and trial of robaxin
5. RTW - no lifting greater than 30 lbs

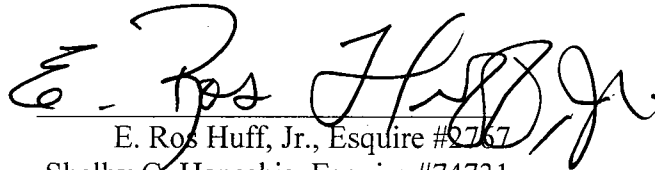
Electronically Signed By: Nancy Lembo DO

Electronically signed: 6/9/2015 12:08:24 PM

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and no other material.

July 13, 2017



E. Ros Huff, Jr., Esquire #2767

Shelby G. Hapeshis, Esquire #74731

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