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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

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

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SC Court of Appeals

WCC File No. 1510187
Appellate Case No. 2016-002297

Shawn Wier, Employee, Claimant, Respondent,

v.

AGY Holding Corporation, Employer, and Great American Alliance Insurance Company, Carrier, Appellants.

RECORD ON APPEAL
Volume I

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June 15, 2017

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

Shawn Wier, Employee/Claimant, vs. AGY Holding Corporation, Employer, and Crawford & Company, Carrier/Defendants.	**DECISION AND ORDER** WCC FILE NO: 1510187

Appellate Panel Review held in Columbia, South Carolina on

August 15, 2016

Appellate Panel Decision and Order filed on October 14th, 2016

Appearances: Claimant represented by William L. Smith, II, Esquire
Defendants represented by E. Ros Huff, Jr., Esquire

STATEMENT OF THE CASE

This case came before the Single Commissioner pursuant to a Form 50 filed by the Claimant, Shawn Wier, and a Form 51 filed by Defendants. Claimant contended he suffered a compensable injury on June 5, 2015 when his left elbow struck the creel while doffing a frame. Claimant alleged entitlement to temporary total disability for the period of August 19, 2015 to the present and continuing. Claimant further alleged that he had not reached maximum medical improvement and was entitled to payment of past and future medical care.

Defendants denied that Claimant had sustained a compensable injury and denied any temporary total compensation or medical benefits.

The hearing was held before the Single Commissioner on February 1, 2016 in Columbia, South Carolina pursuant to timely and properly notice served on all parties. No objection was raised by either party regarding jurisdiction or venue.

On April 11, 2016, the Single Commissioner issued her Decision and Order, making the following Findings of Fact:

1. The parties have agreed to a temporary average weekly wage of $728.26 and a compensation rate of $485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out of and was within the course and scope of his employment. This finding is based on the record as a whole, including the corroborating medical records of Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.

3. Claimant's injury occurred during his shift on June 5, 2015. This injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.
5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well as Claimant's Exhibit One which was the Notice of Discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyles, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epidcondylitis, and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicated that the Claimant's activities contained in a video of his family's pool trip to the YMCA, were not reflected truthfully in his deposition, and this affects his credibility and whether he incurred an injury, and whether he can receive temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family.

Even though it is not an issue, it is noted the Claimant was forthcoming in his pre-placement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible, and the Claimant has a condition that has been objectively observed by two providers, and documented by MRI scanning.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.

11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The Notice of Discharge documents, the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).

12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted (Deposition of Dr. Plymale, Pg. 26).

13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated that he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions

remained in place. The Commission cannot substitute its judgment for that of a physician and change the medical restrictions.

14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

The Single Commissioner further made the following conclusions of law:

1. Pursuant to Section 42-1-160, the Claimant proved he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

The Single Commissioner then ordered the Defendants to make the following payments:

1. Payment of temporary total compensation at the temporary rate of $485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.

3. All other issues are held in abeyance.

Within the statutory period, the Defendants timely filed an Application for Review and Form 30 in the case setting forth their numerous grounds for review, copies of which were furnished to all interested parties. The appellant asserted the Single Commissioner erred:

1. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant sustained an injury by accident, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
2. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to medical treatment to be paid by the Defendants, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
3. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to temporary disability benefits, the error being that this ruling is not supported by the evidence, and the Claimant did not meet his burden of proof?
4. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that Dr. Plymale coordinate treatment, the error being the Defendants have the right to direct medical treatment in this instance?

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on August 15, 2015. All proper testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the

Appellate Panel shall, pursuant to SC Code Section 42-17-50 (1976 as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. A review of the record in its entirety shows that the evidence supports the Single Commissioner's findings and rulings. The testimony of the Claimant as well as the medical records from Aiken Regional Medical Center, Dr. Mickey Plymale, and the deposition of Dr. Mickey Plymale establish that Claimant suffered an injury to his left elbow while doffing. The evidence also shows the Claimant worked light duty until he was terminated by Defendants and his work restrictions remained in effect. The evidence further established that Claimant had not reached maximum medical improvement and remained disabled.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the Record as a whole, the Appellate Panel affirms the Hearing Commissioner's order in full and makes one amendment to Finding of Fact No. 9. Therefore, the following are made as:

FINDINGS OF FACT

1. The parties have agreed to a temporary average weekly wage of $728.26 and a compensation rate of $485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out of and was within the course and scope of his employment. This finding is based on the record as a whole, including the corroborating medical records of

Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.

3. Claimant's injury occurred during his shift on June 5, 2015. This injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.
5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well as Claimant's Exhibit One which was the Notice of Discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyles, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epidcondylitis, and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicated that the Claimant's activities contained in a video of his family's pool trip to YMCA, were not reflected truthfully in his deposition, and this affects his credibility and whether he incurred an injury, and whether he can receive

temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family. Even though it is not an issue, it is noted the Claimant was forthcoming in his pre-placement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible, and the Claimant has a condition that has been objectively observed by two providers, and documented by MRI scanning. Notwithstanding any inconsistency, after review of all the evidence, we believe Claimant more than we doubt him.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.

11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The Notice of Discharge documents, the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).

12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted (Deposition of Dr. Plymale, Pg. 26).

13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated that he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions remained in place. The Commission cannot substitute its judgment for that of a physician and change the medical restrictions.

14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

CONCLUSIONS OF LAW

1. Pursuant to Section 42-1-160, the Claimant proved he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

ORDER

IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner filed on April 11, 2016 is hereby affirmed by the Appellate Panel with the amendment of Finding of Fact No. 9. We order Defendant to make the following payments:

1. Payment of temporary total compensation at the temporary rate of $485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.
3. All other issues are held in abeyance.

AND IT IS SO ORDERED.

The Honorable Gene McCaskill

The Honorable T. Scott Beck

The Honorable Susan Barden

CERTIFICATE OF SERVICE

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

By Kim Falls on October 14, 2016

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Shawn Wier, Employee/Claimant, vs. Advanced Glassfiber Yarns, Employer, Great American Alliance Insurance Company, Carrier/Defendants.	**DECISION AND ORDER** **WCC FILE NO: 1510187**

STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. Notice of the hearing was timely and properly served on all parties of interest.
2. Venue was proper in Aiken County.
3. The parties agreed to a temporary average weekly wage of $728.26 and a compensation rate of $485.53. This rate is subject to further discovery and revision by subsequent order of this Commission.
4. The case is tried over the issues of compensability, temporary total disability, and medical care. The parties agree that if the case is found to be compensable, permanency is premature and not before the Commissioner at this time.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following were submitted into evidence:

APA 1	Charlie Norwood VA Medical Center	09/21/15	1
APA 2	Moore Orthopaedic Clinic Ambulatory Surgery Center	06/16/15-07/06/15	2-8
APA 3	Aiken Regional Medical Center	06/05/15	9-38
APA 4	G4S Personnel File		39-109
APA 5	AGY New Hire form and Preplacement and Periodic History and Physical form		110-116
APA 6	Claimant's deposition (withdrawn)		
APA 7	Surveillance video in the possession of John Ratteree		
APA 8	Causation Statement of Dr. Mickey Plymale	12/02/15	117
APA 9	AGY personnel documents		118-130
APA 10	Deposition of Dr. Mickey F. Plymale	01/20/16	131-195

In addition, the original deposition transcript of Dr. Mickey Plymale was admitted into evidence.

STATEMENT OF THE CASE

Claimant contends he suffered a compensable injury on June 5, 2015 when his left elbow struck the creel while doffing a frame. Claimant worked light duty for a period of time until he was eventually terminated while on light duty. He seeks temporary total disability for the period of August 19, 2015 to the present and continuing. Claimant alleges that any determination of maximum medical improvement and permanent disability would be premature.

Defendants, on the other hand, deny that Claimant sustained a compensable injury. They allege that Claimant is not credible and they should not be responsible for payment of any medical expenses or payment of temporary total disability. Defendants deny any benefits are due under the Workers' Compensation Act.

Claimant is represented by William L. Smith, II of Columbia, SC and Defendants are represented by E. Ros Huff, Jr., of Columbia, SC. The Commission file was made a part of the record. This case was heard by the undersigned Commissioner on February 1, 2016, at which time the parties and their representatives appeared and evidence was received.

EVIDENCE OF THE CASE

Claimant is a 28 year old married male with six dependent children. Claimant has a 10th grade education but went on to obtain his GED. He served in the United States Army for eight years until he was medically discharged as a result of a head injury. Following Claimant's discharge, he worked for G4S Security until he obtained this job with AGY. Claimant began working at AGY in the spring of 2015 and performed his job working on the frames.

Claimant testified that he suffered his injury on June 5, 2015. On that day, he was doffing a frame and attempted to pick up a bobbin that was stuck. Claimant's hand slipped off the bobbin and his elbow hit the creel above it. Claimant was working the night shift at the time. Claimant testified that he reported his injury and was sent to Aiken Regional Medical Center.

After initial treatment at the emergency room, Claimant was referred to Dr. Mickey Plymale by the workers' compensation representatives of AGY. Claimant testified that he took his light duty work excuses to AGY and continued to work for them in a light duty capacity. Claimant testified that he worked until August 19, 2015 at which time he was advised that he had a choice of resigning or being separated because they were no longer able to accommodate his medical restrictions since

he was still a probationary employee. Claimant testified that he did not want to resign and was discharged because they could no longer accommodate his restrictions.

Claimant testified that shortly thereafter he became aware that his claim was denied and he was no longer allowed to return to Dr. Plymale. Claimant testified that as a veteran, he was able to get some medical treatment at the VA Medical Center. He was able to get an MRI of his elbow done and was attempting to get physical therapy although the scheduling the physical therapy was very slow. Claimant testified that he continues to have problems with his elbow and that he very much wants medical treatment for the elbow.

Defendants offered a surveillance videotape and questioned Claimant from still frame photographs of the videotape. The video showed Claimant at the community pool with his children and showed him lifting his children and tossing his children in the pool. Claimant was questioned from his deposition where he testified that the heaviest thing he had lifted since his accident was his one year old child. The videotape is at odds with Claimant's testimony. However, Claimant did explain that he had forgotten the incidents of lifting his children at the pool and that he had become much more careful about the use of his elbow after he obtained the MRI scan that showed a probable tear in his elbow. Prior to that time, he had been operating under the belief that he had a strain or significant bruising of the elbow.

The medical records were reviewed as evidence. The reports of Aiken Regional Medical Center show the Claimant was seen on June 5, 2015 "complaining of left elbow pain that began when he picked up an item at work tonight and hit his elbow on a hard piece of plastic". The reports indicate that Claimant was experiencing pain and swelling at the time of his evaluation. Thereafter, Claimant was sent to the Moore Orthopaedic Clinic where he came under the care of Dr. Mickey Plymale.

Dr. Plymale first saw Claimant on June 15, 2015. Dr. Plymale also took a history of Claimant injuring his elbow at work on June 5, 2015 when he hit his elbow on a piece of equipment. Dr. Plymale originally diagnosed Claimant with a left elbow contusion and placed him on light duty status for the next three weeks with no lifting over 10 pounds. Claimant returned to Dr. Plymale on July 6, 2015 for follow up of his left elbow injury. At that time, Dr. Plymale assessed continued left elbow pain, recommended an MRI of the elbow and continued Claimant on light duty and also recommended physical and occupational therapy. However, after this date the claim was denied and Claimant was never allowed to return to Dr. Plymale. Dr. Plymale did issue a causation statement (APA 8). Dr. Plymale provided an opinion within a reasonable degree of medical certainty that Mr. Wier's elbow problems were most probably caused by the incident at work occurring on June 5, 2015.

Claimant went to the Charlie Norwood VA Medical Center and was able to obtain an MRI scan on his own through the VA. This evaluation was done on September 21, 2015 and the impression was "diffuse signal or abnormality noted at the extensor tendon attachment to the lateral epicondyles likely representing tendinopathy or possible partial tear" (APA Pg. 1).

The deposition of Dr. Plymale was taken and was submitted as evidence. Dr. Plymale had never had the opportunity to review the MRI report prior to his deposition. In deposition, he indicated the MRI report substantiated his prior opinion and it was still his opinion that Claimant's lateral epicondylitis in the left elbow was caused by his injury involving the work accident where he struck his left elbow. He indicated treatment for this was injections, bracing, physical therapy, and anti-inflammatory medication. He indicated he would have continued the same work restrictions until Claimant's symptoms were lessened.

Defendants took the position that Claimant voluntarily quit his job and therefore was not entitled to temporary total disability because he removed himself from the workforce. However, a notice of discharge form from AGY was placed into evidence. That note is a discharge form dated August 19, 2015 and states, "unable to accommodate medical restrictions of a probationary employee". The form is signed by supervisor, A. Davis and by the employee, Shawn Wier. The surveillance videotape was also admitted into evidence and has been reviewed by the undersigned.

Based on the above stated evidence, the following are made as:

FINDINGS OF FACT

1. The parties have agreed to a temporary average weekly wage of $728.26 and a compensation rate of $485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out and was within the course and scope of his employment. This finding is based on the Record as a whole including the corroborating medical records of Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.
3. Claimant's injury occurred during his shift on June 5, 2015. The injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.

5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well Claimant's Exhibit 1 which was the notice of discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyle, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epicondylitis and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicate the Claimant's activities contained in a video of his family's pool trip to the YMCA were not reflected truthfully in his deposition and this affects his credibility in whether he incurred an injury and whether he can receive temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family. Even though it is not an issue, it is noted the Claimant was forthcoming in his preplacement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible and the Claimant has a condition that has been objectively observed by two providers and documented by MRI scanning.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.

11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The notice of discharge documents the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).

12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted in the video (Deposition of Dr. Plymale, Pg. 26).

13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions remained in place. The Commission cannot substitute its judgment for that of the physician and change the medical restrictions.

14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

RULINGS OF LAW

1. Pursuant to Section 42-1-160, the Claimant proved that he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

ORDER

IT IS THEREFORE ORDERED that the Defendants shall make the following payments:

1. Payment of temporary total compensation at the temporary rate of $485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.
3. All other issues are held in abeyance.

AND IT IS SO ORDERED.

Melody L. James

Commissioner Melody L. James

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 #: 1510187
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Shawn Wier SSN: [redacted]
Address: 2017 Honors Circle
City: Graniteville State: SC Zip: 29829
Home Phone: 803-643-1147 Work Phone:

Employer's Name: AGY Holding Corporation
Address: 2556 Wagener Road
City: Aiken State: SC Zip: 29801
Carrier: Great American Alliance Insurance

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: 06/05/2015 (m/d/yyyy)

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

See attached 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**.

FILED

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to William L. Smith, II, Chappell, Smith & Arden address Post Office Box 12330, Columbia, SC 29211 on the 21 day of April, 2016, by ☑ first class postage ☐certified mail ☐ personal service.

Shelly M. Hapeshi / for ERH

Preparer's Signature | Attorney (Title) | roshuff@huffandhapeshis.com (Email) | 4/21/16 (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, [redacted] are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Shawn Wier v. AGY
WCC File No. 1510187
Form 30 Addendum

Did the Hearing Commissioner err in finding as fact, concluding as a matter of law and ordering that the claimant sustained an injury by accident, the error being that this ruling is not supported by the evidence and the claimant did not meet his burden of proof?

Did the Hearing Commissioner err in finding as fact, concluding as a matter of law and ordering that the claimant is entitled to medical treatment to be paid by the defendants, the error being that this ruling is not supported by the evidence and the claimant did not meet his burden of proof?

Did the Hearing Commissioner err in finding as fact, concluding as a matter of law and ordering that the claimant is entitled to temporary disability benefits, the error being that this ruling is not supported by the evidence and the claimant did not meet his burden of proof?

Did the Hearing Commissioner err in finding as fact, concluding as a matter of law and ordering that Dr. Plymale coordinate treatment, the error being that the defendants have the right to direct medical treatment in this instance?

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

WCC File #: 1510187
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Shawn Weir SSN: [redacted]
Address: 2017 Honors Circle
City: Graniteville State: SC Zip: 29829
Home Phone: (757) 867-3938 Work Phone:

Employer's Name: Advanced Glassfiber Yarns
Address: 2556 Wagener Road
City: Aiken State: SC Zip: 29801-957
Insurance Carrier: Strategic Comp Services

Preparer's Name: William L. Smith II Law Firm: Chappell, Smith and Arden, PA Preparer's Phone #: 803-929-3600

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness:** 6/5/2015
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to left arm/ elbow (Part(s) of Body Injured) on 6/5/2015 (Month/Day/Year) in Aiken county, state of SC. Body part(s) affected are: left arm/ elbow
2. Briefly describe how the accident occurred. Left arm hit the moving creel in the machine.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 6/5/2015 (Month/Day/Year) in the following manner: Notified supervisor.
7. ☑ Due to injury, the claimant is in need of (check one):
   ☐ (a) medical examination and treatment for:
   ☑ (b) additional medical examination and treatment for: left arm/ elbow
8. ☑ Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 6/06/15 to present and continuing.
9. ☐ 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
9a. ☑ ☑ A determination of permanent disability is premature at this time.
10. ☐ Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
10a. At the time of the injury, the Claimant was paid weekly wages of Req F20, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Advanced Glassfiber Yarns
11. Further grounds or unusual aspects of claim:
Claimant reserves the right to amend form 50
11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Aiken Regional Medical Center, Moore Orthopaedic Clinic
11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: None Known
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. **I am filing a claim. I am not requesting a hearing at this time.**
14. Estimated time needed for hearing: 30 minutes
☑ 13b. **I am requesting a hearing. A $25 fee is required.**

☐ **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 Strategic Comp Services **address** PO Box 5769, Cincinnati, OH 45201 **on the** ____ **day of** August **20**15**, by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service.**

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

Preparer's Signature | Attorney Title | bsmith@csa-law.com Email | 8.31.15 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 67-601 through 67-615 as well as Reg. 67-1801.

WCC 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) 737-5723 www.wcc.sc.gov

WCC File #: 1510187
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Shawn Weir SSN: [redacted] Employer's Name: Advanced Glassfiber Yarns

Address: 2017 Honors Circle Address: 2556 Wagener Road

City: Graniteville State: SC Zip: 29829 City: Aiken State: SC Zip: 29801-957

Home Phone: (757) 867-3938 Work Phone: Insurance Carrier: Strategic Comp Services

Preparer's Name: William L. Smith II Law Firm: Chappell, Smith and Arden, PA Preparer's Phone #: 803-929-3600

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness:** 6/5/2015

☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to left arm/ elbow (Part(s) of Body Injured) on 6/5/2015 (Month/Day/Year) in Aiken county, state of SC. Body part(s) affected are: left arm/ elbow
2. Briefly describe how the accident occurred. Left arm hit the moving creel in the machine.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 6/5/2015 (Month/Day/Year) in the following manner: Notified supervisor.
7. ☑ Due to injury, the claimant is in need of (check one):
   - ☐ (a) medical examination and treatment for:
   - ☑ (b) additional medical examination and treatment for: left arm/ elbow
8. ☐ Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: As provided for under the Act.
9. ☐ 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
9a. ☑ ☑ A determination of permanent disability is premature at this time.
10. ☐ Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

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

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Advanced Glassfiber Yarns

11. Further grounds or unusual aspects of claim:
Claimant reserves the right to amend form 50

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Aiken Regional Medical Center, Moore Orthopaedic Clinic

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: None Known

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

☑ 13a. **I am filing a claim. I am not requesting a hearing at this time.** 14. Estimated time needed for hearing:

☐ 13b. **I am requesting a hearing. A $25 fee is required.**

☐ **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 Strategic Comp Services **address** PO Box 5788, Cincinnati, OH 45201 **on the** day of August 2015 **by** ☑ **first class postage** ☐ **certified mail** ☐ **personal service.**

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

Preparer's Signature | Attorney (Title) | bsmith@csa-law.com (Email) | 8-18-15 (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 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

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

S.C. WORKERS' COMPENSATION COMMISSION – FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP)
AGY AIKEN LLC - WC 1708667 03 04
2556 WAGENER ROAD
AIKEN SC 29801

CARRIER/ADMINISTRATOR CLAIM NUMBER:
OSHA/LOG NUMBER:
REPORT PURPOSE CODE:
JURISDICTION: SC
JURISDICTION CLAIM NUMBER:
INSURED REPORT NUMBER:
EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT):
LOCATION #: WC 1708667 03 04
INDUSTRY CODE: 2221
EMPLOYER FEIN: 200423093
PHONE #:

CARRIER/CLAIMS ADMINISTRATOR

CARRIER (NAME, ADDRESS, & PHONE #):
POLICY PERIOD: TO
CHECK IF APPROPRIATE: ☐ SELF INSURANCE
CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO):
CARRIER FEIN:
POLICY/SELF-INSURED NUMBER:
ADMINISTRATOR FEIN: 36-3365500
AGENT NAME & CODE NUMBER:

EMPLOYEE/WAGE

NAME (LAST, FIRST, MIDDLE): WIER, SHAWN
DATE OF BIRTH: [redacted]
SOCIAL SECURITY NUMBER: [redacted]
DATE HIRED: 04/28/2015 SC
STATE OF HIRE:
ADDRESS (INCL ZIP): 2017 HONORS CIRCLE GRANITEVILLE, SC 29829 USA
SEX: ☑ Male ☐ Female ☐ Unknown
MARITAL STATUS: ☐ Unmarried/Single/Divorced ☑ Married ☐ Separated ☐ Unknow
OCCUPATION/JOB TITLE: FSRB
EMPLOYMENT STATUS: ACTIVE
NCCI CLASS CODE:
PHONE:
OF DEPENDENTS: 0
RATE PER: $17.52 ☐ DAY ☐ MONTH ☐ WEEK ☑ OTHER HOURLY
DAYS WORKED/WEEK: 5
FULL PAY FOR DAY OF INJURY? ☑ YES ☐ NO
DID SALARY CONTINUE? ☑ YES ☐ NO

OCCURRENCE/TREATMENT

TIME EMPLOYEE BEGAN WORK: ☐ AM ☐ PM
DATE OF INJURY/ILLNESS: 06/05/2015
TIME OF OCCURRENCE: ☐ AM ☑ PM (☐) CANNOT BE DETERMINED 05:15
LAST WORK DATE: 06/05/2015
DATE EMPLOYER NOTIFIED: 06/05/2015
DATE DISABILITY BEGAN:
CONTACT NAME/PHONE NUMBER: ANN TYLER (803)643-1147
TYPE OF INJURY/ILLNESS: SPECIFIC INJURY - CONTUSION
PART OF BODY AFFECTED: UPPER EXTREMITIES - ELBOW
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? ☑ YES ☐ NO
TYPE OF INJURY/ILLNESS CODE: 10
PART OF BODY AFFECTED CODE: 32
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED: AGY AIKEN LLC - 2556 WAGENER ROAD - AIKEN - SC 29801
ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED:
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED: DOFFING
WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED: DOFFING
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL: HIT LEFT WELBOW ON CORNER OF CREEL CAUSING PAIN
CAUSE OF INJURY CODE: 57
DATE RETURNED TO WORK: 06/10/2015
IF FATAL, GIVE DATE OF DEATH:
WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? ☑ YES ☐ NO
WERE THEY USED? ☐ YES ☐ NO
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS):
HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS): AIKEN REGIONAL MEDICAL CENTER ER, 302 UNIVERSITY PARKWAY, AIKEN SC 29801
INITIAL TREATMENT:
0 ☐ No Medical Treatment
1 ☐ MINOR: BY EMPLOYER
2 ☑ MINOR CLINIC/HOSP
3 ☐ EMERGENCY CARE
4 ☐ HOSPITALIZED > 24 HOURS
5 ☐ FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED

OTHER

WITNESSES (NAME & PHONE #):

DATE ADMINISTRATOR NOTIFIED	DATE PREPARED	PREPARER'S NAME & TITLE	PHONE NUMBER
	06/24/2015	ANN TYLER via internet (RN BSN COHN-S DCM)	(803)643-1147

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1510187

Shawn Wier,

Claimant,

v.

AGY Holding Company,

Employer,

and

Great American Insurance Co.,

Carrier/Defendants.

COPY

FULL COMMISSION PANEL HEARING

****

Monday, August 15, 2016
2:35 p.m. - 3:00 p.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 15th day of August, 2016 before Jill H. Vickers, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

COMMISSION PANEL:
Gene McCaskill, Chair
Susan Barden
Scott Beck

William L. Smith, II
Chappell, Smith & Arden, P.A.
1510 Calhoun Street
Columbia, South Carolina 29201
Attorney for the Claimant

E. Ross Huff, Esquire
Huff & Hapeshis, LLC
7244 Woodrow Street
Irmo, South Carolina 29063
Attorney for the Defendants

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COURT REPORTER: Today is August 15, 2016. This is South Carolina Workers' Compensation Case Number 1510187. This is the case of Tyrone Lawrence, Claimant vs. Advanced Glassifiber Yams, Employer, and Great American Insurance Company is the Carrier. The Appellant is the Defendant who is represented by Ross Huff. The Respondent is represented by William Smith. Each side is allowed ten minutes for oral argument and three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

ARGUMENT BY MR. HUFF:

MR. HUFF: I'll start off by saying that when the hearing notice comes out, it tells us what issues we have to address. We're told in this case, we have to address the issues in the Form-50 and 51. That's the standard language. I've handed up to you a Form-50. And under Paragraph 2, it says, "Briefly describe how the accident occurred. Left arm hit the moving creel in the machine." This is a textile mill. At the bottom, you've got a bobbin, and the bobbin is about that tall, and it looks like a pyramid thing, and you've got this thread

coming down through the machine down onto the bobbin until the bobbin gets full. The thread that is run on the bobbin that's being put together/merged is on a big reel up here. So, that's the creel up there. And he said he hit his arm on a moving creel. You can't hit your arm on a moving creel. I take his deposition, and he says that that's a mistake. "I must have made a mistake, because it may have been moving". Well, was it moving, or was it not moving? Now, Mr. Smith who is very well-known by this body and who I have the utmost respect for says, "I did that". Well, I don't care who did it, whether you did it because he told you, or you made an error or not. This is what I'm told I have to defend. I have to defend whether or not he tripped and fell and hit his elbow, or somebody hit him by accident, or there was a fight. I went in there to defend on the notice I was given. There was no moving creel. It didn't happen the way he said it happened. He had his day in court. Be that as it may, that's how it is.

COMMISSIONER BECK: What does 58 say?

MR. HUFF: 58? I don't think I have a 58.

COMMISSIONER BECK: I'll read it to you. "The claimant suffered a strong impact with a metal reel causing an injury to his left elbow".

MR. HUFF: Say that one more time, sir.

COMMISSIONER BECK: "The complaint suffered a strong impact with a metal reel causing an injury to his left elbow".

MR. HUFF: So, it says "reel"?

COMMISSIONER BECK: Yes.

MR. HUFF: Okay. Creel, reel, same thing to me. It doesn't make any mention about it moving or not, but in his pleadings, he said it was moving. So, that statement you're making is a correct statement. He didn't say it was moving when it happened, but in his pleadings, he said it was moving, so ...

COMMISSIONER BECK: But you had notice to of what you were coming to at the hearing.

MR. BECK: A moving creel, that's what I had notice of. I was going to have an accident hitting an elbow on a creel that he said in his pleadings ---

COMMISSIONER BECK: Did you have the 58 before the date of the hearing?

MR. HUFF: Yes, I did. Thank you. I appreciate it,

commissioner. Now, what I say here, this was unwitnessed accident. He's seeking temporary total, even though we say he voluntarily quit his job. We had a job for him, and he quit the job. Under the evidence of the case, he says on Page 2 of our brief, "The claimant testified he suffered his injury on June 5th when he doffing a frame and attempted to pick up a bobbin that was stuck. He testified that his hand slipped off the bobbin, and he hit elbow on the creel above it. However, in his Form-50, as I stated earlier, he said this thing was moving, and we don't know whether it was or not. When he went to seek medical treatment with Dr. Plymale, he saw Dr. Plymale on June 15th, ten days after the accident. What's his diagnosis, "Confusion to the elbow", and on physical examination by Dr. Plymale, "normal exam". He did not even note bruising on the claimant with the injury, as I would argue. X-rays were taken by Dr. Plymale. That's Page 8, Lines 15 through 21, and Page 10, Lines 12 through 16, "X-rays were normal". He contends that he cannot lift anything greater than eight pounds as a result of this

accident. "I can lift nothing greater than eight pounds". And I went over that several times, because we're talking about this man's credibility here. I get this a lot, and he does admit -- I'm going to get you to read my brief that he gave false testimony. He lied under oath. He said he went to a pool and carried a child to the pool. He said he couldn't lift anything. Now, realize this is his left arm. There he is lifting a child. I don't know how much the child weighs, but there he is lifting his left arm, which he said he cannot use. Now, he's lifting his child higher. The child is going higher, but these are not the real revealing ones. I'm going to skip some of these. Now, he's getting the child even higher up with his left arm, not his right arm. He had an opportunity to use his right arm. There's nothing wrong with his left arm. Here he is in the pool with this child. This child eight or nine years of age. He admits that in his deposition. What does an eight or nine year old weigh? I didn't have the child's weight, but what is he doing with the child? He's in the pool, and he grabs the

child, and he throws him in the air. This was done on multiple occasions. He testified at the hearing or his deposition, "I sat in the kiddie pool. I just sat around. I didn't do anything. I didn't do anything at all." And here he is lifting his child, throwing him. And could I get it any better? This one we have -- and look which hand he's using. That's his left hand. That's his left arm, and a picture is worth a thousand words, and he said he didn't do this, but then when confronted ---

COMMISSIONER MCCASKILL: Did you enter the video itself into evidence?

MR. HUFF: I don't -- I think I just did photographs off of it, but there he is doing it, which he said he couldn't do, and then at the end of the day when he's finished being at the pool, he carries the child -- I mean, pushes a stroller, gets the child out and lifts the child up and puts the child in the van. And then he lifts the stroller and puts the stroller in the van.

COMMISSIONER BARDEN: But that's with his right arm.

MR. HUFF: That's his right arm there, but then, here he is with his right arm and his left arm. I've got two in a row. That's where he gets

it, and he puts it in the back of the car, and here he is again. Now, the thing is, he says he can't do this activity, but he is, in fact, doing the activity. He says on August 4th, "I can't pick up anything heavy at all. This was done on August 6th, within 48 hours. He's at the YMCA pool lifting and throwing his eight or nine year old son in the pool using both arms doing activities such as raising the back lift of his truck, lifting the stroller and putting the stroller in. At the hearing, and in my brief on Page 4, I put it in bold print, "He lied in his deposition about not lifting heavy and simply sitting around the kiddie pool when visiting the YMCA". That's false testimony. That's testimony to be deceitful, to mislead. I then showed the video surveillance to Dr. Plymale on Page 4. He viewed the video footage of the claimant doing numerous strenuous activities with his elbow and changed his opinion on causation at the deposition. In fact, Dr. Plymale stated that he wasn't even sure if the claimant is entitled to any medical treatment. Dr. Plymale further testified -- if it were physically possible for him to even

strike the elbow on the equipment while it's stationary or while it's moving, and he side, "I don't know".

COMMISSIONER BARDEN: I thought Dr. Plymale stood by his causation statement.

MR. HUFF: He did, but then he didn't. That's why ---

COMMISSIONER MCCASKILL: What does he say at the very end of the deposition?

MR. HUFF: He says it at the very end, but how do you get around what he said on Page 15, 16, 17 and on Page 25?

COMMISSIONER MCCASKILL: How do you get around what he says at the end?

MR. HUFF: I don't know. It's -- well, how about carrying the burden of proof? Which one is it? I don't know, commissioner. Basically, he says -- even if he goes ahead and he finds it to be an accident, look what he says on Page 15, "Do you anticipate any permanent injury", "No"; "Any permanent impairment", "No". "After you last saw him, are you positive, or can you give any opinion to a reasonable degree of certainty what his physical capabilities were", "No". Even at the end of the deposition, he

says "I can't give you an opinion of what it is". Any opinion after that date that you last saw him", "No". Can you still give the same opinion that he -- since you don't know, can you give an opinion that he does need the treatment, medical treatment", "No". So, he says, I mean, "I can't give an opinion as to these things". The next thing, he's right-handed. He said he's using his left arm which is his non-dominant arm. He's standing to the left side of the creel. This is the creel. The bobbin is down here, and there's a thing that turns, and the thread comes in together and merges onto this -- like a pyramid. He's to the left side. How does he hit his left arm? It's the right arm. He never hit his left arm. It's his right arm on that side of the creel, and that's what he said. I've got that on Page 7. He's right-hand dominant standing to the left side of the creel. He would have to turn around. How does he do it? He can't get his facts straight when he says what he says. He says it's a moving creel -- non-moving creel. He says on Page 8 of my brief -- I put down here,

"The claimant admitted at the hearing ..." --

(Whereupon, the timer buzzer went off.)

MR. HUFF: I'll finish this last one. He said he doesn't know how his left arm could hit a moving creel if the machine is moving and running. Thank you.

COMMISSIONER MCCASKILL: Mr. Smith.

ARGUMENT BY MR. SMITH:

MR. SMITH: Shawn Wier is a 28 year old married man with six kids. He is an Army Veteran. He served -- I think it was eight years in the Army -- excuse me, ten years in the Army doing tours in both Iraq and Afghanistan? He had a service connected head injury. That's why he left the Army. AGY was actually his second job after leaving the Army. He disclosed all of that, anything about his prior injuries and all that before he went to work there. He started in the spring of 2015 as a probationary employee. During the time, about two or three months later into that probationary period, he's working, and he's coming down the line, and he's pulling bobbins. They teach them, if a bobbin is stuck, not to pull it up, and he testified, unlike what Mr. Huff just said, that

they're taught to raise it with their left hand, and then they come behind -- after they get it up, they put their right hand under it. Well, if it's stuck, you're supposed to leave it. He didn't realize it was stuck. He put his hand on it, and he did like that and banged his elbow an the creel. He didn't think it was a big deal, to be perfectly honest with you, but it didn't subside. He reported it to his supervisor, and off they go, and they send him off for medical treatment. Just like last time, I've got all the medical history for you in the things that I've handed up for you. He never ever testified he hit a moving creel. That is a mistake on my part on that Form-50. As Commissioner Beck pointed out, it's not on the Form 58. Mr. Huff questioned him in the deposition -- in fact, I had him read that into the record what he had testified to in the deposition, and that's on the fourth page of what I handed up to you, but he described it -- we've read into the record on Page 50 and 51 what he testified in his deposition, nothing about a moving creel, in his own words about what happened. He hit his elbow and suffered

a blow to his elbow. They send him off for treatment first to Aiken Regional Medical Center, and then they send him to Dr. Plymale. Dr. Plymale begins treating him, puts him on anti-inflammatories, recommends some physical therapy and recommends an MRI scan. Well, everything -- again, just like the last case, everything is admitted. They're providing care. He's working light duty. He was not missing a day of work, and I'll talk about those photos in a minute, but this was taken on a day he worked. He was working, going in doing light duty. Well, Dr. Plymale recommends a MRI scan. They do this video surveillance, and they deny the claim. Unfortunately, he was a veteran. About a month later, he's able to get an MRI done. That's on, I think, the fifth page I've handed up to you, and it shows he's got a likely or a possible partial tear of a tendon in his elbow. There is definitely an injury of his elbow. Now, they go off, and they do this video surveillance. This surveillance -- and he was questioned about all this, and I go through those time stamps with him. This is literally two or three seconds of

what happens here, just two or three seconds in between these time stamps on these videos that they're showing you. He had already worked that day. What he's doing is he -- and he did, he tossed his kid around in the pool. I'm not going -- I'm absolutely not going to deny that. Here's what he said about that. His deposition was taken months later, like December or so, something like that. Up until the time that he had the MRI done, he thought he had a badly bruised elbow. You know, he struck his funny bone, and it was hurting. "When I lift, it hurts", that kind of thing. It wasn't until he had the MRI done that he really knew he had a serious issue, and once he had an MRI done, he severely curtailed what he did, and he did not remember doing this. I don't think he intentionally misrepresented anything. Dr. Plymale was questioned about this, and Dr. Plymale said, "Yeah, he could do that". This guy is right-handed. You know, if you're throwing your kid around in the pool, and you're right-handed, you're going to primarily use your right hand. You're going to use your left hand to guide, but you're going to use

your right hand. That's what's going on in these videos. Now, Mr. Huff makes an argument on Page 3 of his brief, and he brought it up today, and Paragraph 2 talks about him talking to the nurse on August 4th. With all due respect, that's not in the record. The nurse did not testify. The only records submitted from AGY were records about his pre-employment physical, so I would just ask you not to consider that, because that is not in the record in this case. Again, Dr. Plymale was questioned, and Mr. Huff did a good job questioning him and all that, but in the end, he doesn't change his opinion at all. He says, "This is causally connected. All the symptoms he has are absolutely related to this the MRI scan. Yes, that's exactly what I would expect to see." He testified that "This is causally related", and he gave a statement to that effect, he defended it in the deposition. I included the entire deposition here for you. It's not long. It's only like 20 or 21 pages, something like that, but I don't think you could read it and come to any other conclusion other than the fact that this is causally

related. We have an accident. It was proven. It's documented. The doctor says it's causally related, and he was on light duty. By the way, Dr. Plymale also did not change his opinion. He never took him off restrictions. They made this argument that he voluntarily quit his job, so, therefore, they don't have to pay him temporary total. That's the argument that was made. Please look at the last page I handed up to you. They discharged him on August 9th, 2015, "Unable to accommodate the medical restrictions of a probationary employee", signed by the supervisor. I don't know how you can say this man quit. He worked light duty every day up until they did this. He testified, "I would still be working there light duty if they would let me. The shame of this case is that Mr. Wier has a likely tear in his ligament, but if it were treated, he would have probably been back at work full duty six or eight months ago, but instead, we're a year down the line. He hasn't had his treatment, and they're going to pay a lot more for this claim than they ever -- if they had just continued to pay the claim and continued to

provide care and continued to provide light duty, they wouldn't have paid much on this case, but they made a choice based on -- I assume, based on a PI Report. He told Mr. Huff in his deposition, "Yeah, I take my kids to the pool", and he took his kids to the pool and threw them around a little bit. They got mad, and they denied the claim, but he didn't lie about it, he was just mistaken, but everything about this case is compensable.

COMMISSIONER MCCASKILL: All right. Mr. Huff.

ARGUMENT IN REPLY BY MR. HUFF:

MR. HUFF: There's no evidence that we got mad. It was a nice argument. The man said he can't work, and he wants light duty. Something was questionable, so they put a video camera on him. He says the heaviest thing he can lift is 18 pounds. They've got him lifting an eight year old, throwing him up in the air. He testified in his deposition -- the accident was June 5th. The deposition was taken on November 16th. It was taken five-and-a-half months later. He was asked, "What's the heaviest thing that you've lifted since the date of the accident", Page 17 of his deposition, "My one

year old". "All right. Have you lifted anything heavier than that", "No, sir. I've changed some diapers on my two smallest children, but that was very difficult". Changing diapers was difficult, he said. "Have you lifted any of your other children", "No". There was other children, but that was their biggest child, but he says "No". Call it what you want to call it. How do you not understand that question? It was made within five months of the accident -- a couple months after the accident. How can you say "no" when you did do that? "Have you lifted any other children", "No, sir". When you lift, what arm do you use", "My left arm". "What did you do when you went to the pool", "I just stood in the pool, Page 22. Page 22, "I generally sat in the kiddie pool and watched the children". What's the heaviest one you lifted", "My one year old". "Lifted any other child", "I lifted no other child". The man is lying under oath.

COMMISSIONER MCCASKILL: Mr. Huff, how about addressing something else for me: You said here earlier, and it's in your brief that claimant voluntarily removed himself from the

work force. How do you square that with this discharge notice?

MR. HUFF: I can't. From what I was looking at the evidence, is that he was given the opportunity to resign, be terminated -- if he resigned, he could still reapply for work, so I'll stand correct on that. But again, just because you can't work full duty -- because I know y'all have been on the panel a long time. Just because you can't work full duty does not mean that you're entitled to temporary total. If you've got the capacity to earn income, and he does, light duty, then go find a light duty job. He was a probationary employee, and we couldn't keep him, but you get disability not for the loss of earnings. We know that. It's for the loss of earning capacity under 42-1-100. Disability is defined as an incapacity to earn the wages, not the wage loss. It's an incapacity. He's got the capacity. He's throwing a children around. An eight year old is probably -- I don't know what the weight is of an eight year old. He can do that. Thank you.

COMMISSIONER MCCASKILL: Thank y'all. Good to see

you both.

(Whereupon, the hearing concluded at 3:00 p.m.)

CERTIFICATE

This is to certify that the hearing consisting of twenty-one (21) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 11, 2016.

Jill H Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1510187

COPY

EMPLOYEE/CLAIMANT: **SHAWN WIER**

EMPLOYER: **AGY HOLDING CORPORATION**

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 1ST DAY OF FEBRUARY, 2016, COMMENCING AT THE HOUR OF 12:12 P.M., IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY L. JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
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APPEARANCES

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ATTORNEY FOR THE CLAIMANT,

E. ROS HUFF, JR. ESQUIRE, OF THE FIRM
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IRMO, SOUTH CAROLINA 29063

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MS. JUDITH ANN TYLER

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

* * * * * * * * * * * * * * *

BY COMMISSIONER JAMES:

TODAY IS FEBRUARY THE 2ND (SIC), 2016. WE ARE HERE ON WCC FILE NUMBER 1510187. THIS IS THE MATTER OF SHAWN WIER VERSUS AGY HOLDING CORPORATION AND GREAT AMERICAN ALLIANCE INSURANCE COMPANY. PRESENT ON BEHALF OF THE CLAIMANT IS MR. WILLIAM SMITH. PRESENT ON BEHALF OF THE DEFENDANTS IS MR. ROS HUFF. THE ALLEGED DATE OF ACCIDENT IS JUNE THE 5TH, 2015. WE HAVE A TEMPORARY AVERAGE WEEKLY WAGE AND COMP RATE. THE AVERAGE WEEKLY WAGE IS 728.26 WITH A CORRESPONDING COMPENSATION RATE OF 485.53. AS I INDICATED, THIS IS TEMPORARILY STIPULATED TO. IT IS SUBJECT TO DISCOVERY AND REVISION BY THE COMMISSION OR BY CONSENT OF THE PARTIES.

THE CLAIMANT HAS SUBMITTED HIS APAs, NUMBERS ONE THROUGH THIRTY-EIGHT. THE REASON I STOPPED, GENTLEMEN, IS THERE IS A DISPARITY IN THE NUMBERS. I JUST NOTICED IT, BECAUSE THE CLAIMANT'S IS ONE THROUGH THIRTY-EIGHT; THE DEFENDANTS' IS 118 THROUGH 130. THERE'S A BIG GAP IN NUMBERS. AM I MISSING

ANYTHING?

BY MR. SMITH:

THE DEFENSE DID TWO SEPARATE APA PACKAGES. THE FIRST ONE IS NUMBERS FOUR THROUGH SEVEN.

BY THE COMMISSIONER:

OKAY.

BY MR. SMITH:

AND THEN THE SECOND ONE IS NINE THROUGH ELEVEN. SO YOU MAY NOT HAVE THE FOUR THROUGH SEVEN IN FRONT OF YOU.

BY THE COMMISSIONER:

ALL RIGHT. SO I MAY BE MISSING A PACKAGE. LET'S GO OFF RECORD FOR JUST A MOMENT.

(OFF THE RECORD)

BY THE COMMISSIONER:

ALL RIGHT. WE ARE BACK ON RECORD. AGAIN, THE CLAIMANT IS SUBMITTING PAGES ONE THROUGH THIRTY-EIGHT. THE DEFENDANTS' NUMBERS, ALTHOUGH NOT CONSECUTIVE AFTER THE CLAIMANT'S BECAUSE OF SOME REMOVAL OF SOME ITEMS, IS PAGES 118 THROUGH 130. IN ADDITION TO THAT, THE DEFENDANTS HAVE HANDED UP A VIDEO, WHICH THEY INDICATE IS A SURVEILLANCE VIDEO. IT IS MARKED IN THEIR EXHIBITS AS NUMBER 11. THAT IS BEING TAKEN SUBJECT -- UNLESS THERE'S AN OBJECTION IT'S BEING TAKEN BY THE COMMISSION, AND

ALSO THE ORIGINAL DEPOSITION OF DR. PLYMALE HAS BEEN HANDED UP.

IS THERE ANY OBJECTION TO THE APAs, JURISDICTION, VENUE, OR ANY OTHER ITEMS ON BEHALF OF THE CLAIMANT?

BY MR. SMITH:

NONE FROM THE CLAIMANT, YOUR HONOR.

BY THE COMMISSIONER:

ON BEHALF OF THE DEFENDANTS?

BY MR. HUFF:

NONE, THANK YOU, COMMISSIONER.

BY THE COMMISSIONER:

ALL RIGHT. WITHOUT OBJECTION THE COMMISSION FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION OF ANY SELF-SERVING DECLARATIONS AND UNSTIPULATED MEDICAL REPORTS.

THE CLAIMANT IS HERE TODAY SEEKING COMPENSABILITY FOR HIS LEFT ARM OR, MORE SPECIFICALLY, WHAT HE INDICATES IS A LEFT ELBOW INJURY. HE IS REQUESTING TEMPORARY TOTAL FROM AUGUST THE 19TH, 2015, FORWARD, PAST MEDICAL AND CONTINUING MEDICAL. HE INDICATES THAT HE'S NOT AT MAXIMUM MEDICAL IMPROVEMENT.

THE DEFENDANTS HAVE ENTERED A GENERAL DENIAL. THEY ARE DENYING THE INCIDENT, THE INJURY, AND ALL

OTHER ASPECTS OF WHAT A GENERAL DENIAL WOULD ENTAIL. ALSO, THEY INDICATE SHOULD IT BE FOUND COMPENSABLE THAT THE TEMPORARY TOTAL IS NOT COMPENSABLE BECAUSE HE WAS NOT TERMINATED, THAT HIS BEING OUT OF WORK DOES NOT HAVE ANYTHING TO DO WITH HIS INJURY, THAT HE ACTUALLY QUIT HIS EMPLOYMENT, AND THEY PRESENT THAT. THE CLAIMANT COUNTERS THAT HE DID NOT QUIT HIS JOB AND THAT HE WAS DISCHARGED AND THAT THE EMPLOYER WAS UNABLE TO ACCOMMODATE HIS RESTRICTIONS AND THAT HE SHOULD BE APPROPRIATELY AWARDED TEMPORARY TOTAL UNDER THE POLLACK CASE.

IS THERE ANYTHING FURTHER ON BEHALF OF THE CLAIMANT AS FAR AS THE ISSUES?

BY MR. SMITH:

NOTHING FURTHER, YOUR HONOR.

BY THE COMMISSIONER:

ANYTHING FURTHER ON BEHALF OF THE DEFENDANTS AS FAR AS THE ISSUES?

BY MR. HUFF:

NO, MA'AM.

BY THE COMMISSIONER:

ALL RIGHT. SIR, IF YOU WOULD RAISE YOUR RIGHT HAND.

* * * * * * * * * * * * * * *

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE

WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE MATTER HEREIN:

SHAWN WIER,

BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

BY THE COMMISSIONER:

YOUR WITNESS, SIR.

BY MR. SMITH:

THANK YOU. YOUR HONOR, MAY I APPROACH OVER HERE?

BY THE COMMISSIONER:

CERTAINLY.

DIRECT EXAMINATION BY MR. SMITH:

Q. DID YOU STATE YOUR FULL NAME ALREADY?

A. NO, SIR.

Q. OKAY. STATE YOUR FULL NAME FOR ME, PLEASE, SIR.

A. SHAWN ALLEN WIER.

Q. HOW OLD ARE YOU, MR. WIER?

A. TWENTY-EIGHT.

Q. ARE YOU MARRIED?

A. YES.

Q. AND DO YOU HAVE CHILDREN?

A. YES.

Q. HOW MANY CHILDREN DO YOU HAVE?

A. SIX.

Q. ALL THOSE SIX CHILDREN LIVE AT HOME WITH YOU AND YOUR WIFE?
A. YES.
Q. AND WHAT ARE THEIR -- WHAT'S THE AGE RANGE OF THE CHILDREN?
A. I HAVE A NINE-YEAR-OLD ALL THE WAY DOWN TO A ONE-YEAR-OLD.
Q. HOW FAR DID YOU GO IN SCHOOL?
A. HIGH SCHOOL. I DROPPED OUT IN THE TENTH GRADE.
Q. DID YOU EVER OBTAIN YOUR G.E.D. OR ANYTHING OF THAT NATURE?
A. YES, SIR. I RECEIVED MY G.E.D.
Q. YOU ARE A MILITARY VETERAN?
A. YES, SIR.
Q. WHAT BRANCH OF THE MILITARY IN WHICH DID YOU SERVE?
A. THE ARMY.
Q. AND HOW LONG DID YOU SERVE?
A. APPROXIMATELY EIGHT YEARS.
Q. AND YOU DID SOME TOURS OVERSEAS, I BELIEVE, CORRECT?
A. YES, SIR.
Q. AND WHERE DID YOU DO TOURS?
A. IRAQ AND AFGHANISTAN.
Q. DID YOU SUFFER AN INJURY WHILE YOU WERE IN SERVICE?
A. YES, SIR.
Q. WHAT SORT OF INJURY DID YOU HAVE?

A. A HEAD INJURY.
Q. AND WERE YOU ENTITLED TO A SERVICE-CONNECTED DISABILITY AS A RESULT OF THAT?
A. YES, SIR.
Q. IS THAT WHY YOU LEFT THE MILITARY?
A. YES.
Q. DO EMPLOYERS GET SOME SORT OF BREAK FOR HIRING A DISABLED VETERAN?
A. MOST EMPLOYERS DO, YES.
Q. AND DID YOU ADVISE AGY OF YOUR INJURIES AND YOUR DISABILITY STATUS WHEN YOU WENT TO WORK WITH THEM?
A. YES.
Q. OKAY. BEFORE YOU WENT -- WELL, LET ME BACK UP. WHILE YOU WERE IN THE MILITARY HAD YOU EVER SUSTAINED ANY INJURY TO YOUR LEFT ELBOW?
A. NO.
Q. WERE YOU HAVING ANY TROUBLE AT ALL WITH YOUR LEFT ELBOW BEFORE GOING TO WORK AT AGY?
A. NO.
Q. AGY WAS YOUR SECOND JOB, I BELIEVE, AFTER GETTING OUT OF THE MILITARY; IS THAT CORRECT?
A. YES, SIR.
Q. WHAT WAS THE OTHER TYPE WORK YOU DID BEFORE GOING TO AGY?
A. SECURITY.

Q. AND WHEN YOU WERE HIRED AT AGY, WHAT POSITION WERE YOU HIRED TO DO?
A. F.S.R., FRAME SERVICES WORKER.
Q. CAN YOU TELL ME WHAT A FRAME SERVICES WORKER DOES, JUST IN GENERAL.
A. THEY DOFF THE MACHINE, THEY LOAD THE MACHINE, AND THEY START IT UP SO IT CAN WRAP THE YARN.
Q. DO YOU REMEMBER ROUGHLY WHEN YOU WENT TO WORK FOR AGY?
A. APRIL 28TH.
Q. OF 2015?
A. YES, SIR.
Q. OKAY. AND HOW MANY HOURS A DAY DO YOU TYPICALLY WORK?
A. ON AVERAGE 40 TO 48.
Q. PER WEEK?
A. PER WEEK, YES.
Q. OKAY. NOW, DID YOU SUFFER AN INJURY ON JUNE 5, 2015?
A. YES, SIR.
Q. ABOUT WHAT TIME OF DAY WAS THAT?
A. BETWEEN TEN AND ELEVEN O'CLOCK AT NIGHT.
Q. WHAT SHIFT WERE YOU WORKING?
A. CHARLEY SHIFT.
Q. AND WHAT DOES CHARLEY SHIFT MEAN?

A. "C" SHIFT. IT'S ROTATIONAL WORK.
Q. SO SOMETIMES YOU WORK FIRST SHIFT; SOMETIMES YOU WORK SECOND SHIFT; SOMETIMES YOU WORK THIRD SHIFT?
A. YES, SIR.
Q. OKAY, ALL RIGHT. TELL ME WHAT HAPPENED TO YOU THAT NIGHT.
A. I WAS UNLOADING, WHICH IS DOFFING THE MACHINE, AND MY ARM GOT INJURED WHEN I WAS DOFFING OFF ONE OF THE DOFFS. I WENT TO LIFT IT UP. I DIDN'T REALIZE IT WAS STUCK, AND MY HAND HAD SLIPPED AND MY ELBOW HAD HIT THE CREEL ABOVE IT.
Q. SO -- AND I'LL BE HONEST WITH YOU. I'VE REPRESENTED PROBABLY HUNDREDS OF PEOPLE THAT DO THAT JOB, BUT I STILL IN MY MIND DON'T KNOW EXACTLY WHAT THAT MEANS. BUT YOU'VE GOT THINGS YOU PULL OFF FROM A LOWER LEVEL?
A. YES.
Q. ABOUT WAIST HIGH, IS THAT RIGHT, OR HOW HIGH?
A. THAT PARTICULAR MACHINE WAS LOWER THAN WAIST HIGH.
Q. OKAY. AND SO YOU'RE LIFTING THESE BOBBINS -- IS THAT WHAT IT IS -- OFF?
A. YES.
Q. AND THE BOBBIN IS STUCK?
A. YES, SIR.
Q. DID THE BOBBIN EVER COME FREE, OR DID YOUR HAND SLIP

OFF?

A. MY HAND SLIPPED OFF. IT WAS STUCK. DURING TRAINING WE ARE TAUGHT NOT TO MAKE THE ATTEMPT TO DO IT MORE THAN ONCE. IF THE BOBBIN DOESN'T COME UP, WE LET IT SIT THERE AND WE MARK IT.

Q. ALL RIGHT. AND YOU SAID YOUR ELBOW HIT THE CREEL. WHERE IS THE CREEL?

A. THE CREEL IS ABOVE THE BOBBIN OR -- YEAH, IT'S ABOVE THE BOBBIN BUT DEPENDING ON THE MACHINE AS HOW FAR APART THEY ARE.

Q. SO YOU TRIED TO PULL THE BOBBIN UP? EXCUSE ME; LEFT HAND. YOU TRIED TO PULL THE BOBBIN UP?

A. YES, SIR.

Q. YOUR HAND SLIPS OFF, AND YOUR ELBOW HITS THE CREEL, CORRECT?

A. YES, SIR.

Q. OKAY. WHAT DID YOU FEEL?

A. A SHARP PAIN AS IF I HAD HIT MY FUNNY BONE.

Q. AT THE TIME DID YOU THINK IT WAS ANY BIG DEAL?

A. NO, SIR.

Q. DID YOUR PAIN CONTINUE?

A. YES, SIR.

Q. HOW LONG WAS IT AFTERWARDS BEFORE YOU REPORTED IT TO YOUR SUPERVISOR?

A. I FINISHED DOFFING THE MACHINE, TOOK THE DOFF TO

WHERE IT NEEDED TO BE, AND THEN I REPORTED IT TO HIM. SO ROUGHLY FIVE MINUTES.

Q. OKAY. WHAT HAPPENED AFTER YOU REPORTED IT?

A. MY SUPERVISOR PUT ME ON LIGHT DUTY, AND A COUPLE HOURS LATER MY ARM WAS STILL CAUSING ME ISSUES, SO I REPORTED IT TO HIM, AND HE SENT ME TO THE EMERGENCY ROOM AT AIKEN REGIONAL.

Q. SO YOU WENT TO THE EMERGENCY ROOM AT AIKEN REGIONAL MEDICAL CENTER ON THE SAME DAY THIS OCCURRED; IS THAT CORRECT?

A. YES, SIR.

Q. DID THEY SEND YOU ALONE, OR DID SOMEONE GO WITH YOU?

A. THEY SENT ME ALONE.

Q. THIS WAS DURING THE NIGHT, CORRECT?

A. YES, SIR.

Q. OKAY, ALL RIGHT. AFTER BEING SEEN AT AIKEN REGIONAL MEDICAL CENTER, WERE YOU PLACED ON RESTRICTIVE DUTY?

A. YES, SIR.

Q. AND DID YOU TAKE YOUR WORK EXCUSE IN?

A. YES, SIR.

Q. AND WHO DID YOU TAKE IT TO?

A. MS. ANN; SHE'S THE NURSE AT THE FACTORY.

Q. IS THAT MS. ANN TYLER?

A. YES.

Q. WHO IS PRESENT HERE IN THE COURTROOM TODAY?

A. YES.
Q. OKAY, ALL RIGHT. THAT WOULD HAVE BEEN THE FOLLOWING DAY, I'M ASSUMING; IS THAT CORRECT?
A. YES, SIR.
Q. OKAY, ALL RIGHT. DID YOU -- DID THEY PROVIDE WORK FOR YOU WITHIN THOSE RESTRICTIONS?
A. YES, SIR.
Q. DID THEY FILL OUT AN ACCIDENT REPORT AND ALL THAT STUFF?
A. YES, SIR.
Q. OKAY, ALL RIGHT. AND SO YOU CONTINUED TO WORK; IS THAT CORRECT?
A. YES, SIR.
Q. ALL RIGHT. WERE YOU SENT ELSEWHERE FOR TREATMENT?
A. YES, SIR. THEY SENT ME TO MOORE CENTER IN COLUMBIA.
Q. AND WHEN YOU SAY, "THEY," SPECIFICALLY WAS THAT ---
A. AGY.
Q. OKAY. IS THAT MS. TYLER WHO SCHEDULED THAT FOR YOU AND GAVE YOU THE INFORMATION TO GO?
A. YES, SIR.
Q. OKAY. AND YOU SAID MOORE CENTER FOR ORTHOPEDICS, BUT WAS IT SPECIFICALLY DR. MICKEY PLYMALE THAT YOU SAW?
A. DR. PLYMALE; YES, SIR.
Q. OKAY. AND WAS THAT A COUPLE WEEKS AFTER THE INJURY?

A. I'D SAY IT WAS WITHIN A WEEK AND A HALF; YES, SIR.
Q. OKAY. AND DR. PLYMALE EXAMINED YOU AND TREATED YOU?
A. YES, SIR.
Q. DID HE ALSO PUT YOU ON LIGHT DUTY?
A. YES, SIR.
Q. DID YOU GIVE THE LIGHT-DUTY WORK EXCUSE TO THE PEOPLE AT WORK?
A. YES, SIR.
Q. AND DID THEY PROVIDE LIGHT DUTY AT THAT TIME?
A. YES, SIR.
Q. I THINK YOU WENT BACK TO DR. PLYMALE FOR A SECOND OCCASION IN JULY OF 2015; IS THAT CORRECT?
A. YES, SIR.
Q. AND DID HE AGAIN PUT YOU ON LIGHT DUTY?
A. YES, SIR.
Q. DID HE RECOMMEND AN MRI SCAN FOR YOU AT THAT TIME?
A. YES, SIR.
Q. WERE YOU ABLE TO GET THE MRI SCAN?
A. NO, SIR.
Q. AT LEAST NOT AT THAT TIME, CORRECT?
A. NOT AT THAT TIME, NO, SIR.
Q. ALL RIGHT. YOU CONTINUED TO WORK LIGHT DUTY?
A. YES, SIR.
Q. AT SOME POINT DID YOU BECOME AWARE THAT THEY WERE DENYING YOUR CLAIM?

A. YES, SIR.
Q. DO YOU KNOW ROUGHLY WHEN THAT WAS?
A. NO, I DO NOT.
Q. OKAY. AT THE POINT IN TIME WHERE THEY STARTED DENYING YOUR CLAIM, DID THEY CONTINUE TO PROVIDE LIGHT DUTY FOR YOU?
A. YES, SIR.
Q. WHEN DID THEY STOP PROVIDING LIGHT DUTY FOR YOU?
A. THE DAY I WAS DISCHARGED.
Q. DO YOU REMEMBER WHAT DAY THAT WAS?
A. AUGUST 19TH OF 2015.
Q. ALL RIGHT. TELL ME WHAT HAPPENED ON AUGUST 19TH.
A. MY SUPERVISOR ASKED ME TO COME TO THE OFFICE, AND MY SUPERVISOR AND, I BELIEVE, HIS SUPERVISOR, ADAM, -- MY SUPERVISOR IS KEVIN -- INFORMED ME THAT I NEEDED TO COME OFF OF RESTRICTION, I NEEDED TO QUIT, OR THEY WERE GOING TO HAVE TO LET ME GO.
Q. OKAY. AND WERE YOU STILL ON RESTRICTIONS FROM THE DOCTOR?
A. YES, SIR.
Q. AND YOU WERE NOT ABLE TO GET YOUR MRI AT THAT POINT IN TIME; IS THAT CORRECT?
A. NO, SIR.
BY MR. HUFF:
I'M GOING TO OBJECT TO THE LEADING FORM OF THE

QUESTION.

BY MR. SMITH:

LET ME -- I'LL REPHRASE THE QUESTION.

BY MR. HUFF:

THANK YOU, BILL.

DIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. WAS AN MRI EVER SCHEDULE FOR YOU?

A. NO, SIR.

Q. NOW, SO YOU HAD A MEETING WITH THEM AT THE PLANT?

A. YES, SIR.

Q. AND I FAILED TO ASK YOU THIS EARLIER. YOU SAID YOU REPORTED IT TO YOUR SUPERVISOR. WHAT IS YOUR SUPERVISOR'S NAME?

A. KEVIN.

Q. DO YOU REMEMBER HIS LAST NAME?

A. I DO NOT.

Q. IS IT KEVIN FAUST?

A. I BELIEVE SO, SIR.

Q. OKAY. BUT DID HE MEET WITH YOU WHEN YOU WERE CALLED INTO THE PLANT AND THE LIGHT DUTY WAS NO LONGER PROVIDED?

A. YES, SIR.

Q. WERE YOU GIVEN PAPERWORK ON THAT DAY?

A. YES, SIR.

Q. I'M GOING TO SHOW THIS TO YOU AND ASK YOU IF YOU CAN

IDENTIFY THIS.

A. YES, SIR. THIS IS A PAPER I HAD TO SIGN AFTER I REFUSED TO QUIT.

BY MR. SMITH:

YOUR HONOR, I'D LIKE TO OFFER THIS AS CLAIMANT'S EXHIBIT ONE.

BY MR. HUFF:

MAY I SEE IT, BILL?

(OFF THE RECORD)

BY THE COMMISSIONER:

ANY OBJECTIONS?

BY MR. HUFF:

THERE IS NO AUTHENTICATION OF THIS DOCUMENT. IF ANYBODY SIGNED IT, I -- IS THIS HIS NAME RIGHT HERE, BILL? I CAN'T TELL. THAT NAME RIGHT THERE.

BY MR. SMITH:

YES, THAT'S SHAWN. WE CAN GET HIM TO -- I CAN ASK HIM THAT QUESTION.

BY MR. HUFF:

I'M NOT GOING TO OBJECT TO IT. I THINK IT -- NO NEED TO BEAT A HORSE. IT LOOKS LIKE IT'S ONE OF OUR DISCHARGE NOTICES.

BY THE COMMISSIONER:

ALL RIGHT. SO ADMITTED.

BY MR. HUFF:

HE'S YOUR COPY BACK.

BY MR. SMITH:

OH, THANK YOU.

DIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. SO, MR. WIER, YOU WERE GIVEN THIS DOCUMENT AT THE CONCLUSION OF THE MEETING?

A. YES, SIR.

Q. IS THAT YOUR SIGNATURE ON THE DOCUMENT?

A. YES, SIR.

Q. OKAY. AND BASED ON WHAT THIS DOCUMENT -- WELL, THIS DOCUMENT READS, "UNABLE TO ACCOMMODATE MEDICAL RESTRICTIONS OF A PROBATIONARY EMPLOYEE." IS THAT WHAT YOU WERE TOLD?

A. YES, SIR.

Q. JUST TO BE CLEAR, YOU HAD BEEN WORKING LIGHT DUTY UP TO THAT POINT?

A. YES, SIR.

Q. WERE YOU WILLING TO CONTINUE WORKING LIGHT DUTY?

A. YES, SIR.

Q. IF THEY OFFERED YOU LIGHT DUTY TODAY, WOULD YOU GO DO THE LIGHT DUTY?

A. YES, SIR.

Q. HAVE YOU WORKED ANYWHERE SINCE AUGUST 19TH, 2015?

A. NO, SIR.

Q. WE TALKED EARLIER ABOUT THE FACT THAT YOU ARE A

VETERAN.

A. YES, SIR.

Q. DID YOU ULTIMATELY OBTAIN AN MRI SCAN THROUGH THE V.A. HOSPITAL?

A. YES, SIR.

Q. SINCE OBTAINING THAT MRI SCAN HAVE YOU BEEN ABLE TO GET ANY TREATMENT AT THE V.A. HOSPITAL SPECIFICALLY RELATED TO YOUR ELBOW?

A. YES, SIR.

Q. AND WHAT HAVE YOU GOTTEN?

A. PHYSICAL THERAPY.

Q. HOW MANY TIMES HAVE YOU BEEN ABLE TO GET PHYSICAL THERAPY SO FAR?

A. TWICE.

Q. JUST TWO VISITS TO PHYSICAL THERAPY?

A. TWO VISITS TO PHYSICAL THERAPY.

Q. I NOTICE THAT YOU ARE WEARING SOME SORT OF COMPRESSION, OR SOMETHING, DEVICE ON YOUR LEFT ARM TODAY.

A. YES, SIR.

Q. IS THAT SOMETHING YOU WERE GIVEN AT PHYSICAL THERAPY?

A. YES, SIR.

Q. DOES IT HELP YOU?

A. TO A DEGREE, YES.

Q. DO YOU CONTINUE TO HAVE PAIN IN YOUR LEFT ELBOW?

BY MR. HUFF:

I'M GOING TO OBJECT. IT'S A LEADING QUESTION. IT SUGGESTS THE ANSWER.

BY MR. SMITH:

I'LL REPHRASE IT.

DIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. DESCRIBE FOR ME THE SENSATION, IF ANY, THAT YOU HAVE IN YOUR LEFT ELBOW.

BY MR. HUFF:

THANK YOU, BILL.

WITNESS ANSWERS:

A. SHARP, PULSATING PAINS IN MY LEFT ELBOW DEPENDING ON WHAT I'M DOING, EVEN IF I'M JUST SITTING STILL DOING NOTHING.

DIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. ARE YOU STILL ABLE TO DO THE LIGHT DUTY, THOUGH?

A. YES.

Q. DOES ACTIVITY HAVE ANY EFFECT ON YOUR PAIN?

A. DEPENDING ON THE ACTIVITY, YES.

Q. THERE IS A SURVEILLANCE TAPE THAT HAS BEEN OFFERED AS EVIDENCE. HAVE YOU HAD A CHANCE TO SEE THAT SURVEILLANCE TAPE BEFORE?

A. YES, SIR.

Q. AS I UNDERSTAND IT, THAT SURVEILLANCE WAS DONE ON

AUGUST 6TH, 2015?

A. YES, SIR.

Q. WERE YOU STILL WORKING AT AGY AT THAT TIME?

A. YES, SIR.

Q. WERE THE ACTIVITIES THAT YOU PERFORMED IN THE SURVEILLANCE TAPE HEAVIER OR LIGHTER THAN WHAT YOU WOULD DO AT WORK?

A. I'D SAY ABOUT THE SAME ACTUALLY.

Q. OKAY. MR. WIER, YOU WERE -- WELL, LET ME JUST ADD -- BEFORE WE GET INTO THAT, FROM WHAT YOU SAW OF THAT SURVEILLANCE TAPE WHAT WERE YOU DOING ON THAT DAY?

A. I WAS PLAYING IN THE POOL, LIFTING MY CHILDREN AND TOSSING MY CHILDREN WITH MY RIGHT ARM.

Q. DO YOU REMEMBER MR. HUFF TAKING YOUR DEPOSITION IN NOVEMBER OF 2015?

A. YES, SIR.

Q. IN THAT DEPOSITION YOU WERE ASKED ABOUT YOUR ABILITY TO LIFT YOUR KIDS?

A. YES, SIR.

Q. AND WHAT DID YOU TELL -- LET ME GO BACK. HAVE YOU READ THAT DEPOSITION?

A. YES, SIR.

Q. OKAY. AND WHAT DID YOU TELL -- IN GENERAL WHAT DID YOU TELL MR. HUFF ABOUT YOUR ABILITY TO LIFT YOUR

KIDS?

A. AT THE TIME IN NOVEMBER I HAD TOLD HIM THAT I WAS ONLY LIFTING MY ONE-YEAR-OLD, WHO WEIGHED TEN TO FIFTEEN POUNDS.

Q. IN THE SURVEILLANCE TAPE WERE YOU DOING MORE THAN THAT?

A. YES, SIR.

Q. CAN YOU EXPLAIN THAT TO ME.

A. I WAS MISTAKEN IN MY STATEMENT IN MY DEPOSITION DUE TO THE TIME FRAME.

Q. OKAY. ACCORDING TO THE MEDICAL RECORDS THAT HAVE BEEN OFFERED AS EVIDENCE, YOU GOT YOUR MRI DONE ON SEPTEMBER 21, 2015, AT THE V.A. MEDICAL CENTER IN AUGUSTA?

A. YES, SIR.

Q. UP UNTIL THE TIME THAT YOU HAD YOUR MRI SCAN DONE, WHAT DID YOU -- NOT WHAT DOCTORS TOLD YOU, BUT WHAT DID YOU BELIEVE WAS GOING ON WITH YOUR ELBOW?

A. THAT IT WAS JUST A BRUISE, AT WORST A BONE BRUISE, FROM MY UNDERSTANDING.

Q. DID YOU LEARN -- AGAIN, DON'T TELL ME WHAT HE SAID. WELL, LET'S -- THAT REPORT IS ALREADY IN EVIDENCE. IS IT YOUR UNDERSTANDING NOW THAT YOU MAY WELL HAVE A TEAR IN THAT ELBOW?

A. YES.

Q. SINCE YOUR INJURY AT WORK ON JUNE 5, 2015, HAVE YOU DONE ANYTHING TO REINJURE YOUR ELBOW?

A. NO, SIR.

Q. DID YOU DO ANYTHING TO INJURE YOUR CHILDREN IN THE POOL? EXCUSE ME, NOT INJURE YOUR CHILDREN, INJURE YOUR ELBOW IN THE POOL?

A. NO, SIR.

Q. THE VIDEOTAPE SPEAKS FOR ITSELF AS TO WHAT YOU WERE DOING, BUT LET ME ASK YOU A QUESTION. WHICH ARM IS INJURED?

A. MY LEFT ARM.

Q. ARE YOU RIGHT-HANDED OR LEFT-HANDED?

A. I AM DOMINATELY RIGHT-HANDED.

Q. OKAY. IF YOU ARE LIFTING SOMETHING THAT'S MORE THAN A FEW POUNDS, WOULD YOU DO THAT WITH YOUR RIGHT ARM OR YOUR LEFT ARM?

A. MORE THAN A FEW POUNDS I WOULD GENERALLY DO WITH MY RIGHT ARM, BUT IF IT'S TOO HEAVY I DO IT WITH BOTH.

Q. WHEN YOU WERE LIFTING YOUR CHILDREN IN THE POOL, DESCRIBE FOR ME HOW YOU WOULD DO THAT.

A. WITH BOTH HANDS, BOTH ARMS.

Q. WOULD YOU USE ONE ARM MORE THAN THE OTHER?

A. YES.

Q. AND WHY IS THAT?

A. MY RIGHT ARM. I'M MORE DOMINANT RIGHT-HANDED, SO I

DO MORE THINGS WITH MY RIGHT ARM.

Q. HAS ANY DOCTOR RELEASED YOU WITH REGARD TO YOUR LEFT ARM?

A. NO, SIR.

Q. SINCE AUGUST OF 2015 HAS AGY PROVIDED ANY MEDICAL CARE FOR YOU?

A. NO, SIR.

Q. DO YOU FEEL LIKE YOU STILL NEED FURTHER MEDICAL CARE?

A. FROM AGY?

Q. FROM -- WITH REGARD TO YOUR LEFT ARM.

A. YES, SIR.

Q. IF SURGERY WERE RECOMMENDED FOR YOUR LEFT ARM, WOULD YOU BE WILLING TO UNDERGO SURGERY?

A. YES, SIR.

BY MR. SMITH:

THANK YOU, SIR. NO FURTHER QUESTIONS.

BY THE COMMISSIONER:

CROSS.

BY MR. HUFF:

YES, MA'AM. THANK YOU. EXCUSE ME JUST FOR A SECOND.

CROSS EXAMINATION BY MR. HUFF:

Q. CAN YOU TELL ME WHAT DOCTOR SAID YOU NEED SURGERY?

A. I HAVE NOT BEEN INFORMED THAT I NEED SURGERY.

Q. OKAY. I JUST WANTED TO MAKE SURE. YOU WOULD UNDERGO SOMETHING TODAY THAT NO ONE HAS TOLD YOU THAT YOU NEED? BECAUSE THAT'S YOUR TESTIMONY, THAT YOU WOULD HAVE SURGERY.

BY MR. SMITH:

OBJECTION.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. NO ONE HAS SAID YOU NEED SURGERY, CORRECT?

A. CORRECT.

BY MR. SMITH:

I JUST NEED TO POSE AN OBJECTION. THAT MISSTATES THE EVIDENCE. HE WAS ASKED IF IT WAS RECOMMENDED WOULD HE ACCEPT IT.

BY THE COMMISSIONER:

IT'S CROSS, SO I'M GOING TO -- IF YOU'LL GO AHEAD AND ANSWER IT, SIR.

WITNESS ANSWERS:

A. THAT IS CORRECT.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. THANK YOU. AND I TOOK YOUR DEPOSITION; DID I NOT?

A. YES, SIR.

Q. AND YOU WERE SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, CORRECT?

A. CORRECT.

Q. AND YOU DIDN'T TELL THE WHOLE TRUTH, DID YOU?

A. AT THE TIME I BELIEVED I WAS.

Q. YOU BELIEVED YOU WERE TELLING THE WHOLE TRUTH WHEN YOU SAID THE HEAVIEST THING YOU LIFTED WAS A TEN- OR FIFTEEN-POUND CHILD, YOUR ONE-YEAR-OLD?

A. YES, SIR.

Q. YOU DIDN'T TELL ME ABOUT LIFTING THE BIG BOY AND THROWING HIM IN THE POOL, DID YOU?

A. NO, SIR.

Q. YOU REMEMBERED THE BABY?

A. YES, SIR.

Q. BUT YOU DIDN'T REMEMBER THE BIG BOY?

A. YES, SIR.

Q. AND YOU SAID YOU JUST SAT DOWN IN THE KIDDIE POOL AREA; DID YOU NOT?

A. I BELIEVE I SAID I WAS IN THE POOL, NOT JUST THE KIDDIE POOL.

Q. YOU DON'T REMEMBER SAYING, "I SAT IN THE KIDDIE POOL AREA"? I CAN GO TO THE DEPOSITION AND SHOW IT TO YOU. DO YOU REMEMBER THAT OR NOT?

A. I DO NOT REMEMBER, SIR.

Q. ALL RIGHT.

BY MR. HUFF:

BILL, I'M HANDING HIM A COPY OF THE DEPOSITION. COMMISSIONER, I'LL HAND YOU THE COPY, ALSO, THE ORIGINAL. I'M JUST GOING TO GO THROUGH SEVERAL

PAGES, NOT ALL OF IT. HERE'S THE ORIGINAL, COMMISSIONER. THE FIRST THING I WANT TO DO IS KIND OF GO THROUGH IN PROGRESSION. THAT WOULD BE EASIER FOR EVERYBODY TO UNDERSTAND.

BY THE COMMISSIONER:

MR. HUFF, CAN YOU REPEAT THAT. I COULDN'T HEAR YOU.

BY MR. HUFF:

I'M SO SORRY, COMMISSIONER. I'M HANDING THAT UP TO YOU, BUT BEFORE I GO TO THAT I'M GOING TO START OFF WITH BY JUST GOING CHRONOLOGICALLY, TRYING TO KEEP THINGS SMOOTH. I'M GOING TO HAND YOU A COPY -- BILL, I'M HANDING UP TO HIM A COPY OF HIS FORM 50. I PUT EVERYTHING IN A NOTEBOOK. COMMISSIONER JAMES, THIS MAY HELP US AS WE GO THROUGH EVERYTHING. I'M GOING TO SHOW HIM THE FORM 50, AND I JUST PUT EVERYTHING IN A FORM TO SHOW EASY TO HIM.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. HERE WE GO, SIR. HERE IS YOUR FORM 50. THIS IS FILED. IT'S A FORM CALLED WORK COMP COMMISSION FORM 50. IT'S THE REQUEST FOR A HEARING THAT'S FILED IN ORDER TO GET HERE. IF YOU WOULD LOOK AT PARAGRAPH THREE AND TELL ME HOW YOU DESCRIBE YOUR INJURY. COULD YOU READ THAT FOR ME?

A. PARAGRAPH THREE OR LINE THREE?

Q. PARAGRAPH NUMBER THREE. IT SHOULD HAVE IT ON THERE. I'LL READ IT FOR YOU. DOES IT SAY THE FOLLOWING: "BRIEFLY DESCRIBE HOW THE ACCIDENT OCCURRED. LEFT ARM HIT THE MOVING CREEL ON THE MACHINE." IS THAT WHAT IT SAYS?

A. THAT IS WHAT IT SAYS.

Q. RIGHT, THAT'S WHAT IT SAYS. THAT'S YOUR FORM 50. YOUR NAME UP IN THE LEFT CORNER SAYS SHAWN WIER; IS THAT CORRECT?

A. YES, SIR.

Q. WE ARE TO BELIEVE THAT YOU HAD AN ACCIDENT ON THE JOB, AND YOU'RE CLAIMING AN ACCIDENT ON THE JOB WHEN YOUR ARM HIT THIS MOVING CREEL, RIGHT?

A. NO, SIR.

Q. THAT'S NOT WHAT IT SAYS ON THE FORM?

A. THAT IS WHAT IT SAYS ON THE FORM.

Q. RIGHT, FILED ON YOUR BEHALF?

A. YES, SIR.

Q. OKAY. AND YOU'RE SAYING AT THE TIME ---

BY MR. HUFF:

CAN YOU GIVE ME THAT BOBBIN IN THAT BAG, PLEASE? THANK YOU.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. AND IT'S YOUR TESTIMONY THAT AS YOU WERE TRYING TO REMOVE THE THREAD THAT WAS ON THE BOBBIN THAT YOUR

ELBOW CAME UP AND HIT THE MACHINE?

A. YES, SIR.

Q. YOU HAVE -- IF I'M NOT MISTAKEN, THIS IS WHERE THE THREAD GOES, AND IT'S DOWN ON THE MACHINE DOWN HERE?

A. YES, SIR.

Q. AND THEN YOU'VE GOT THE THREAD COMING BACK TO THE MACHINE AND GOING ON THIS BOBBIN, CORRECT?

A. YES, SIR.

Q. AND YOU'RE PICKING THIS BOBBIN UP LIKE THIS?

A. NOT WITH BOTH HANDS, NOT LIKE THAT.

Q. HOW WERE YOU PICKING IT UP?

A. YOU WOULD PICK IT UP BY THE VERY TOP -- YOU'RE NOT TO TOUCH THE YARN -- IN ORDER TO LIFT IT UP.

Q. WITH ONE HAND?

A. YES, SIR. YOU LIFT IT UP. ONCE YOU GET IT OFF THE SPINDLE, THAT IS WHEN YOU REACH YOUR OTHER HAND UNDERNEATH THE BOBBIN ITSELF TO PULL THE BOBBIN OUT AND PUT IT ONTO A CART.

Q. AND YOU'RE RIGHT-HAND DOMINANT?

A. YES, SIR.

Q. WHY DIDN'T YOU PICK IT UP WITH YOUR RIGHT HAND IF YOU'RE RIGHT-HAND DOMINANT?

A. BECAUSE WE WERE SHOWN TO GO DOWN THE MACHINES A CERTAIN WAY, AND THAT'S THE LEFT HAND.

Q. YOU'RE STANDING IN FRONT OF THIS, RIGHT?

A. NO, SIR. IT'S ON THE SIDE.
Q. IS IT TO YOUR LEFT OR TO YOUR RIGHT?
A. TO THE LEFT.
Q. TO THE LEFT, OKAY. AND YOU SAID YOU PICKED THIS THING UP, AND YOUR HAND CAME UP AND HIT THE MACHINE. OKAY. I JUST WANT TO MAKE SURE I'VE GOT IT RIGHT. WHAT IS THIS CALLED?
A. A BOBBIN.
Q. OKAY. AND WHAT'S THE CREEL; IS THAT THAT BLUE THING ON THE MACHINE WITH THE THREAD ON IT?
A. NO. THE CREEL IS THE PLASTIC PIECE THAT THE -- WELL, THE CREEL IS CALLED, YEAH, THE PLASTIC PIECE, BUT THE CREEL ITSELF GOES ON THE CREEL PART OF THE MACHINE.
Q. IT'S LIKE BLUE?
A. YES.
Q. AND YOU HIT THAT BLUE PIECE OF PLASTIC; YOU DIDN'T ACTUALLY HIT THE MACHINE THAT SPINS?
A. NO.
Q. THANK YOU. ALL RIGHT. AT THE POOL THAT DAY -- YOU HAVE HOW MANY CHILDREN?
A. SIX.
Q. HOW OLD IS THE OLDEST ONE? IS IT A BOY OR GIRL?
A. HE IS A BOY, AND HE IS NINE NOW.
Q. IS HE THE ONE THAT YOU WERE THROWING UP IN THE POOL?

A. IT WAS EITHER HIM OR HIS EIGHT-YEAR-OLD BROTHER.
Q. OTHER THAN THAT DAY OF THROWING HIM UP IN THE POOL, DID YOU THROW ANYBODY ELSE UP IN THE POOL?
A. PROBABLY THEIR SISTERS.
Q. ALL RIGHT. DID YOU LIFT ANY OF THE CHILDREN TO CARRY THEM TO THE POOL OR CARRY THEM BACK FROM THE POOL?
A. MORE THAN LIKELY.
Q. PARDON?
A. MORE THAN LIKELY.
Q. MORE THAN LIKELY. YOU'RE RIGHT-HAND DOMINANT. IF YOU HAD TO LIFT THE CHILDREN, WHICH HAND WOULD YOU USE, LEFT OR RIGHT?
A. BOTH TO LIFT.
Q. TO LIFT. SO YOU DIDN'T USE THE BAD ARM TO LIFT? YOU WOULDN'T USE THE NON-HURT DOMINANT ARM; YOU'D USE THE HURT NON-DOMINANT ARM TO LIFT, RIGHT? THAT'S WHAT YOU'RE TELLING US, CORRECT?
A. TO LIFT MY CHILDREN I USE BOTH.
Q. WHY BOTH?
A. BECAUSE THEY'RE CHILDREN, THEY NEED TO BE LIFTED SAFELY.
Q. WHAT IF YOU WERE GOING TO LIFT THEM ONLY WITH ONE ARM, WHICH ARM WOULD YOU PREFER TO USE?
A. WELL, TO LIFT THEM WITH ONE ARM, I WOULD USE MY

RIGHT.

Q. OKAY, JUST WANT TO MAKE SURE.

BY THE COMMISSIONER:

MR. HUFF, WHILE YOU'RE GETTING SET UP I WANT TO TELL THE OTHER PARTIES -- WHILE WE HAVE A BREAK I'M GOING TO WALK OUT AND TELL THEM ABOUT HOW LONG EVERYTHING IS GOING TO LAST.

(OFF THE RECORD)

BY THE COMMISSIONER:

WHENEVER YOU ALL ARE READY TO RESUME.

BY MR. HUFF:

THANK YOU, COMMISSIONER. WE'RE BACK ON THE RECORD NOW?

BY THE COMMISSIONER:

YES.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. DO YOU SEE THIS PHOTOGRAPH I'M SHOWING YOU?

A. YES, SIR.

Q. IS THAT YOU?

A. YES, SIR.

Q. IS THAT YOUR CHILD?

A. YES, SIR.

Q. NOW, YOU'RE LIFTING THAT CHILD ---

BY MR. SMITH:

YOUR HONOR, I KNOW THE VIDEOTAPE HAS BEEN

OFFERED AS EVIDENCE. ARE YOU INTENDING TO OFFER THOSE PHOTOS AS EVIDENCE?

BY MR. HUFF:

NO, I'M JUST USING THEM TO ASK HIM QUESTIONS. WE CAN PUT THEM IN IF YOU WANT TO.

BY MR. SMITH:

NO, I DON'T INTEND TO PUT THEM IN.

BY MR. HUFF:

I'LL PUT THEM IN, THEN. I'LL TAKE THEM OFF THE BOARDS AND FOLD THEM UP AND SUBMIT THEM. IT'S JUST SOME THINGS THAT I TOOK OFF THE ---

BY MR. SMITH:

THE ONLY THING I JUST WANT TO POINT OUT, YOUR HONOR, I DON'T REALLY HAVE A PROBLEM WITH HIM REFERRING TO THE PHOTOS, BUT WE WEREN'T GIVEN PHOTOS, AND, YOU KNOW, WHAT APPEARS IN A SPLIT SECOND OF A PHOTOGRAPH MAY WELL NOT BE THE CONTEXT OF A VIDEOTAPE THAT YOU SEE IN LIVE. SO, I GUESS I JUST WANT TO POINT OUT, YOU'RE GOING TO WATCH THE VIDEOTAPE, AND THESE PHOTOS ARE NOT GOING TO EVIDENCE; IS THAT...

BY THE COMMISSIONER:

MY UNDERSTANDING IS THAT THE PHOTOS, BECAUSE THEY HAVE A TIME STAMP ON THEM, ARE PART OF THE VIDEO. IF YOU ALL NEED THE VIDEO WITH REGARDS TO --

WHICH HAS ALREADY BEEN PUT INTO EVIDENCE -- IF YOU ALL NEED THAT IN SUPPLEMENTATION OF USING THESE PHOTOS, IT WOULD BE THE SAME THING AS FREEZING IT ON THE SCREEN. BUT IF YOU ALL NEED THE ---

BY MR. SMITH:

I GUESS I JUST WANT TO POINT OUT THAT I KNOW YOU WILL WATCH THE VIDEOTAPE, BUT WHAT MAY APPEAR FOR A SPLIT SECOND ON A PHOTO MAY NOT ACCURATELY REFLECT WHAT IN MOTION IS GOING ON.

BY THE COMMISSIONER:

RIGHT. AND EITHER ONE OF YOU CAN USE THE VIDEO IN YOUR CROSS OR IN YOUR REDIRECT.

BY MR. HUFF:

I'LL MARK THIS ONE AT THE BOTTOM, NUMBER ONE.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. THAT'S YOU LIFTING YOUR CHILD WITH YOUR LEFT ARM, THE BAD ARM, RIGHT?

BY THE COMMISSIONER:

FOR PURPOSES OF -- ACTUALLY IF THE VIDEO IS GOING IN, FOR PURPOSES OF ANYBODY THAT MAY ACTUALLY HEAR AN APPEAL ON THIS, THEN I AT LEAST NEED TO REFERENCE THE TIME ON IT. IT NEEDS -- WHATEVER GOES INTO EVIDENCE ---

BY MR. HUFF:

I'M NUMBERING THEM, AND I'M GOING TO FOLD THEM

UP AND GIVE THEM TO YOU, COMMISSIONER, AT THE CONCLUSION. SO WE WILL HAVE THEM NUMBERED IN AN ENVELOPE.

BY MR. SMITH:

I GUESS, JUST IN THE QUESTION SO WE KNOW WHAT -- LET'S REFER TO THE TIME STAMP IN THE QUESTION, PLEASE.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. AUGUST 6TH, 2015, 11:34:39 SECONDS. IS THAT YOU LIFTING THE CHILD WITH THE AFFECTED ARM, AFFECTED SIDE, RIGHT?

A. I CANNOT TELL IF I'M LIFTING OR SETTING DOWN.

Q. LET'S GO TO THE NEXT PICTURE. IS THE CHILD FURTHER UP IN THE AIR?

A. YES, SIR.

Q. SO YOU'RE LIFTING; YOU'RE NOT SITTING DOWN, CORRECT?

BY THE COMMISSIONER:

ALL RIGHT. LET'S REFER TO THE TIME STAMP, ALSO. I GUESS THAT'S THE ---

BY MR. HUFF:

NUMBER TWO.

BY THE COMMISSIONER:

WITH THE TIME STAMP ---

BY MR. HUFF:

11:34 WITH 40 SECONDS, A SECOND LATER.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. SO ARE YOU LIFTING OR PUTTING HIM DOWN? WHICH ONE DO YOU THINK YOU'RE DOING?

A. LIFTING.

Q. THANK YOU VERY MUCH. AND, AGAIN, ON NUMBER TWO YOU'RE USING THAT BAD ARM?

A. YES, SIR.

Q. OKAY. I'LL NUMBER THE NEXT ONE AS NUMBER THREE. IT'S 11:34, 40-SOME SECONDS. THE CHILD IS HIGHER UP NOW, ISN'T SHE?

A. RESTING ON MY HIP, YES.

Q. HERE THE CHILD IS LOWER DOWN, AND NOW THE CHILD IS A LITTLE BIT HIGHER UP. THE HEAD IS NOW ABOVE THE SHOULDER, CORRECT?

A. CORRECT.

Q. THANK YOU. NUMBER FOUR. AGAIN, YOU'RE STILL USING THE AFFECTED ARM, THE ARM THAT YOU SAID IS HURTING?

A. CORRECT.

Q. BUT YOU CAN'T LIFT -- YOU'RE USING THE LEFT ARM; THAT'S PICTURE NUMBER FOUR. LET'S GO TO NUMBER FIVE. NOW IT LOOKS LIKE YOU'RE ABOUT TO WALK AWAY. AGAIN, YOU'VE GOT THE CHILD WITH YOUR LEFT, AFFECTED ARM. SHE'S RIGHT AT THE HIP LEVEL, CORRECT?

A. CORRECT.

Q. YOU'RE NOT USING YOUR RIGHT ARM, ARE YOU?

A. NO, SIR.
Q. THANK YOU. CAN YOU THINK OF ANY OTHER TIME THAT DAY THAT YOU MAY HAVE USED YOUR AFFECTED, BAD ARM THAT WAS HURTING YOU?
A. NOT OFF THE TOP OF MY HEAD.
Q. YOU CAN'T THINK OF ANYTHING ELSE YOU DID THAT DAY WITH THAT ARM? OKAY. LET'S LOOK AT THESE PICTURES, AND I'LL GO TO THE TIME FRAME ON THEM. THIS WILL BE NUMBER SIX. THIS IS AUGUST 6TH, 12:34:27. DO YOU KNOW WHICH BOY THIS IS?
A. I CAN'T EVEN TELL THAT'S A PERSON, BUT, NO.
Q. HOW MANY BOYS DO YOU HAVE?
A. I HAVE TWO.
Q. WHAT'S THEIR AGES?
A. EIGHT AND SEVEN. WELL, NOW IT IS NOW NINE AND EIGHT.
Q. ALL RIGHT. SO AT THIS TIME EIGHT AND SEVEN. SO AT LEAST IF WE GO TO THE YOUNGEST ONE, THE SEVEN-YEAR-OLD BOY, YOU WOULD AGREE THAT'S A BOY? IT'S GOT A ONE-PIECE MEN'S BATHING SUIT ON; WOULD YOU AGREE?
A. CORRECT.
Q. ARE YOU SITTING IN THE KIDDIE POOL THERE, OR ARE YOU IN THE DEEPER POOL?
A. I'M IN THE DEEPER POOL.
Q. ARE YOU HOLDING THE BOY?

A. YES, SIR.

Q. LET'S GO TO PICTURE NUMBER SEVEN. ARE YOU THROWING THE CHILD UP IN THE AIR?

A. WITH BOTH HANDS, CORRECT.

Q. ALL RIGHT. IS THAT YOUR LEFT ARM OVER HERE, THE AFFECTED ARM?

A. YES, SIR.

BY THE COMMISSIONER:

ALL RIGHT. SEVEN IS 12:34:28 OF THE VIDEO.

BY MR. HUFF:

12:34:28. I'M SORRY, COMMISSIONER.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. LET'S GO TO NUMBER EIGHT. WHAT DOES THAT SHOW A PICTURE OF? DOES IT SHOW THE CHILD OUT OF YOUR ARMS IN THE AIR GOING INTO THE POOL?

A. CORRECT.

Q. THAT ARM RIGHT THERE, IS THAT YOUR LEFT ARM?

A. THAT IS.

Q. THAT'S YOUR BAD ARM, RIGHT?

A. CORRECT.

Q. THANK YOU.

BY THE COMMISSIONER:

THAT'S 12:34:29.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. CAN YOU THINK OF ANYTHING ELSE YOU MAY HAVE DONE

WITH THAT ARM THAT DAY, ANYTHING ELSE YOU MAY HAVE THROWN OR LIFTED OR PUSHED OR PULLED?

A. PROBABLY THE STROLLER, MAYBE ANOTHER CHILD. I MEAN, I AM AT A POOL.

Q. I'M COMING TO LET YOU LOOK AT NUMBER NINE. THERE'S THE STROLLER. DID YOU JUST TAKE THAT CHILD OUT OF THE STROLLER, CARRY THE CHILD OVER, AND PUT IT INSIDE THE VAN?

A. THAT IS MY BABY, YES.

Q. OKAY. THAT'S NUMBER NINE, AND THAT IS 12:52:21 SECONDS.

A. WITH BOTH ARMS.

Q. THEN YOU PICKED UP THE STROLLER, DIDN'T YOU?

A. CORRECT.

Q. CARRIED THAT TO THE BACK OF THE VAN?

A. WITH THE RIGHT ARM.

Q. DID YOU CARRY IT TO THE BACK OF THE VAN?

A. WITH MY RIGHT ARM, YES.

Q. I'M NOT ASKING WHICH ARM; I'M ASKING DID YOU CARRY IT. IT'S A YES OR NO QUESTION.

BY MR. SMITH:

OBJECTION; ARGUMENTATIVE.

BY THE COMMISSIONER:

WHAT STAMP WAS THAT? I'M TRYING TO MAKE SURE THAT IT CORRESPONDS WITH THE VIDEO.

BY MR. HUFF:

YES, MA'AM. THAT'S NUMBER TEN. THAT'S 12:54:38.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. LET'S LOOK AT PICTURE NUMBER 11. IT'S 12:54:43 SECONDS. THERE YOU ARE LIFTING THE STROLLER, AND YOU MADE IT CLEAR YOU'RE LIFTING IT THERE WITH YOUR RIGHT ARM. THERE YOU'RE USING YOUR LEFT ARM, TOO, AREN'T YOU?

A. CORRECT.

Q. I'LL LET THE COMMISSIONER SEE IT. YOU'RE USING THE LEFT ARM. ALL RIGHT. PICTURE NUMBER 12 AT 12:54:43; THERE YOU ARE USING YOUR LEFT ARM TO LAY THE STROLLER IN THE VAN, AREN'T YOU?

A. CORRECT.

Q. SO THAT DAY YOU USED THAT ARM A LOT, DIDN'T YOU? TO CARRY CHILDREN, TO THROW CHILDREN IN THE POOL, THEN TO CARRY THE STROLLER AND LOAD IT IN THE VAN; IS THAT TRUE?

A. CORRECT.

Q. IN YOUR DEPOSITION -- AND HOPEFULLY WE WON'T HAVE TO GO TO IT. IF WE DO I'VE GOT IT IN FRONT OF YOU SO YOU CAN PULL IT AND LOOK AT IT. YOU SAID, ON PAGE 18 OF YOUR DEPOSITION, THAT AFTER THE DATE OF THE ACCIDENT THE HEAVIEST THING THAT YOU HAVE LIFTED WAS

YOUR CHILDREN, AND THAT'S NOT A TRUE STATEMENT -- YOU'RE BABIES, YOUR TWO SMALLEST CHILDREN. THAT'S NOT A TRUE STATEMENT, IS IT, 'CAUSE YOU THREW THAT BIGGER BOY, EITHER THE EIGHT- OR NINE-YEAR-OLD, IN THE POOL, DIDN'T YOU?

A. CORRECT.

Q. AND YOU CARRIED THE STROLLER AND LIFTED IT AND PUT IN THE TRUCK/VAN, TOO, DIDN'T YOU?

A. THE STROLLER IS NOT HEAVIER THAN TEN TO FIFTEEN POUNDS, BUT YOU ARE CORRECT.

Q. OKAY. AND I ASKED YOU WHEN YOU WENT TO THE POOL THAT DAY -- YOU CAN TURN TO PAGE 22 IF YOU WANT TO -- YOU SAID YOU JUST STOOD IN THE POOL, DIDN'T YOU? YOU SAID NOTHING ABOUT THROWING ANY CHILDREN IN THE POOL, DID YOU? PAGE 22. IS THAT A TRUE STATEMENT?

A. CORRECT.

Q. THAT'S WHAT YOU SAID, BUT THAT WASN'T A TRUE STATEMENT, THOUGH, WAS IT? YOU DID MORE THAN JUST STAND IN THE POOL; YOU THREW CHILDREN IN THE POOL, DIDN'T YOU?

A. CORRECT.

Q. OKAY. SO WHEN YOU SAID YOU JUST STOOD IN THE POOL, THAT'S A FALSE STATEMENT, ISN'T IT?

BY MR. SMITH:

OBJECTION; ASKED AND ANSWERED.

BY MR. HUFF:

NO, I DON'T THINK I'VE ASKED THE QUESTION IF IT WAS FALSE. I SAID THAT'S WHAT YOU SAID. NOW I WANT HIM TO VERIFY THAT WAS A FALSE STATEMENT THAT YOU GAVE.

WITNESS ANSWERS:

A. THAT IS TRUE.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. EVEN THOUGH YOU SWORE TO TELL THE TRUTH, YOU GAVE A FALSE STATEMENT. THANK YOU. IS THAT CORRECT?

A. I GAVE A MISTAKEN QUESTION (SIC), YES.

Q. OKAY. LOOK AT PAGE 22 FURTHER. YOU SAID GENERALLY YOU SAT IN THE KIDDIE POOL AND WATCHED THE CHILDREN. BUT YOU DIDN'T MORE THAN THAT; YOU INTERACTED AND THREW THEM IN THE AIR, CORRECT?

BY MR. SMITH:

AGAIN, YOUR HONOR, ASKED AND ANSWERED.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. LET'S GO TO PAGE 34; LET'S DO IT THIS WAY. YOU SAID YOU LIFTED NO OTHER CHILD OTHER THAN THE BABY CHILDREN, PAGE 34.

A. CORRECT. THAT IS WHAT I HAD STATED.

Q. THAT'S A FALSE STATEMENT, THOUGH, ISN'T IT?

A. I WAS MISTAKEN, YES.

Q. MISTAKEN. THAT'S -- ALL RIGHT. LET'S GO TO PAGE

35. I ASKED YOU, "AFTER JUNE 5TH OF 2015 HAVE YOU LIFTED ANYTHING HEAVIER THAN EIGHT OR TEN POUNDS?" WHAT ANSWER DID YOU GIVE ME?

A. THAT IS ---

Q. YOU SAID, "NO, SIR," DIDN'T YOU?

A. YES.

BY THE COMMISSIONER:

WHAT PAGE ARE YOU ON?

BY MR. HUFF:

PAGE 35.

CROSS EXAMINATION RESUMED BY MR. HUFF:

Q. DO YOU SEE THAT?

A. I SEE THAT. YOU ARE CORRECT.

Q. I'M CORRECT.

A. THAT WAS WHAT I HAD STATED.

Q. LET'S GO TO PAGE 36. I'M ASKING THIS QUESTION MORE THAN ONE TIME. LOOK AT PAGE 36. DID YOU NOT GIVE TESTIMONY THAT SINCE THE DATE OF THE ACCIDENT THE HEAVIEST THING THAT YOU LIFTED IS THE ONE-YEAR-OLD CHILD; YOU LAID HER DOWN. THAT'S ALL YOU DID; YOU LAID HER DOWN. THAT'S NOT A TRUE STATEMENT, IS IT, BECAUSE YOU LIFTED THIS BOY, DIDN'T YOU?

A. CORRECT.

Q. LET GO TO PAGE 36 AGAIN. YOU SAID YOU HAD LIFTED NO OTHER CHILDREN. BUT THAT'S ALSO FALSE, TOO, ISN'T

IT?

A. CORRECT.

Q. AND WHEN WE LOOK AT YOUR PLEADINGS HERE, THIS IS WHAT I -- THIS IS WHAT I CAME TO DEFEND. IF YOU'RE IN A CAR WRECK AND SOMEONE RAN A STOP SIGN AND HIT YOU, YOU'RE NOT GOING TO SUE THEM AND SAY THEY STOLE YOUR BICYCLE, ARE YOU? YOU GOING TO SAY THEY RAN A STOP SIGN AND HIT YOU; WOULD THAT BE A TRUE STATEMENT?

A. YES, SIR.

Q. YOU CAN CALL IT FOR WHAT IT IS, RIGHT?

A. YES, SIR.

Q. SO WHY DOES IT SAY HERE THAT YOUR LEFT ARM HIT A MOVING CREEL? IF THAT MACHINE IS MOVING AND IT'S RUNNING, HOW ARE YOU GOING TO HIT YOUR ELBOW ON IT, SIR? THAT'S WHAT THAT -- THAT'S WHAT I'M HERE TO DEFEND.

A. I DON'T KNOW.

Q. IT SAYS MOVING.

A. I TOLD THEM THAT MY LEFT ARM HIT THE CREEL. I DIDN'T SAY ANYTHING ABOUT IT MOVING. I SEE THAT'S WHAT'S WRITTEN. BUT THAT IS NOT WHAT I SAID.

Q. YEAH, OKAY, I JUST WANT TO MAKE SURE. THIS IS WHAT I CAME TO DEFEND, A MOVING CREEL. IS THIS THE PLASTIC THAT'S ON TOP OF THE CREEL THAT HAS THE YARN

ON IT AND IT'S UP HERE AND IT'S SPINNING AND IT'S COMING DOWN THE MACHINE AND IT'S FEEDING ONTO THE BOBBIN?

A. THAT'S THE PIECE THAT'S ATTACHED TO THE CREEL, YES.

Q. AND THAT'S WHAT YOU HIT?

A. NO, I HIT THE BLACK PLASTIC PIECE THAT THAT ATTACHES TO.

Q. SO THIS IS TAKEN OFF?

A. NO, SIR. I HIT THE CORNER OF THE BLACK PLASTIC PIECE 'CAUSE THE PIECE THAT I HAD HIT, THAT PIECE WAS PUSHED IN A LITTLE BIT FURTHER.

Q. I MEANT TO ASK YOU AND I DIDN'T -- I WANTED TO ASK A FOLLOWUP. WHEN WE TOOK YOUR DEPOSITION, THERE WAS A POSSIBILITY OF ANOTHER CHILD ON THE WAY. IS THERE ANOTHER ONE?

A. ON THE WAY, YES.

Q. WAY TO GO. DO YOU ALL KNOW IF IT'S A BOY OR A GIRL YET?

A. UNFORTUNATELY WE DO NOT KNOW YET.

Q. DON'T KNOW YET. CONGRATULATIONS. THEY'RE GOD'S GIFT TO YOU.

A. THANK YOU, SIR.

Q. I ONLY HAVE ONE, SO I'M VERY JEALOUS OF YOU FROM THAT STANDPOINT. LOOK AT PAGE 22, IF YOU WOULD, OF THE DEPOSITION. HAVE YOU GOT PAGE 22?

A. YES, SIR.
Q. LET ME TURN TO IT, IF I MAY. I THINK THAT'S WHERE IT IS. I ASKED YOU ON PAGE 14, "DO YOU NORMALLY SWIM OR JUST STAND IN THE POOL?" I'M LOOKING AT LINE 15. CAN YOU READ LINE 15 AND TELL ME WHAT YOUR ANSWER WAS.
A. "NORMALLY I JUST STOOD IN THE POOL."
Q. YOU JUST STAND IN THE POOL?
A. YES, SIR.
Q. DOES IT -- LET ME LOOK AT THAT AGAIN. THANK YOU, SIR. THEN I ASKED YOU ON LINE 19, "WHAT DID YOU DO WITH THE CHILDREN?" IF YOU COULD READ LINE 20 AND 21 AND TELL ME WHAT TESTIMONY YOU GAVE ME.
A. TWENTY AND TWENTY-ONE: "I USUALLY JUST SAT DOWN IN THE KIDDIE POOL WITH THEM AT WATCHED THEM PLAY."
Q. YOU DIDN'T GIVE ME ANY TESTIMONY ABOUT LIFTING THE CHILDREN OR THROWING THE CHILDREN OR ANYTHING LIKE THAT, DID YOU?
A. NO, SIR.
Q. NOW, AFTER YOU -- YOU TESTIFIED AFTER THE ACCIDENT THEY PROVIDED LIGHT DUTY FOR YOU?
A. YES, SIR.
Q. AND DID IT COME A POINT IN TIME THAT THEY QUESTIONED YOU ABOUT GOING BACK TO FULL DUTY, CONTINUING LIGHT DUTY, WHETHER YOU WOULD BE TERMINATED OR YOU WOULD

VOLUNTARILY RESIGN? OF COURSE, IF YOU VOLUNTARILY RESIGN, YOU'RE SUBJECT TO REHIRE. DID THEY NOT DISCUSS THAT WITH YOU?

A. YES, SIR.

Q. AND YOU SAID YOU DID NOT WANT TO VOLUNTARILY RESIGN, YOU WANTED TO BE TERMINATED; ISN'T THAT CORRECT?

A. CORRECT.

BY MR. HUFF:

THANK YOU. I HAVE NOTHING FURTHER.

REDIRECT EXAMINATION BY MR. SMITH:

Q. IN ORDER FOR YOU NOT TO BE TERMINATED, DID YOU HAVE TO BE RELEASED TO FULL-DUTY WORK?

A. YES, SIR.

Q. AND HAD ANY DOCTOR RELEASED YOU TO FULL-DUTY WORK?

A. NO, SIR.

Q. SO YOUR OPTION WAS TO SAY I QUIT OR THEM TO SAY THEY CAN'T ACCOMMODATE YOUR RESTRICTIONS ANY MORE; IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU DIDN'T SAY I QUIT, CORRECT?

A. NO, SIR.

BY MR. HUFF:

I OBJECT TO LEADING.

REDIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. YOU WERE WILLING TO CONTEND DOING THE LIGHT DUTY?

BY THE COMMISSIONER:

IF YOU CAN REPHRASE THE QUESTION SO THAT IT IS NOT LEADING.

REDIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. DID YOU QUIT?

A. NO, SIR.

Q. WERE YOU WILLING TO CONTINUE DOING LIGHT DUTY?

A. YES, SIR.

Q. YOU WERE ASKED ABOUT THE FORM 50. FIRST OF ALL, DID YOU SIGN THAT FORM 50, OR DID I SIGN THAT FORM 50?

A. YOU SIGNED THE FORM 50, SIR.

Q. HAVE YOU EVER SEEN THE FORM 50 BEFORE TODAY?

A. NOT BEFORE TODAY.

Q. BUT YOU WERE ASKED ABOUT THAT FORM 50, ABOUT THE MECHANISM OF INJURY. AND MR. HUFF, WE'VE BEEN THROUGH THIS A WHOLE BUNCH, BUT HE TOOK YOUR DEPOSITION, DIDN'T HE?

A. YES, SIR.

Q. LET ME GET YOU TO REFER TO PAGE 13 OF YOUR DEPOSITION. LET'S GO TO LINE 16, AND I'M GOING TO READ YOU WHAT MR. HUFF ASKED YOU, AND THEN I WANT YOU TO READ YOUR RESPONSES, OKAY?

A. YES, SIR.

Q. "AND YOUR DATE OF ACCIDENT, YOU WOULD AGREE, IS JUNE 5 OF 2015?"

A. "YES, SIR."
Q. "TELL ME HOW YOU GOT HURT THAT DAY."
A. "I WAS DOFFING A FRAME, AND I WENT TO PICK UP A BOBBIN THAT WAS STUCK. I DID NOT KNOW IT WAS STUCK. MY HAND SLIPPED OFF THE BOBBIN, AND MY ELBOW HIT THE CREEL ABOVE IT."
Q. YOU DIDN'T SAY ANYTHING ABOUT A MOVING CREEL, DID YOU?
A. NO, SIR.
Q. AND IS THAT ALSO WHAT YOU TOLD THE DOCTOR WHEN YOU WENT TO THE DOCTOR'S OFFICE?
A. YES, SIR.
Q. NOW, WHEN YOUR DEPOSITION WAS TAKEN, YOU DIDN'T KNOW THERE WAS ANY SURVEILLANCE, DID YOU?
A. NO, SIR.
Q. BUT LET ME GET YOU TO REFER TO PAGE 22 OF YOUR DEPOSITION. IN RESPONSE TO MR. HUFF'S QUESTION STARTING ON PAGE 21, DID YOU VOLUNTARILY TELL HIM YOU HAD BEEN TO THE POOL?
A. YES, SIR.
Q. AND, AGAIN, WHILE THIS SURVEILLANCE WAS GOING ON YOU WERE STILL WORKING?
A. YES, SIR.
Q. SO, WAS IT A DAY OFF WHEN YOU WENT TO THE POOL?
A. YES, SIR.

Q. AND YOU TOOK YOUR KIDS TO THE POOL?
A. YES, SIR.
Q. NOW, WHEN YOU WERE DOING THE LIGHT DUTY, WHAT WERE YOU DOING?
A. MOSTLY CLEANUP, BUT OCCASIONALLY I WOULD DOFF A FRAME.
Q. AND WHEN YOU DOFFED A FRAME, DID YOU HAVE TO PICK UP ONE OF THESE THINGS?
A. THE SMALLER ONE, YES, ABOUT THAT SIZE.
Q. OKAY. FOR THE RECORD, WHAT DO THEY CALL THIS?
A. A BOBBIN.
Q. OKAY. AND WHEN YOU WERE DOING LIGHT DUTY, YOU WOULD OCCASIONALLY HAVE TO PICK UP ONE OF THESE THINGS?
A. YES, SIR.

BY MR. SMITH:

YOUR HONOR, FOR -- I HATE TO ASK YOU TO PERFORM FOR THE RECORD, BUT I'D LIKE FOR YOU TO FEEL THE WEIGHT OF THAT.

BY MR. HUFF:

BILL, WE WEIGHED IT IF YOU WANT ME TO TELL YOU.

REDIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. I WANT YOU TO DO THIS WITH YOUR RIGHT HAND AND NOT YOUR LEFT HAND, OKAY, BUT PICK THAT UP FOR ME AND GIVE ME AN ESTIMATE OF WHAT YOU THINK THAT WEIGHS.
A. ROUGHLY EIGHT POUNDS.

Q. THESE ARE -- THIS IS AN INANIMATE OBJECT; IS IT NOT?
A. CORRECT.
Q. IF YOU'RE LIFTING ONE OF THESE, IT DOESN'T HAVE ARMS THAT GRAB ONTO YOU AND THAT KIND OF THING?
A. CORRECT.
Q. OKAY. I KNOW IT'S BEEN A WHILE, BUT YOU'VE SEEN THE VIDEOTAPE, CORRECT?
A. YES, SIR.

BY MR. HUFF:

I NUMBERED IT IN THE BOTTOM RIGHT CORNER, BILL.

BY MR. SMITH:

THANK YOU.

REDIRECT EXAMINATION RESUMED BY MR. SMITH:

Q. THIS PHOTO WE SEE HERE, WHICH IS AUGUST 6TH AT 11:34 AND 39 SECONDS, IS ITEM ONE?
A. CORRECT.
Q. THE NEXT ONE IS 11:34:40 SECONDS, ITEM TWO?
A. CORRECT.
Q. THE NEXT ONE IS AUGUST 6TH 11:34, STILL AT 40 SECONDS?
A. CORRECT.
Q. EXCUSE ME, THAT'S FOUR, BUT THREE IS ALSO AT 40 SECONDS, CORRECT?
A. YES, SIR.
Q. SO THIS SEQUENCE THAT TAKES PLACE AS SHOWN ON THESE

FOUR PHOTOGRAPHS -- EXCUSE ME, WE'LL GO TO NUMBER FIVE. THIS IS 11:34 AT 41 SECONDS?

A. YES, SIR.

Q. THIS SEQUENCE TAKES PLACE OVER A PERIOD OF THREE SECONDS, FROM 11:34:39 SECONDS TO 11:34:41 SECONDS?

A. CORRECT.

Q. THOSE FIVE PHOTOGRAPHS TAKE PLACE OVER A PERIOD OF THREE SECONDS?

A. YES, SIR.

Q. NUMBER SIX STARTS AT 12:34 AT 27 SECONDS?

A. YES, SIR.

Q. AND NUMBER SEVEN IS 12:34 AT 28 SECONDS?

A. CORRECT.

Q. THAT'S TWO SECONDS THERE SO FAR?

A. YES, SIR.

Q. 12:34 AT 29 SECONDS IS NUMBER EIGHT. SO THAT'S ALSO A PERIOD OF THREE SECONDS; IS THAT CORRECT?

A. YES, SIR.

Q. NOW WE'RE GOING -- NOW WE'RE OUT TO THE CAR AT 12:52:21 SECONDS FOR NUMBER NINE?

A. YES, SIR.

Q. AND THIS IS 12:54:38 SECONDS. SO THERE'S SOME TIME INVOLVED, I GUESS, IN WRANGLING UP KIDS AND GETTING THEM IN THE CAR?

A. CORRECT.

Q. BUT ALL IN ALL FROM THE BEGINNING WE STARTED 11:34 AT 39 SECONDS TO 12:54 AT 43 SECONDS. SO ALL THOSE PHOTOGRAPHS TAKE PLACE WITHIN AN HOUR AND 20 MINUTES?

A. ROUGHLY, SIR.

Q. WHEN YOU WERE GOING TO WORK AND WORKING LIGHT DUTY, HOW MANY HOURS A DAY WERE YOU WORKING?

A. EIGHT-HOUR SHIFTS.

Q. EXCUSE ME?

A. EIGHT-HOUR SHIFTS.

Q. MR. HUFF ASKED YOU ABOUT THOSE PHOTOGRAPHS, AND HE ASKED YOU IF IT WAS A TRUE STATEMENT THAT YOU USED YOUR ARM A LOT THAT DAY, AND I THINK YOU SAID YES. DID YOU USE YOUR ARM MORE OR LESS THAN YOU WOULD HAVE BEEN IF YOU HAD BEEN AT WORK THAT DAY?

A. MORE THAN -- I'D SAY IN THOSE I WOULD BE DOING IT LESS.

Q. DID YOU INTEND TO BE UNTRUTHFUL IN YOUR DEPOSITION?

A. NO, SIR.

BY MR. SMITH:

THANK YOU, SIR. NO FURTHER QUESTIONS.

RECROSS EXAMINATION BY MR. HUFF:

Q. DID YOU INTEND TO GET CAUGHT BEING UNTRUTHFUL?

A. NO, SIR.

Q. HOW TALL ARE YOU?

A. FIVE, NINE, SIR.
Q. THIS BLUE THING THAT HAS THE THREAD ON IT IS ABOVE YOUR HEAD OR RIGHT AT YOUR HEAD LEVEL, AM I CORRECT, ON THE MACHINE?
A. CORRECT.
Q. AND THAT THREAD COMES OFF OF THAT AND COMES DOWN TO THIS BOBBIN, CORRECT?
A. CORRECT.
Q. AND THE BOBBIN IS DOWN BELOW YOUR WAISTBAND, DOWN WHERE YOUR LEGS COME TOGETHER IN YOUR CROTCH AREA; IS THAT CORRECT?
A. CORRECT.
Q. AND YOU'RE PULLING UP FROM THIS LEVEL. GIVE ME JUST ONE SECOND, PLEASE. AND AT THE TIME THAT THIS ACCIDENT OCCURRED, ALL THE THREAD HAD GONE DOWN TO THE BOBBIN AND THIS BLUE -- WHAT DO YOU CALL THIS?
A. CREEL.
Q. IT WAS EMPTY?
A. CORRECT.
Q. AND IT WAS STILL ON THE MACHINE?
A. CORRECT.
Q. AND YOU HIT THIS WITH YOUR ---
A. NO, SIR. I HIT THE PIECE OF THE MACHINE THAT THAT GOES ON.
Q. AND IT IS A TRUE STATEMENT THAT SINCE THE DATE OF

ACCIDENT WHEN YOU WERE IN THE POOL YOU DIDN'T HAVE THAT BAND ON, DID YOU?

A. NO, SIR.

Q. AND YOU'VE WORN THAT BAND FOR THE FIRST TIME WITHIN THE LAST WEEK OR TWO, RIGHT BEFORE THIS HEARING, CORRECT?

A. THIS BAND?

Q. THAT BAND THAT YOU'VE GOT ON YOUR ARM, HOW LONG HAVE YOU HAD IT?

A. FOUR AND A HALF WEEKS.

Q. FOUR AND A HALF WEEKS. DIDN'T HAVE IT BEFORE THAT, DID YOU?

A. I HAD A DIFFERENT ONE.

Q. OKAY. AND YOUR EMPLOYER GAVE YOU AN OPPORTUNITY TO RESIGN THE JOB SO YOU COULD BE REHIRED, AND YOU CHOSE NOT TO DO THAT; IS THAT CORRECT?

A. CORRECT.

Q. THANK YOU.

BY MR. HUFF:

I DON'T HAVE ANYTHING FURTHER, COMMISSIONER.

REDIRECT EXAMINATION BY MR. SMITH:

Q. TO RESIGN THE JOB AND BE REHIRED YOU HAD TO WORK AGAINST YOUR RESTRICTIONS?

A. YES.

Q. THAT BAND WAS GIVEN TO YOU AT PHYSICAL THERAPY?

A. YES.

Q. RECENTLY?

A. YES, SIR.

BY MR. SMITH:

NO FURTHER QUESTIONS.

BY THE COMMISSIONER:

YOU CAN STEP DOWN AND SIT WITH YOUR ATTORNEY, SIR. ANYTHING FURTHER FROM THE CLAIMANT?

BY MR. SMITH:

OH, I'M SORRY, YOUR HONOR. ALONG WITH OUR APA SUBMISSIONS AND THE DEPOSITION OF DR. PLYMALE, THAT'S OUR CASE.

BY THE COMMISSIONER:

ANY WITNESSES ON BEHALF OF THE DEFENDANT?

BY MR. HUFF:

I'M SORRY, COMMISSIONER, I WAS NOT PAYING ATTENTION.

BY THE COMMISSIONER:

ANY WITNESSES ON BEHALF OF THE DEFENDANTS?

BY MR. HUFF:

NO, MA'AM. I THINK THAT THE CROSS EXAMINATION WILL BE SUFFICIENT FOR US.

BY THE COMMISSIONER:

ALL RIGHT. THAT CONCLUDES THIS HEARING. I NEED TO ASK YOU ALL A FEW QUESTIONS. I MAY REOPEN

THE RECORD WITH REGARDS TO THESE PHOTOS.

(OFF THE RECORD)

BY THE COMMISSIONER:

ALL RIGHT. WE ARE BACK ON RECORD JUST FOR THE PROCESS OF IDENTIFYING THE TWO PIECES OF EVIDENCE THAT HAVE WENT IN AND WHAT THE PURPOSES ARE, OR, I GUESS, WITH REGARDS TO THE PICTURES, WE NOW HAVE SMALLER PICTURES THAT CAN BE PUT IN THE COMMISSION'S FILE INSTEAD OF THE BLOWUPS. SO, PUT INTO EXHIBIT FOR THE DEFENDANTS IS THE PACKET OF PHOTOGRAPHS THAT WAS MENTIONED DURING THE HEARING. THAT IS PHOTOGRAPHS ONE THROUGH TWELVE THAT IS MARKED ON THE TOP OF EACH PHOTOGRAPH, BUT, AGAIN, THEY ARE BEING PUT IN AS ONE EXHIBIT. THE DEPOSITION OF MR. WIER WAS OPENED DURING THE HEARING AND USED FOR PURPOSES OF CROSS EXAMINATION AND DIRECT. IT IS STILL LIMITED TO THAT PURPOSE, PURSUANT TO MY POST CONFERENCE WITH THE ATTORNEYS. IS THERE ANYTHING FURTHER THAT EITHER OF YOU WOULD WISH TO ADD TO THE RECORD AT THIS TIME?

BY MR. HUFF:

NOTHING.

BY MR. SMITH:

NOTHING FROM ME.

BY THE COMMISSIONER:

ALL RIGHT. THEN THAT COMPLETES THE RECORD.

(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS CONCLUDED AT THE HOUR OF 1:25 P.M.)

South Carolina Workers' Compensation Commission
WCC File # 1510187

Shawn Wier, Employee, Claimant, vs. AGY Holdings Corp., Employer, Great American Alliance Insurance Company, Carrier, Defendants.	)	Deposition of **Shawn Wier**

Deposition of Shawn Wier, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 10:45 a.m., Monday, November 16, 2015, at Chappell, Smith & Arden, 322 Laurens Street NW, Aiken, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR-M

Appearances

For the Employee/
Claimant:

William L. Smith, II, Esquire
Chappell, Smith & Arden
1510 Calhoun Street
Columbia, SC 29201

For the Employer/
Carrier:

E. Ros Huff, Jr., Esquire
Huff & Hapeshis, LLC
7244 Woodrow Street
P.O. Box 1935
Irmo, SC 29063

Reported By: Barbara P. Scott, CVR-M

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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. Social Security number, if present, has been partially or fully redacted or blacked out.

Stipulations

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

Whereupon,

Shawn Wier, 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: Shawn Alan Wier.

Examination

By Mr. Huff:

Q Mr. Wier, my name is Ros Huff, and I'm the attorney that represents AGY. I've known your attorney for two decades or longer, so -- He's a very good attorney. I consider him a friend and a very honest individual.

Mr. Smith: Thank you.

Mr. Huff: And I'll put that on the record, don't mind it, just because I'm not under oath, so you can't hold me to it.

Q But I'm here today in a deposition to learn facts about you. I'm not here to trick you, but you need

to listen to my questions, okay?
A Yes, sir.
Q And then if it calls for a yes/no answer, I need for you to give me a yes/no answer, but you've got a right to explain your answer if you want to. You don't have to. Okay?
A Yes, sir.
Q All right. You're doing good. And try to avoid saying uh-huh or uh-uh because they sound so much alike and can be misinterpreted, and Bill and I will remind you when you do that, okay?
A Yes, sir.

Mr. Huff: And, for the record, prior to going on the record, there was a discussion about reading and signing, and reading and signing has been waived.

The Deponent: Yes, sir.

Q All right. I'm showing that you were born on [redacted].
A Yes, sir.
Q How old are you currently?
A Twenty-eight years old, sir.
Q I'm showing an address for you to be 2017 Honors Circle, Graniteville, South Carolina 29829. Is that correct?

A Yes.
Q You still at that address?
A Yes.
Q How long have you been at that address?
A A little over a year now, sir.
Q All right. Are you married?
A Yes.
Q How long have you been married?
A Eight years.
Q Eight years. Do you have any children?
A Six.
Q My goodness. Either you're a Catholic or an overzealous Baptist, one of the two. All right. I don't need their names or anything, but can you just give me the ages?
A Eight years old; seven years old; six years old; three years old; two years old; and one year old.
Q God bless you. I've only got one. All right. See if I got this right. I'm showing that at the time of the accident you were making $17.62 an hour.
A 55 an hour.
Q All right. 17.55. Okay. How many hours a week were you working?
A Before the injury, I would do overtime, which would be 48 to 50.

Q 48 to 50 hours.
A And then after the injury, it was all of 40.
Q Are you still working at AGY?
A No, sir.
Q When this accident occurred, you were still doing your probationary period?
A Probationary period, yes, sir.
Q Are you working now?
A No, sir.
Q Do you know when you last worked at AGY?
A August 19th.
Q Of 2015?
A Yes, sir.
Q And this accident occurred on June 5th, 2015?
A Yes, sir.
Q I remember that because that's my older brother's birthday.
A Well, happy birthday.
Q Yeah, to him. Mine's July. Here we go. Let's see what else we got here. Can you give me your height and weight?
A Five-foot-nine. 200 pounds.
Q All right. Since the date of accident, June 5th of 2015, has your weight fluctuated much? Like have you put on more weight, lost more weight or stayed

about the same?
A Stayed the same.
Q All right. Can you tell me how far you went in school?
A I went to tenth grade and got my GED.
Q And I also show that you were in the military. Correct?
A Yes, sir.
Q What branch?
A Army.
Q And how long were you in the Army?
A Almost eight years.
Q Can you tell me why you left the Army?
A Medical discharge.
Q All right. And what was the basis for the medical discharge?
A Head injury.
Q Tell me what happened.
A On December 1st of 2011, while loading up a vehicle in Afghanistan, a fuel pump tongue bar landed on my head.
Q When you left the military, were you assigned any type of impairment or disability?
A Yes.
Q All right. What type of disability did you get

from the military, what percentage?
A Right now I am at a temporary hundred percent.
Q To what body part?
A My head.
Q Is it your head or brain, or what is it, or both?
A TBI/PTSD and --
Q TBI -- I know what that is -- and PTSD?
A Yes, sir. And chronic migraines.
Q All right. Do you get a check from the military for disability?
A Yes.
Q How much?
A 3500 a month.
Q While in the military, did you ever have any injury to the left arm?
A Yes.
Q Tell me what injury or disability you had to the left arm.
A I had an injury to my left shoulder.
Q Tell me how that happened.
A Too many pushups.
Q Too many pushups. Back in the early '70s, I got drafted to go to Vietnam, and they brought me to Fort Jackson, 90 of us. Eighty-eight went in. Two went home. I was one of the two, and I did not

argue. They thought I wasn't physically fit to be in the military, and I did not disagree. Okay. So, your injury to the left arm or shoulder was because of the pushups?

A Yes, sir.

Q Okay. Did they give you any type of percentage to the left arm?

A No, sir.

Q Prior to this accident of June 5th of 2015, had you ever had any type of injury to the left arm or elbow?

A No, sir.

Q Do you have any college education?

A No, sir.

Q While working for AGY, did you have any side jobs or second job?

A No, sir.

Q This will be redacted from the transcript. So, no one can pick up the transcript and get this private information, but I'm going to ask you the question. I'm showing your Social Security number to be XXX-XX-XXXX. Is that correct?

A Yes, sir.

Q And what city were you living in when you got that?

A The Social Security number?

Q Yes.
A I was born in Jacksonville, Florida.
Q All right. So, you got that in Jacksonville, or did you get it when you were living in South Carolina?
A I got it when I was in Florida.
Q Okay. All right. I'm showing on the Form 50 which was filed by your attorney requesting a hearing a home phone of 757-867-3938. What state was that issued in?
A Virginia.
Q Virginia. Okay. Do you own any vehicles?
A Yes.
Q How many?
A Two.
Q And what I need to know is the year, make, the model, and the color.
A 2007 Honda Odyssey, silver. A Dodge Ram.
Q What year?
A 2004, I believe.
Q All right. What color?
A It's silver.
Q Silver. Any other vehicles?
A No, sir.
Q Do you own any watercraft, jet ski, boat or

anything like that?
A No, sir.
Q Do you own any other vehicle that is propelled by a motor that you can drive on the road? That could be a scooter, a four-wheeler, a motorcycle, anything like that.
A No, sir.
Q Of the -- the children that you have, how many of them live at your home?
A All of them.
Q Okay. I may have asked you this earlier. How long -- How many years have you been married?
A Eight.
Q Eight?
A Yes, sir.
Q All right. Does your wife work?
A No, sir.
Q If you say that to her, she's going to disagree. Does she give childcare to the children?
A She will disagree.
Q Yeah, she will disagree. That's hard work.
A She says her job is 24/7, 365 days of the -- out of the year.
Q Yes, it is, absolutely. And -- I've got it in the medical records, but are you left- or right-handed?

A I am right-handed.
Q Can you tell me why you're currently not working?
A I've been offered several jobs, but they would not hire me while my arm was injured. I have enrolled in college in the meantime so that I can better my education.
Q All right. Where are you enrolled?
A Aiken Tech.
Q And when did you get enrolled at Aiken Tech?
A November 2nd.
Q Of 2015?
A Of 2015.
Q How many hours are you taking this semester or quarter?
A Hours, I'm not sure.
Q How many courses?
A Four. Starts in January.
Q So, you're not attending right now, then?
A No, sir.
Q I forgot to tell you at the beginning. If at any time you're uncomfortable and you need to stand or get up or take a break, even if it's a bathroom break, just let us know, okay?
A Yes, sir.
Q All right. Are you capable of driving?

A Yes, sir.
Q And the date of accident was June of this year, which is about five and a half months ago. Have you left the state of South Carolina since the accident?
A No, sir.
Q Since the accident, have you left the Aiken area, Graniteville area, or Aiken County?
A Yes.
Q Where have you gone?
A Augusta.
Q All right. Have you gone anyplace else? Like have you been to the mountains or the beach or anything like that?
A No.
Q And your date of accident, you would agree, is June 5th of 2015?
A Yes, sir.
Q Tell me how you got hurt that day.
A I was doffing a frame, and I went to pick up a bobbin that was stuck. I did not know it was stuck. My hand slipped off the bobbin, and my elbow hit the creel above it.
Q So, you were pulling when your hand slipped off?
A Yes, sir.

Q And when your hand slipped off, which direction were you pulling?
A Up.
Q You were pulling up. And tell me what happened again.
A My hand slipped off the bobbin, and my elbow hit the creel.
Q Which one?
A My left elbow hit the creel.
Q All right. I am showing as a result of this accident of June 5th to your left arm, that on June 6th, the next day, you went to Aiken Regional Medical Center.
A It was technically the same day because I was working the night shift, --
Q Right.
A -- but yes.
Q All right. So, you went there within 24 hours?
A Yes.
Q And then I'm showing that you went to the Moore Center for Orthopaedic Treatment and saw Dr. Mickey Plymale on June 15th.
A Yes, sir.
Q All right. Have you seen any other medical practitioner other than those two medical

facilities?
A Augusta, the VA hospital uptown.
Q All right. So, you've been to Augusta VA?
A Yes, sir.
Q How many times have you been to the Augusta VA because of this injury?
A Three times.

Mr. Huff: Bill, it's very hard to get those records from them, especially being out of state. Can you get those for me?

Mr. Smith: I'm trying.

Mr. Huff: Okay.

Mr. Smith: I've got the MR -- They did an MRI -- You want this on the record?

Mr. Huff: We can go off the record for a minute.

[Off the record at 11:03 a.m.; back on the record at 11:05 a.m.]

Mr. Huff: We were off the record for a minute for -- Mr. Smith was showing me a copy of the MRI that was performed, and I'll get a copy before we leave.

Examination Continues

By Mr. Huff:

Q I always ask this when I go off the record because many years ago I had somebody say that while off the record I either asked them a question or they volunteered information, which wasn't true. So, while we were off the record and I had a discussion with your attorney and he showed me an MRI, did we have any discussion at all?
A No, sir.
Q I didn't ask you any questions, did I?
A No, sir.
Q You didn't volunteer any information, did you?
A No, sir.
Q So, this is our first communication since we went off the record and came back on the record?
A Yes, sir.
Q All right. We're doing good, then. We're going to be finished in about 30 minutes, okay?
A (Nods head.)
Q And it's your testimony that prior to June 5th of 2015, you never had any type of injury to your left elbow?
A No, sir.
Q Never had any impairment to your left elbow?
A No, sir.
Q Never had any treatment to your left elbow?

A No, sir.
Q All right. Can you tell me, currently, now as we sit here at the table, what symptoms, if any, are you having with your left elbow?
A I feel a pulsing, irritating pain, and it hurts to stretch my arm out, and I can't lift anything. I'm very careful not to.
Q Since this happened on June 5th of 2015, you worked for how much longer before they let you go, a couple of weeks, or how long would you say?
A They let me work for another month and a half.
Q All right. And just, again, so I can put it here, when did you leave?
A I was released from AGY on August 19th.
Q And would it not be a true statement that while you continued to work, that was light duty?
A Yes, sir.
Q What would be the heaviest thing since the accident that you've lifted?
A I'd have to say my one-year-old.
Q When was that? Approximately the month would be all I need.
A This month.
Q All right. Which would be November?
A Yes, sir.

Q Why were you lifting your one-year-old?
A To lay her down to go to sleep.
Q All right. How much do you think she weighs, approximately?
A Ten to 15 pounds.
Q Can you think of anything else that you may have lifted that would be heavier than that since the date of accident?
A No, sir.
Q Does your wife work?
A No, sir.
Q That's right. I asked you that earlier. Other than your military disability, do you have any other source of income?
A No, sir.
Q Have you taken any vacations this year?
A No, sir.
Q Do you have any brothers or sisters?
A Yes, sir.
Q How many?
A I have three brothers and -- one, two -- three sisters.
Q Where do you sit in the hierarchy of the six? Are you the youngest or --
A I'm the oldest.

Q The oldest. Tell me how this injury has affected your left arm.
A It has made normal life at home difficult.
Q All right. How?
A I have six children that I have to take care of. Even changing diapers on the two smallest ones is relatively difficult. And trying to get a job, a lot of places won't actually hire me until my arm gets better.
Q These children -- because you told me that you lifted this one child that's between ten and 15 pounds.
A Mm-hmm.
Q Since the date of accident of June 5th of 2015, have you lifted any other children?
A No, sir.
Q Are you able to go to the grocery store and get groceries?
A Yes, sir.
Q What would be the heaviest bag of groceries you think you've lifted since the date of accident?
A I generally don't use my left arm.
Q All right. And I know 15 pounds isn't that heavy. When you lift the child, do you -- do you use one arm or two arms, or how do you lift the child?

A I use both my arms.
Q Both arms. Okay. Are you able to dress yourself and do your daily hygiene?
A Yes, sir.
Q Do you do any housework?
A Vacuuming. I vacuum.
Q Vacuum. Okay. What's your address? Is that -- We talked about earlier, which was Honors -- 2017 Honors Circle. Is that a house, mobile home, apartment? What is that?
A It's a house.
Q All right. Are you renting or buying?
A Buying.
Q Is it on acreage or just, like, on a lot?
A On a lot.
Q Is it in a subdivision?
A I believe so, yes.
Q All right. Do you know the name of the subdivision?
A Horse Creek.
Q Okay. What city?
A Graniteville.
Q Okay. Do you have a lawnmower?
A Yes, sir.
Q What type?

A Push mower.
Q Since this accident of June 5th, have you cut the grass?
A Yes, sir.
Q How many times?
A Three or four times, I believe.
Q Okay. Have you done any other type of yard work?
A No, sir.
Q Have you done any type of repair work in or outside of the house?
A No, sir.
Q Can you wash your car?
A Haven't tried. I usually go to car washes.
Q That's why God invented car washes. I thoroughly agree with you. And you've taken no vacations, right?
A No, sir.
Q Have you engaged in any type -- These are just standard questions.
A Mm-hmm.
Q Have you engaged in any type of recreational activity? That could be -- Let me give you an example of recreational activity. You could play horseshoes. You could go play golf. You could go swimming. You could ride a bike. You see what I'm

saying? I'm trying to find -- Or recreational to some people is walking. Have you done any type of recreational activity since June 5th?

A During the summer, we went to the pool.

Q What pool?

A The YMCA pool --

Q All right.

A -- in Graniteville.

Q How many times have you done that?

A Since the injury?

Q Mm-hmm.

A We usually went once a week. So, eight to ten times.

Q Did you swim or just stand in the pool?

A Normally I just stood in the pool.

Q That's about me, too, at my age. All right. Did you interact with the children at all?

A Yes.

Q What did you do with the children?

A Usually just sat down in the kiddie pool with them and watched them play.

Q Of the children, -- you've got a good group there -- the one- and two-year-old and three-year-old do not attend school; is that correct?

A Yes.

Q How about the six, seven, and eight? Do they attend school?
A Yes.
Q How do they get to school?
A They ride the bus.
Q All right. Okay. Please tell me some of the places where you've applied for work and where they've offered you jobs.
A I had a job offer at a -- I'm trying to think of their name.
Q Take your time. We're in no hurry.
A I don't remember their name exactly, but they do surveys and stuff out in Columbia.
Q South Carolina?
A Yes, sir.
Q You don't remember the name of the company?
A No, sir.
Q All right. Where else?
A I also had a job offer at the Home Depot here in Aiken, but they needed me to be able to lift stuff up to a certain pound, so --
Q Did you apply for work there?
A Yes, sir.
Q All right. Where else, if anywhere else?
A Those are the only two.

Q Okay. All right. I'm showing that you worked at AGY approximately about six or seven weeks. Does that sound about right?
A April 27th or 28th --
Q 28th is what I have.
A -- till August 19th.
Q All right. August 19th. All right.
A It's more like 12 weeks.
Q All right. But if you were hired -- And let's do it this way. Let me rephrase the question. I'll rephrase the question. You went to work on April 28th, and the accident occurred on June 5th, so we're looking at -- yeah, June 5th. We're looking at May, 30 days, -- So, about 37 days, 40 days of working before the accident, correct?
A Yes, sir.
Q All right. Now, during those five or six or seven weeks that you worked at AGY before the accident, you said you were working overtime?
A Yes, sir.
Q And you were working about ten hours overtime a week?
A Roughly.
Q Okay. And it could be 11, it could 12, it could be nine or eight, but approximately --

A Yes, sir.
Q -- ten hours of OT. And you got paid time and a half?
A Yes, sir.
Q So, you were making somewhere around $25 an hour overtime?
A Yes, sir.
Q All right. So, for ten hours overtime, that's another 250 a week?
A Yes, sir.
Q Can you tell me, before you went to work for AGY, where did you work?
A G4S Security Company.
Q G --
A G4S Security Company.
Q And how long did you work there?
A A month.
Q How much were you making an hour there?
A 10.50.
Q How many hours a week were you working, approximately?
A A week?
Q Yeah, a week.
A Sixty to 70.
Q Why did you quit?

A Low pay.
Q Low pay and long hours?
A Yeah. Yes, sir.
Q Okay. And maybe I asked this and I just don't remember. When were you discharged from the military?
A September 14th of 2014.
Q Where did you work from September 14th, 2014 until you went to work for a private employer?
A I didn't work until I started working with G4S in December.
Q All right. Was there any witness to your accident?
A No, sir.
Q Who was your supervisor when you were working there at AGY?
A Kevin is his first name. I don't remember his --
Q Okay.
A I don't remember his last name.
Q That's good enough. Do you know when you reported it?
A I believe it was around 10-something at night.
Q Same day?
A June 5th of 2015.
Q So, you reported it on the same day that you got hurt?

A Yes, sir.
Q What, if anything, did they do for you? By that I mean, did they take you to the infirmary, did they take you to the nurse? What did they do?
A For roughly two hours, he put me on light duty, and then I was worried about the swelling and the pain. So, then he sent me to the emergency room.
Q At the hospital in Aiken?
A Yes, sir.
Q Did you come in the next day to see a nurse or anybody at the plant?
A I had to bring some paperwork in to her.
Q All right. Did you see Ann Tyler?
A Yes.
Q Were you union at that time?
A No, sir.
Q Good for you. I grew up in a union family, and I'm not a big union guy at all. Okay. And basically what you were doing for AGY was doffing type of work?
A Yes, sir.
Q And what shift did you work?
A Charlie shift.
Q All right. What time did you come in and what time did you go home?

A It's a rotating shift.
Q All right. So, --
A So, they're eight-hour shifts. I believe it was eight till three or four.
Q All right. Is that eight a.m. or p.m.?
A Eight a.m.
Q So, about --
A They had three -- three shifts of eight-hour shifts, --
Q All right.
A -- morning, afternoon, and at night.
Q And you'd rotate?
A And we'd rotate.
Q Okay. Do you know what day of the week this June 5th was?
A I'd have to look on a calendar.
Q Okay. After this happened on June 5th, do you remember whether or not you were out of work for a day or two because of a holiday, a weekend or because of the injury?
A I was out of work for four days, I believe, because I was waiting on a drug test to come back to make sure I wasn't on any drugs.
Q Got you. That's a question I was going to ask you. I always ask. Have you ever been arrested?

A No, sir.
Q Neither have I.
A Doing good so far.
Q I'm not saying I didn't break any laws. I've just never been arrested. Have you ever been in a car wreck?
A Yes, sir.
Q Were you a driver or a passenger?
A Driver.
Q What state would that be?
A Kansas.
Q When was that, what year?
A 2011 or 2012, I believe.
Q Were you a driver or passenger? Driver, you said, right?
A I was the driver, yes, sir.
Q Tell me what happened.
A I was on my way to PT formation in the morning. I was in a little bit of a rush. I didn't see a car in front of me, and I rear-ended them.
Q So, you were at fault?
A Yes, sir.
Q Have you ever been -- ever been involved in a lawsuit, where you sued somebody or somebody sued you?

A No, sir.
Q Other than the disability that you get from the military, have you ever had any other person pay you, whether it be a person or insurance company or whatever, because of injuries that you may have sustained?
A No.
Q You just haven't had an exciting life, have you? Now, I think you said it earlier. Have you ever left the United States?
A Yes.
Q Where did you go?
A Germany; Ireland; Iraq; Afghanistan; Turkistan.
Q Germany, Ireland, -- So, basically Europe and the Far East?
A Yes, sir.
Q All right. How many tours did you do in the Far East?
A Two.
Q What years?
A 2008 to 2009 and all of 2011.
Q And where were you in the Far East?
A Irag 2008 to 2009 and Afghanistan for 2011.
Q One thing I didn't ask you that I need to ask you, what was your rank?

A E5.
Q And for those that read this, is that like a sergeant, or what is E5?
A It's a sergeant, noncommissioned officer.
Q Okay. The medicals that I have right now after the June 5th accident, I show you went to Aiken Regional Medical Center after midnight, so you were there on June 6th.
A Yes, sir.
Q Then I'm showing you saw a Dr. Mickey Plymale over at Moore Center for Orthopaedics on June 15th and July 6th. Does that sound about right?
A Yes, sir.
Q And then you went to the VA?
A Yes, sir.
Q Any other place that you may have gotten treatment, physical therapy or anything?
A No, sir.
Q All right. Has your attorney sent you anywhere?
A No.

Mr. Huff: And, Bill, you're still trying to get the VA records?

Mr. Smith: Mm-hmm. Yes.

Mr. Huff: Let me see. I maybe got it right here. I show the hearing is December

3rd, about -- not long from now. We got Commissioner James. I don't see right now, Bill, any need to take a deposition, but, you know, if we have to, over in Georgia and being the federal government, they're kind of difficult sometimes. So, when you get what you get, let me know, and --

Mr. Smith: I'll send it to you.

Mr. Huff: I know you will, buddy.

Q Are you currently taking any types of medication for this injury?

A No, sir.

Q Has any doctor or medical facility that you've seen recommended surgery?

A No, sir.

Q What are the doctors telling you?

A I have a -- an appointment scheduled on December 31st to see occupational therapy.

Q Of this year?

A Yes, sir.

Q And this is through the federal government, VA, or where?

A Through the VA.

Q And that's for physical therapy?

A Occupational therapy.

Q Occupational.
A That is where they will determine what kind of treatment I need.
Q All right. So, would December 30th be your next appointment?
A Yes, sir.
Q Okay. Other than the MRI that your attorney showed me, have you had any other type of testing, CT scans, x-rays, anything that you can think of?
A The x-rays from the emergency room and the MRI. That's all.
Q Have you made any work attempts other than -- I know you went back to work for my employer for a while, until they let you go. Since leaving AYP, have you made any -- actually gone to any work sites and worked anywhere?
A No, sir.
Q If the employer would be willing to send you for an evaluation to have you checked out, would you be willing to go?
A Yes, sir.
Q What I'm going to do is, when the deposition's done and it's typed up, I'm going to give it to my adjuster, insurance people, and talk to them. That's why I'm here today, trying to find some

things out. And, from what you're telling me, is that after you had this injury, you have been able to lift, but it's the small child that was -- the one that's less than one year old. Is that correct?

A Yes, sir.

Q And you said your symptoms in your -- your left arm is you have pulsing pain and it hurts to stretch the arm and you can't lift anything and that the heaviest thing that you've lifted since the date of accident is your one-year-old in November, you laid her down, and she weighed about ten to 15 pounds?

A Yes, sir.

Q Have you done any type of exercise program where you may have lifted anything else?

A No, sir.

Q Other than the smallest child, have you lifted any other child or any other children?

A No, sir.

Q What hobbies do you have?

A I don't have any hobbies.

Q Do you hunt or fish?

A No, sir.

Q After the date of accident of June 5th, have you been on any type of watercraft? It could be a jet

ski or a boat or anything like that.

A No, sir.

Q After June 5th of this year, have you engaged in any type of sporting activity? That could be golf, putt-putt, horseshoes. Any sporting activities?

A No, sir.

Q After June 5th of this year, have you been involved in any other accidents?

A No, sir.

Q After June 5th of 2015, -- so, after that date -- have you had any other type of injury?

A No, sir.

Q How did you get here today?

A I drove.

Q After June 5th of this year, have you been on any airplanes?

A No, sir.

Q After June 5th of this year, -- because you did make mention you lifted this child that was about eight to ten pounds -- have you lifted anything heavier than that?

A No, sir.

Q I'm not trying to get too personal. You got any children on the way?

A Possibly.

Q Possibly.
A We don't know yet.
Q You haven't learned what causes it yet?
A Oh, no, we learned. We learned.
Q Now you got my curiosity up. How many boys do you have and how many girls do you have?
A I have two boys and four girls.
Q You got four weddings to pay for.
A I don't want to talk about it.
Q I'm sixty-five, and I've got one girl who's twenty-three. I was late having children. I don't know. You'd think by now you'd know what would cause it.
A Oh, yes, sir.
Q Okay. Are you scheduled to leave the state of South Carolina? Other than going to Augusta, Georgia, are you scheduled to leave South Carolina?
A No, sir.
Q This is a standard question I ask everybody. This is -- It's an open-ended question where you get to say a few things to me. Tell me what a typical day is for you. And let me give you an example. You can say a typical day for me is I get up at 7:30 or 8 or 6:30 -- I don't know -- I get up, you know, I get a cup of coffee, get breakfast, then I take a shower, get my clothes on and brush my teeth, I

comb my hair, you know. Yeah, I know. I'm the same way. I don't have a receding hairline. I just got a long face. I then go out and sit on the porch or I take my children to school, or when my children come home from school, I make them a snack. I know your wife's there and doesn't work. You know, I go to the mall. I think you told me earlier you went to the pool about eight or nine or ten times, a dozen times, whatever. Just tell me now, what is a typical day for you?

A A typical day for me is getting up at 5:30 in the morning to get my children up for school. Once I see them onto the bus, I lay back down till anywhere between eight and ten, depending on how my baby feels that day, and I'll --

Q That's the small child, right?

A That's the one-year-old.

Q All right.

A When she wakes up, we all generally wake up.

Q Right.

A Usually my wife will get her up, but occasionally I do, as carefully as I can. I'm using my right arm to do everything I can with her.

Q That's your dominant arm anyway, right?

A Yes, sir.

Q All right.
A We then spend the day taking care of the kids, giving them food, watching TV, trying to teach them stuff before they start going to school.
Q Right.
A Once my children get home from school around 3, 3:15, depending on how the bus feels, --
Q Right.
A -- we give them snacks and we help them with homework. And then, once they're done with that, they help clean up the house, because babies are babies. After that, we have dinner anywhere between five and seven. My oldest three go to bed around 8, 8:30. Then we pretty much wait till the babies fall asleep, anywhere between 11 and 1.
Q And you get up the next day and start it over?
A Yes, sir.
Q Okay.
A Trust me, when they take naps, we take naps.
Q I don't blame you. I don't blame you. Do you own any guns?
A Yes, sir.
Q How many?
A One.
Q What type?

A Handgun.
Q What caliber?
A .40.
Q I think you told me earlier you went to the pool at the YMCA. Are you a member of the YMCA?
A We were, but since I lost my job, we've had to reduce some things for finances, --
Q All right.
A -- so we are not now.
Q Do you think you're capable of working light duty?
A Light duty, yes.
Q Tell me what you -- In your words, -- I know what I've got in the medical records, and you did -- you were kind enough to tell me some of the symptoms that you're having. Tell me what you think you can or cannot do right now with your arm, because this is your left arm, not your dominant arm.
A Yes, sir. If I was still working at AGY, for example, --
Q Yes.
A -- I would still be able to do doffing because all I did was switch sides. So, I'd go down the frame on the other side and use my right arm instead. Cleaning up, which was sweeping. Tearing down boxes. Taking out trash. Simple tasks.

Q All right.
A Nothing heavy.
Q All right.
A They have a machine that's called a Beco, which is the heavier yarn. They -- When I was doing light duty, I did not touch those.
Q I know you've got a -- some type of a black strap on your arm.
A Yes, sir.
Q Was that prescribed or did you just go buy that?
A It was prescribed by the doctor in Columbia.
Q The VA doctor?
A No. In Columbia, South Carolina.
Q Okay. Which would have been?
A Dr. Plymale.
Q Plymale. Over at Moore?
A Yes, sir.
Q Have you had any injections to your arm?
A I had injections by Dr. Plymale.
Q I'm seeing that.
A They did not help.
Q And Dr. Plymale put you on light duty?
A Yes, sir, until he got the results of the MRI which he never was able to do.
Q Had he placed you on light duty?

A Dr. -- Yes, Dr. Plymale.
Q That's what I'm seeing. Did you injure any other part of your body other than your left arm?
A No, sir.

Mr. Huff: Bill, could I see that MRI one more time, if you don't mind?

Mr. Smith: Mm-hmm.

Mr. Huff: Thank you, buddy. Thank you very much.

Q Had you ever had any prior problem with your left arm or elbow before this accident of June 5th, 2015?
A My left elbow, no.
Q Had you ever had any type of medical treatment to the left elbow prior to June of 2015?
A No, sir.

Mr. Huff: Thank you, Bill.

Mr. Smith: Mm-hmm.

Mr. Huff: Can we go off the record for a minute.

[Off the record at 11:43 a.m.; back on the record at 11:48 a.m.]

Mr. Huff: All right. We're back on the record. We went off the record for a minute

to make copies of certain documents, medical reports and other documents. We have agreed to adjourn the deposition so I can have a conversation with my client. Basically my understanding is, from the claimant by and through his attorney, Bill Smith, that what they're looking for is at least get him back to the doctor for an IME to see what's wrong with the arm, and plus the issue of temporary total from the day that he went out of work to present. He indicated he's not capable of working and has not worked since leaving the employment. I will discuss that with my client. And this matter is scheduled for a hearing, so we'll try to be as expeditious as we can. Anything else, Bill, you can think of?

Mr. Smith: Go ahead. I just --

Mr. Huff: Go ahead.

Mr. Smith: Let me ask one or two questions real quick, --

Mr. Huff: Go ahead.

Mr. Smith: -- just in case we don't come back.

Examination

By Mr. Smith:

Q You indicated that you had been offered jobs at Home Depot and at -- with a surveying company, but then you also said that they wouldn't let you work because you weren't able to work yet. Is that correct?

A The Home Depot did.

Q Okay. So, you weren't actually offered a job that you could actually go to; you had to be able to do the job. Is that correct?

A Yes.

Mr. Smith: Okay. Thank you, sir. No further questions.

Mr. Huff: I have nothing either. Thank you very much.

(Whereupon the deposition was adjourned at 11:50 a.m.)

(Deponent has waived reading and signing.)

South Carolina Workers' Compensation Commission
WCC File # 1510187

Shawn Wier, Employee, Claimant, vs. AGY Holdings Corp., Employer, Great American Alliance Insurance Company, Carrier, Defendants.	Deposition of **Mickey F. Plymale, MD**

Deposition of Mickey F. Plymale, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 7:07 a.m., Wednesday, January 20th, 2016, at the office of Moore Center for Orthopedics, 104 Saluda Pointe Drive, Lexington, South Carolina.

COPY

Reported by
Sandra M. Austin

Appearances

For the Employee/ Claimant:	Andrew W. Fajardo, Esquire Chappell, Smith & Arden, PA 1510 Calhoun Street 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:	Sandra M. Austin

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Exhibits

Marked as Defendant's Exhibit Number 1; medical records; six pages 8

Marked as Claimant's Exhibit Number 1; MRI report; one page 20

Marked as Defendant's Exhibit Number 2; photographs; ten pages 23

Marked as Defendant's Exhibit Number 3; photographs; four pages 24

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. Social Security number, if present, has been partially or fully redacted or blacked out.

Stipulations

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

Whereupon,

Mickey F. Plymale, MD, 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: Mickey Plymale.

Mr. Huff: Plymale?

The Deponent: Mm-hmm.

Examination

By Mr. Huff:

Q Okay. Dr. Plymale, my name is Ros Huff, and I'm the attorney that represents the employer in the workers' compensation claim of Shawn Wier versus Advanced Glassfiber Yarns down in Aiken. It's also known as AGY. And I'm here today to take your deposition. You had the opportunity, I believe, to see a -- a Mr. Shawn Wier. Is that correct?

A Yes.

Q All right. The notes that I have -- and I'd like

to make sure I've got a complete copy. Let me look at my medical index here. I'm showing that you first saw him -- it appears to be June 15th. Does that sound about correct?

A Yes.

Q And then you saw him again -- I know I had it right here -- on July 6th?

A Yes.

Q Is that the only two times that you've seen him?

A Yes.

Q All right. And how did you come about seeing him?

A He was referred in for elbow pain after an injury at work --

Q Okay. Did --

A -- is what we were told.

Q All right. Did you provide any surgery to him?

A No.

Q All right. And I also notice that you completed a questionnaire, or signed a questionnaire, on December 2nd of 2015. Do you remember signing that questionnaire?

A Let's see. Yes, I remember seeing one. Yes.

Q At any time -- and it's not against the rules. It's permissible, if you want to. At any time have you had any conversation with any attorney

representing --

A No.

Q All right. And -- All right. This questionnaire, did it come to you in the mail?

A Yes.

Q And you completed it, it looks like, on 12/2 of 2015?

A Yes.

Q Okay. And what problem did you treat this gentleman for?

A A -- It seemed like he had a contusion or some tendinitis of the elbow.

Q And did he give you a history of what happened to him?

A He said he had banged it against some piece of equipment at work.

Q Did he say where the equipment was located?

A I do not recall.

Q Did he give you a statement of any type that you can recall that it was at knee level, waist level?

A No.

Q You have no idea what level it was?

A Yeah, that, I don't know.

Q Do you have any idea whether it was even physically impossible -- I mean physically possible for him to

be able to strike his elbow?

Mr. Fajardo: Objection. Calls for speculation.

Q You still answer the question.

A Well, I --

Q The commission will rule.

A I don't know.

Q You don't know. Do you know what degree of force he hit it with?

A No.

Q Do you know whether it was at the end range of motion or in the middle range of motion?

A I do not.

Q It was just strictly he said he struck it on a piece of equipment?

A Yes.

Q Do you know whether or not the equipment was moving or -- or stationary?

A I do not.

Q Do you know if it's a piece of equipment that has the capability of movement or twisting or turning?

A No.

Q Do you know what type of machine it was?

A No.

Q All right. And when you saw him on the first time

of June 15th -- I'm looking at your report. And let's hold this out right here. Bear with me.

Mr. Huff: (to Mr. Fajardo) Let me hand this over to you, if I may, and let you look at that.

Mr. Fajardo: Thank you.

Mr. Huff: I'm going to ask him some questions about those documents. Do you have any objection to that being made an exhibit?

Mr. Fajardo: No, I do not.

Mr. Huff: All right. I'm going to hand one to Madam Reporter and let her --

Marked as Defendant's Exhibit Number 1; medical records; six pages.

Q You've probably got the exact same documents. This is Exhibit 1. It looks like it's all your reports. Will you look at it and see if there's any -- I didn't -- I did not include in that exhibit the questionnaire. I'm just putting in your medical reports --

A Sure.

Q -- and documents from your -- your practice.

A Yeah.

Q Does that seem like -- to be an accurate copy?

A Yes.

Q Okay. If we could, let's try to go over that, if we could. Did you do a physical examination on this gentleman when he came in?
A Yes.
Q All right. Did you examine -- Which elbow did he complain of, left or right?
A It was his left elbow.
Q Okay. Did you do a physical examination on the left elbow?
A Yes.
Q Can you tell me -- I think I'm looking at page one of the report of June 15th, 2015. That was your first appointment?
A Yes.
Q All right. Can you tell me what the physical examination revealed to you regarding the left elbow?
A He essentially had pain along his lateral epicondyle.
Q All right.
A That is the extent of the findings on exam.
Q Pain?
A Yes.
Q In other words, he told -- he tells you he's in pain?

A Yes.
Q Were you able to run any type of test to verify that he had the pain?
A Other than a physical exam and palpating the area, that was it.
Q And --
A That was the only thing that --
Q And his --
A -- showed up on exam.
Q And his response?
A Yes.
Q All right. Did you find any loss of strength?
A No.
Q Any range of motion difficulty?
A No.
Q Pain?
A Yes.
Q Okay. I notice that you put the -- the left elbow through a range of motion. I'm looking at page two of that report, and it looks like it says -- range of motion, left elbow, flexion was normal?
A Mm-hmm.
Q Extension was normal?
A Yes.
Q Pronation normal?

A Yes.
Q Supination normal?
A Yes.
Q Strength in the right, was that normal?
A Yes.
Q How about flexion 5/5? What does that mean?
A That's just your strengths when you're testing the strength.
Q All right. So, flexion 5/5, extension 5/5, pronation 5/5, supination 5/5, all those, would that be considered normal?
A Yes.
Q Did you see any bruising on his arm?
A I did not.
Q Were x-rays -- Did you -- Were x-rays done or did you have an opportunity to review any x-rays?
A I did review x-rays.
Q What were they?
A I did not see anything on the x-rays. They were normal.
Q Okay. I'm going to go over to the next time you saw him, which was July 6th, 2015. That was the last time you saw him, correct?
A Yes.
Q At that time, -- I'm looking at ROS. Does that

stand for -- What does that stand for?
A Range of motion.
Q All right. It's also my name. I only spell my name with one S --
A Yeah.
Q -- instead of two Ses. I thought maybe you were writing something to me. Okay. Again, it says -- Looking under that, it says, "He reports no loss of --" I can't read that -- "consciousness, no weakness, no numbness, no tingling." He didn't report any weakness, numbness or tingling in the left arm?
A He might have reported some weak- -- He did report weakness, so that was just the box that was checked on that.
Q All right. He had full range of motion?
A Yes.
Q How was his strength? Was it pretty good?
A It -- I would assume it hadn't changed, but I don't think that was reported on that.
Q I think it says, in the middle of the first page, -- it says, "He has full range of motion, still pain over his lateral epicondyle, pain with elbow flexion but relatively good strength." What would that mean to you? That's the --

A That -- That's pretty much unchanged.
Q Okay. And that's the last time you saw him?
A Yes.
Q When you last saw him, what type of restriction would you have put on him, if any?
A I think it was still lifting, because he was complaining of pain with lifting. That was his biggest complaint. So, at that point, we went ahead and just continued the restrictions, hoping we could get an MRI.
Q Mm-hmm.
A MRI's -- If it didn't show anything, then we could just say, all right, well, you continue to work and progress back to full duties.
Q Have you seen him at all -- at all since you last saw him on that visit?
A No.
Q So, July 6th would have been the last time that you've seen him at all?
A Yes.
Q Do you know -- When you last saw him, did you put any further restrictions on him?
A I don't recall. No. It looks like it was the same.
Q Do you know what physical activities he's been

involved in since you've last seen him?
A No.
Q When you last saw him, do you think he was capable -- capable of lifting 20 pounds?
A I -- Probably, yes.
Q All right. Do you think he would be capable of lifting 30 pounds?
A Yes.
Q How about 40?
A Yeah. It could be painful, but he could probably do it.
Q Okay. Did you assign any type of an impairment to him?
A No.
Q And other than his mentioning to you of how this accident occurred, would it be a true statement you've never been out to the facility to see the accident site?
A I have not.
Q Do you have no opinion as to whether or not it would be possible to strike an object with his elbow like he said?
A No.
Q It's strictly based upon what he told you?
A I have no opinion.

Q All right. Okay. What is lateral epicondylitis?
A It's -- Essentially, it's irritation of the outer aspect of the elbow. It can occur from overuse or from a -- a direct injury to the area.
Q And that's what I was going to ask you. So, there's more than one cause of epicondyli- --
A Yeah.
Q And the itis word, does that mean inflammation?
A It just means inflammation.
Q Like arthritis?
A It's a generic term for inflammation of the area.
Q Inflammation. Based upon what you saw on the last time that you saw him in July 2015, did you anticipate any permanent restrictions?
A No.
Q Any permanent injury?
A No.
Q Any permanent impairment?
A No.
Q Did he give you any history of ever having any prior problems with his left arm or elbow?
A No.
Q And this questionnaire that you completed on December 2nd, it looks like that was about five months after you last saw him, correct?

A Yes.
Q In your opinion that was -- that you gave -- Well, let me rephrase that. You didn't write this statement, did you?
A No.
Q It's bad when you can't see and you have to wear these magnifying glasses. You need to start typing this bigger for me so I can read it. Was an MRI done of his elbow?
A No.
Q But you did review x-rays?
A Yes.
Q At any time did you issue any type of out-of-work slips for this gentleman?
A I think the ones that are in the chart are the only ones that we've given him.
Q Okay. After you last saw him, are you in a position to give any opinion, to a reasonable degree of certainty, what his physical capabilities were?
A No.
Q After you last saw him, can you give any opinion as to what he was physically capable of doing? I think the last time -- I think you saw him in June, and then you saw him July 6th. Can you give

any opinion after that date?
A No.
Q And the only reason you give any opinion as this being -- of being work-related would be based upon the history that he gave you?
A Yes.
Q Did you see any bruising on him when you saw him?
A No, not in that area itself. He had a little bit of swelling there, but there was no actual bruising, --
Q All right.
A -- if I recall.
Q When you have something with an itis on the end, like arthritis, rheumatoid and stuff like -- do you normally have inflammation? Itis, does that mean inflammation or --
A Yes.
Q So, that's part and parcel of it?
A Yeah, that's --

Mr. Huff: I think that's all the questions that I have. Thank you.

Mr. Fajardo: Thank you for bearing with me.

The Deponent: Sure. Sure.

Examination

By Mr. Fajardo:

Q We introduced ourselves a moment ago, but, again, my name is Andrew Fajardo, and I represent Mr. Wier in his workers' compensation claim. And so as -- we don't repeat the same questions or go back through, I think you've kind of gone over your course of treatment with Mr. Wier. Again, he was referred to you by Aiken Hospital; is that correct?

A I believe so. He was seen at Aiken Regional.

Q Okay. And when you saw him, again, your initial diagnosis was lateral epicondylitis; is that correct?

A Yeah.

Q Okay. And is that consistent with his report of injury, striking his left elbow?

A Yes.

Q Okay. And at that next time when you saw Mr. Wier on July 6th, you had recommended an MRI; is that correct?

A Yes.

Q And what would the purpose of that MRI be?

A Really just to better evaluate the soft tissues to see whether or not this is something that -- It really gives you a prognosis more than anything, prognosis being, okay, is he going to be better,

hopefully, over the next six weeks. It's almost so we can give both him and his job a timeline, when we think he will get better. We were not looking for anything that would require surgery. It was more just to, number one, make sure that it kind of confirms that he had an injury there -- because it would show up on an MRI -- and, secondly, his prognosis in terms of when he could return to -- to full activity.

Q And were you aware that at a certain point Mr. Wier's claim has been denied? Is that --

A Yeah, that's what I was told.

Q All right. And that he was unable to get that MRI through your practice; is that correct?

A Yes.

Mr. Fajardo: Off the record for a moment.

[Off the record briefly at 7:24 a.m.]

Mr. Fajardo: What I've just handed to Dr. Plymale is an MRI report from September 21st of 2015 that was done at the Charlie Norwood VA Medical Center in Augusta, Georgia. I'd like to mark this as Claimant's Exhibit Number 1.

Mr. Huff: I have no objection whatsoever.

Mr. Fajardo: Thank you, Ros.

Marked as Claimant's Exhibit Number 1; MRI report; one page.

Examination Continues

By Mr. Fajardo:

Q And I know that this is a little bit difficult to read, but can you tell us what the impression or the findings were from this MRI?

A It essentially shows or confirms a diagnosis of lateral epicondylitis.

Q All right. And, so, again, the results from the MRI essentially confirm your initial diagnosis; --

A Yeah.

Q -- is that correct? Okay. And, therefore, your statement that you've attested to, on December 2nd, stating that his lateral epicondylitis in his left elbow was caused by his injury involving his work accident where he struck his left elbow, after seeing those MRI results, do you still stand by that statement to a reasonable degree of medical certainty?

A Yes.

Q Okay. After seeing these MRI results, are there

any types of treatment that you recommend?
A For this, usually it's kind of the treatment we were proceeding with, which was an injection, sometimes a brace, and time, and usually it -- it resolves on its own.
Q Okay. And it looked like you had recommended physical therapy at one point, as well?
A Yeah, that's also an option. Yes.
Q Okay. Are there any medications that might be helpful for him?
A I think we gave him one. It was a steroid, I think, using --
Q A Medrol Dosepak?
A Yeah, a Medrol Dosepak. Uh-huh. You can do that or anti-inflammatories.
Q After reviewing these MRI results, would you have continued him on the same restrictions that he was on as far as work is concerned?
A Yes, until his symptoms were less.
Q And it appears that you had given him -- Strike that question. Earlier you were making a comment on whether Mr. Wier would be capable of lifting up to 40 pounds, and you said that he would be capable of doing that, although it would be painful for him; is that --

A Yes.
Q -- correct? So, that's a -- There's a difference in work restrictions and general activities of daily living; --
A Yes.
Q -- is that correct? So, you didn't give him any restrictions as far as his right arm was concerned; is that --
A No.
Q -- correct? And, so, some use of his left arm in his personal life would -- would be expected; is that correct?
A Yes.
Q And if not using -- If he were not using his left arm at all, could that essentially make his condition worse or --
A It probably wouldn't --
Mr. Huff: Object.
A -- affect it.
Mr. Huff: It calls for speculation.
Q You can answer.
A It wouldn't affect it.
Q Is going to a pool something that you'd tell the claimant not to do?
A No.

Q Okay. Would assisting them and teaching his kids how to swim be something that you would advise him not to do?

A No.

Mr. Fajardo: I believe that's all the questions I have. Thank you.

Mr. Huff: I may have just a few. Let me see where I --

Re-examination

By Mr. Huff:

Q The issue of a pool has been brought up. Let me show you some photographs taken off of a videotape. And I'm going to hand you the first series, -- one, two, three, four, five, six, seven, eight -- ten --

Mr. Huff: I'm going to put these in as our Exhibit 2. And I'm going to hand them to the opposing attorney to see first. And there's ten of them, Sandra.

Marked as Defendant's Exhibit Number 2; photographs; ten pages.

Mr. Huff: Thank you, ma'am.

Q Now, this date of injury occurred on June 5th, and this is two months later, in August. I'm going to show you some video -- I mean some photographs of this gentleman at a swimming pool with his family,

and I'm going to have you look at them. There's ten pictures of him lifting a child, and I think he uses his left arm. And that's -- that's within two months of this accident. Did you see any indication of any restriction on the use of his left arm?

A No.

Q And you would agree that that child looks like it's -- she weighs more than 10 or 15 or 20 pounds?

A Yes.

Q All right. And then you can have the other pictures.

A Sure.

Q Thank you.

Mr. Huff: All right. I'm going to let you go ahead and mark them first. Hand those down, too.

Marked as Defendant's Exhibit Number 3; photographs; four pages.

Q Now, what I have here is photographs off of a videotape, and this is August, within two months of the accident. By the time we get to the hearing, we'll have the weight of the child, but my estimation is 40, maybe, pounds, or 50 pounds -- I don't know. I'll let you look at those

photographs, which is the next exhibit. It consists of four pictures.

(The deponent reviews photographs.)

Q All right. Do those photographs show him in a pool with a young boy, it looks like, that he is throwing up in the air?

A Yes.

Q And if you'll look at it, is he using both his left and right arm?

A Yes.

Q Do you see any restrictions on him?

A No.

Q Based upon looking at those photographs, would you have indicated that he was incapable of working?

A No.

Q And based upon your photographs and your examination of him, would you place any permanent impairment on him?

A No.

Q Now, let's talk about this treatment that you may have suggested earlier. Do you think he is still in need of that treatment?

A I don't know without examining him.

Q Can you still give the same opinion that he -- Since you don't know, can you give an opinion that

he does need the treatment?
A No.
Q The activity that you see in those photographs, were those type of activities that you would have restricted him from doing?
A Not necessarily.
Q Okay. And have all your answers today been to a reasonable degree of medical certainty?
A Yes.

Mr. Huff: All right. I have nothing further. Thank you very much.

Re-examination

By Mr. Fajardo:
Q Just to put a cap on this, and I believe that we've covered everything, but after looking at these photos, essentially, you would still need to evaluate Mr. Wier to determine his current physical state and what type of treatment that you would recommend for him?
A Yes.
Q Okay. After reviewing the MRI and everything and having these photos of the claimant playing -- excuse me -- Mr. Wier playing in a pool with his children, do you still stand by your causation statement --

A Yes.
Q -- as of December 2nd?
A Yes.

Mr. Fajardo: All right. No further questions. Thank you.

Mr. Huff: Just in response, one question.

Re-examination

By Mr. Huff:

Q The type of activity that you saw in the photographs, --
A Yes.
Q -- of carrying the child in the left arm, not the right arm, -- he was carrying the child in the injured arm -- throwing this other child up in the pool, using both arms, could that type of activity aggravate the problem that he had?
A Yes.

Mr. Huff: Nothing further. Thank you. Appreciate it. Why do you do these things so early in the morning?

Mr. Fajardo: One -- one --

The Deponent: Clinic --

Mr. Huff: You've got -- Wait.

Mr. Fajardo: One more follow-up,

perhaps.

Re-examination

By Mr. Fajardo:

Q Okay. Is that speculation that this activity may or may not have aggravated any problems in his left elbow?

A Yes.

Mr. Huff: I call to -- the form of the question as leading.

Mr. Fajardo: I -- No further questions. I think we've gone about as far as we can.

Mr. Huff: Why do you do them so early? I'm finished.

(Whereupon the deposition was concluded at 7:35 a.m.)

(Deponent has waived reading and signing.)

Encounters and Procedures

Clinical Encounter Summaries
Encounter Date: 06/15/2015
Encounter Sign-Off
Encounter signed-off by Mickey F. Plymale, MD, 06/17/2015.
Patient

Name	WEIR, SHAWN (27, M) ID# 379189	Appt. Date/Time	06/15/2015 09:30AM
DOB	[redacted]	Service Dept.	Lexington
Provider	MICKEY F. PLYMALE, MD		
Insurance	Med Worker's Comp: STRATEGIC COMP Employer Name : AGY AIKEN Case # : 247855408 Case Injury Date : 06/05/2015 Prescription: ESI - Member is eligible. details		

Chief Complaint

Left Elbow Problem

ROS

Patient reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no chest pain, no arm pain on exertion, no shortness of breath, no palpitations, no known heart murmur, and no lightheadedness. He reports no cough, no wheezing, no coughing up blood, no shortness of breath, and no sleep apnea. He reports no jaundice, no rashes, no itching, no dry skin, no growths/lesions, no skin ulcers, no hives, and no shingles. He reports no loss of consciousness, no weakness, no numbness, no tingling, no seizures, no dizziness, no headaches, no migraines, and no restless legs. He reports no swollen glands, no bruising, and no excessive bleeding.
ROS as noted in the HPI

Vitals

06/15/2015 09:39 am

Ht: 5 ft 9 in **Wt: 200 lbs** **BMI: 29.5**

BP: 127/81

HPI

Sports Elbow/Forearm
Reported by patient.

Location: left
Duration: date of onset: (6/5/15)
Timing: acute
Context: work injury
Aggravating Factors: carrying; pushing/pulling; ROM; weightbearing
Prior Imaging: x ray
Previous Injections: none
Previous PT: none
Work Related: yes
Notes: patient is here for evaluation of his left elbow. He reports that he was at work on 6/5/15 when he hit his elbow on a piece of equipment. He was seen later that day at Aiken Regional medical center where X-rays were taken. He was given naproxen and placed in a sugar tong splint and instructed to follow up with ortho. He is currently employed by AGY where he works producing fiberglass.

Physical Exam

Patient is a 27-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, active, alert and oriented, and normal body habitus.

Cardiovascular System: Arterial Pulses Right: radial normal. Arterial Pulses Left: radial normal. Capillary Refill Right: capillary refill test normal. Capillary Refill Left: capillary refill test normal.

Elbows: Inspection Right: no deformity, redness, swelling, or warmth. Inspection Left: no deformity, redness, swelling, or warmth. Bony Palpation Right: tenderness of the lateral epicondyle. Soft Tissue Palpation Right: no radial collateral

ligament or ulnar collateral ligament. Passive Range of Motion Right: flexion normal, extension normal, pronation normal, and supination normal. Passive Range of Motion Left: flexion normal, extension normal, pronation normal, and supination normal. Strength Right: flexion 5/5, extension 5/5, pronation 5/5, and supination 5/5. Strength Left: flexion 5/5, extension 5/5, pronation 5/5, and supination 5/5.

Skin: Right Upper Extremity: normal. Left Upper Extremity: normal.

Neurologic: Sensation on the Right: C5-T1 normal. Sensation on the Left: C5- T1 normal.

Procedure Documentation

MFP Elbow Injection:

The patient was made aware of the risks of bleeding, infection, nerve damage, blood vessel damage, reaction to the medication, including skin changes and also the risk of elevated blood sugars if the patient was diabetic. I prepped the left elbow area with a betadine swabstick. I injected 3 cc's 0.25% Marcaine and 8 mg Dexamethasone with a 22 gauge needle without any complication. Adequate homeostasis was obtained afterwards. I told the patient to call if there were any problems.

Results / Interpretations

X-RAY, ELBOW
- Possibility of Pregnancy?: N, Side: LEFT

Review of x-ray, elbow taken on 06/15/2015 at MOORE CENTER FOR ORTHOPEDICS shows:

Adult Elbow:

X-Ray: no fracture, no dislocation, joint spaces well preserved, and normal alignment.

Assessment / Plan

Left elbow contusion. Plan is to stop with splint, tennis elbow strap, we will place on Medrol dose pak and place him on light duty for the next 3 weeks with no lifting over 10lbs.

1. Lateral epicondylitis - Left

726.32: Lateral epicondylitis
- X-RAY, ELBOW

Possibility of Pregnancy?: N Side: LEFT
- Medrol (Pak) 4 mg tablets in a dose pack - Take by oral route as directed. Qty: 1 package(s) Refills: 0

Pharmacy: WAL-MART PHARMACY 4487
- TENNIS ELBOW STRAP - Dispense Qty: 1 Unit

Return to Office
- Mickey F. Plymale, MD for Work Comp Recheck at Lexington on 07/06/2015 at 09:30 AM

Allergies

Reviewed Allergies
NKDA

Medications

Reviewed Medications	
Name	Date
Medrol (Pak) 4 mg tablets in a dose pack Take by oral route as directed	06/15/15 prescribed
naproxen 500 mg tablet Take 1 tablet(s) twice a day by oral route.	06/15/15 entered
Paxil 40 mg tablet Take 1 tablet(s) every day by oral route	06/15/15 entered

Encounter performed and documented by Mickey F. Plymale, MD
Encounter reviewed & signed by Mickey F. Plymale, MD on 06/17/2015 at 7:21am

Attachment for claim 583132V2585

Encounters and Procedures

Clinical Encounter Summaries

Encounter Date: 07/06/2015

Encounter Sign-Off

Encounter signed-off by Mickey F. Plymale, MD, 07/08/2015.

Patient

Name	WEIR, SHAWN (27, M) ID# 379189	Appt. Date/Time	07/06/2015 09:30AM
DOB	[redacted]	Service Dept.	Lexington
Provider	MICKEY F. PLYMALE, MD		
Insurance	Med Worker's Comp: STRATEGIC COMP Employer Name : AGY AIKEN Case # : 247855408 Case Injury Date : 06/05/2015 Prescription: ESI - Member is eligible. details		

Chief Complaint

Followup: Lateral epicondylitis

ROS

Patient reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no loss of consciousness, no weakness, no numbness, no tingling, no seizures, no dizziness, no headaches, no migraines, and no restless legs.
ROS as noted in the HPI

HPI

Sports Follow-Up

Reported by patient.

How are you feeling? improving

Notes: patient is here for follow up for his left elbow, date of injury 6/5/15. He reports he feels better but he still has issues with lifting things. "It fells better but I can't lift anything over 8 lbs." He is currently at work at light duty.

Physical Exam

Patient is a 27-year-old male.

he has full ROM, still pain over the lateral epicondyle. Pain with elbow flexion but relatively good strength.

Previous Assessment / Plan

Date of Service

06/15/2015

Left elbow contusion. Plan is to stop with splint, tennis elbow strap, we will place on Medrol dose pak and place him on light duty for the next 3 weeks with no lifting over 10lbs.

1. Lateral epicondylitis - Left

726.32: Lateral epicondylitis

- X-RAY, ELBOW

Possibility of Pregnancy?: N Side: LEFT

- Medrol (Pak) 4 mg tablets in a dose pack - Take by oral route as directed. Qty: 1 package(s) Refills: 0

Pharmacy: WAL-MART PHARMACY 4487

- TENNIS ELBOW STRAP - Dispense Qty: 1 Unit

Assessment / Plan

Left elbow continued pain. I want to MRI his elbow as he says he can not lift heavy things right now. I will see him back after. I also want to place him in PT to strengthen his arm. Cont light duties and f/u after the MRI.

1. Contusion of elbow

923.11: Contusion of elbow

- PHYSICAL AND OCCUPATIONAL THERAPY REFERRAL - Schedule Within: provider's discretion

Note to Provider:

Attachment for claim 591468V2585

2-3x a week for 8 weeks for left elbow contusion
eval & treat-strengthening and ROM
- MRI, ELBOW - Note to Imaging Facility: MRI left elbow without contrast to eval for internal derangement

Side: LEFT Contrast (MRI): Without
MRI type: Closed 1.5T min Possibility of Pregnancy?: N

Return to Office
None recorded.

Allergies

Reviewed Allergies
NKDA

Medications

Reviewed Medications

Name	Date
naproxen 500 mg tablet Take 1 tablet(s) twice a day by oral route.	06/15/15 entered
Paxil 40 mg tablet Take 1 tablet(s) every day by oral route.	06/15/15 entered

Encounter performed and documented by Mickey F. Plymale, MD
Encounter reviewed & signed by Mickey F. Plymale, MD on 07/08/2015 at 1:02pm

Attachment for claim 591468V2585

MOORE CENTER
FOR ORTHOPEDICS

Imaging Order

07/08/2015

To Provider	From Provider
Phone: Fax:	MICKEY F. PLYMALE, MD Lexington 104 Saluda Pointe Drive Lexington, SC 29072-7295 Phone: (803) 227-8000 Fax: (803) 227-8015

Imaging Order Information

Diagnosis	Contusion of elbow ICD-9: 923.11: Contusion of elbow
Order Name	Orders Included: 1 **Contusion of elbow** ICD-9: 923.11: Contusion of elbow • MRI, ELBOW Note to Imaging Facility: MRI left elbow without contrast to eval for internal derangement Side: LEFT Contrast (MRI): Without MRI type: Closed 1.5T min Possibility of Pregnancy?: N
Notes	

Patient Information

Patient Name	WEIR, SHAWN
Sex - DOB - Age	M [redacted] 27 YR
Address	2017 HONORS CIRCLE GRANITEVILLE, SC 29829
Phone	H: (757) 867-3938 M: (757) 867-3938
Primary Insurance	STRATEGIC COMP Policy Holder: AGY AIKEN
Secondary Insurance	None recorded.

Electronically Signed by: MICKEY F. PLYMALE, MD

MICKEY F. PLYMALE, MD

MOORE CENTER
FOR ORTHOPEDICS

Referral Order

07/06/2015

To Provider	From Provider
Phone: Fax:	Lexington 104 Saluda Pointe Drive Lexington, SC 29072-7295 Phone: (803) 227-8000 Fax: (803) 227-8015

Referral Order Information

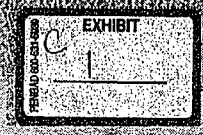
Diagnosis	Contusion of elbow ICD-9: 923.11: Contusion of elbow
Order Name	Orders Included: 1 **Contusion of elbow** ICD-9: 923.11: Contusion of elbow • PHYSICAL AND OCCUPATIONAL THERAPY REFERRAL Schedule Within: provider's discretion Note to Provider: 2-3x a week for 8 weeks for left elbow contusion eval & treat-strengthening and ROM
Notes	2-3x a week for 8 weeks for left elbow contusion eval & treat-strengthening and ROM

Patient Information

Patient Name	WEIR, SHAWN
Sex - DOB - Age	M [redacted] 27 YR
Address	2017 HONORS CIRCLE GRANITEVILLE, SC 29829
Phone	H: (757) 867-3938 M: (757) 867-3938
Primary Insurance	STRATEGIC COMP Policy Holder: AGY AIKEN
Secondary Insurance	None recorded.

Electronically Signed by: MICKEY F. PLYMALE, MD

Electronically ordered/documented by: MICKEY F. PLYMALE, MD



Charlie Norwood VA Medical Center
1 Freedom Way
Augusta, GA 30904

SEP 21, 2015

WIER,SHAWN ALLEN
2017 HONORS CIRCLE
GRANITEVILLE, SOUTH CAROLINA, 29829

Dear SHAWN ALLEN WIER,

I want to update you on your recent test results. See how you do with OT and use of the tennis elbow band. Let me know if no improvement and I will refer you to ortho.

IMAGING RESULTS
Image: MRI left Elbow
Impression:

Diffuse signal abnormality noted at the extensor tendon attachment to the lateral epicondyles likely representing tendinopathy or possible partial tear.

Small joint effusion.

Tendinopathy at the attachment of the triceps tendon at the olecranon.

I have reviewed your lab results and have discussed above.

If you need health care for a medical problem prior to your next Primary Care appointment, please call the Call Center at 706-823-2717 or 888-483-9674 (toll free). The Call Center nurses will help you determine if you need to be seen on an emergency basis in the Emergency Department or whether we can help you in the group practice. Please do not just walk in to the clinic without an appointment. If we are not able to handle your problem over the phone, we will schedule you an appointment, usually within 24 hours of your call. The Call Center nurse line is also available after clinic hours and on weekends.

FUTURE APPOINTMENTS
10/13/2015 09:00 AUG EC OT THERAPY-OT6 UD
10/20/2015 12:30 AUG MH EC INTER 3

In our efforts to help you stay healthy I am including information on how you are doing with some prevention activities that in the least could stop you from getting sick and at the most could save your life. If you would like to address any of them or have any questions, please do not hesitate to contact me.

Clinical Reminder Due Report	--STATUS--	--DUE DATE--	--LAST
DONE			
CW Colorectal Cancer Screen	N/A		unknown

-1-

EXHIBIT
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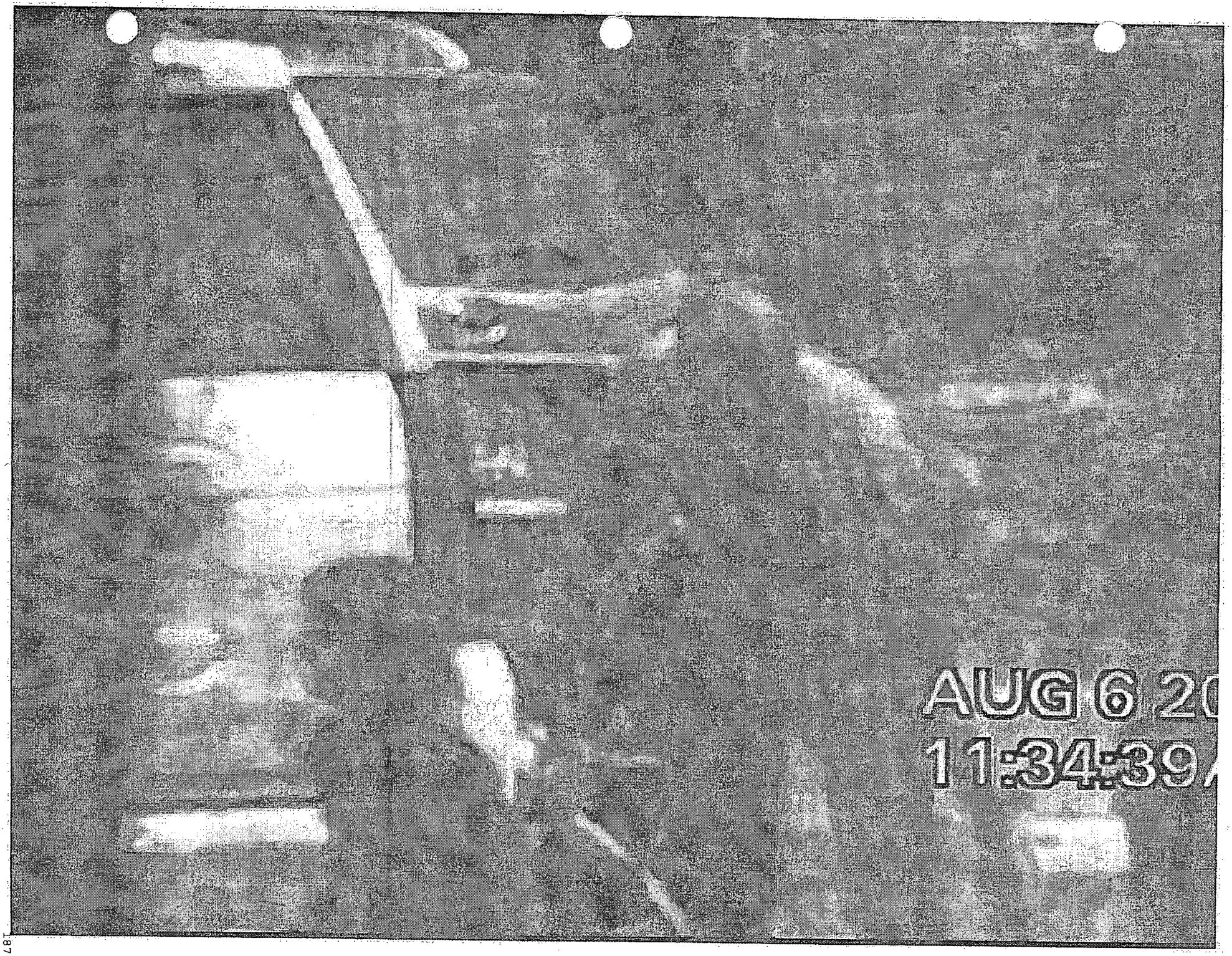
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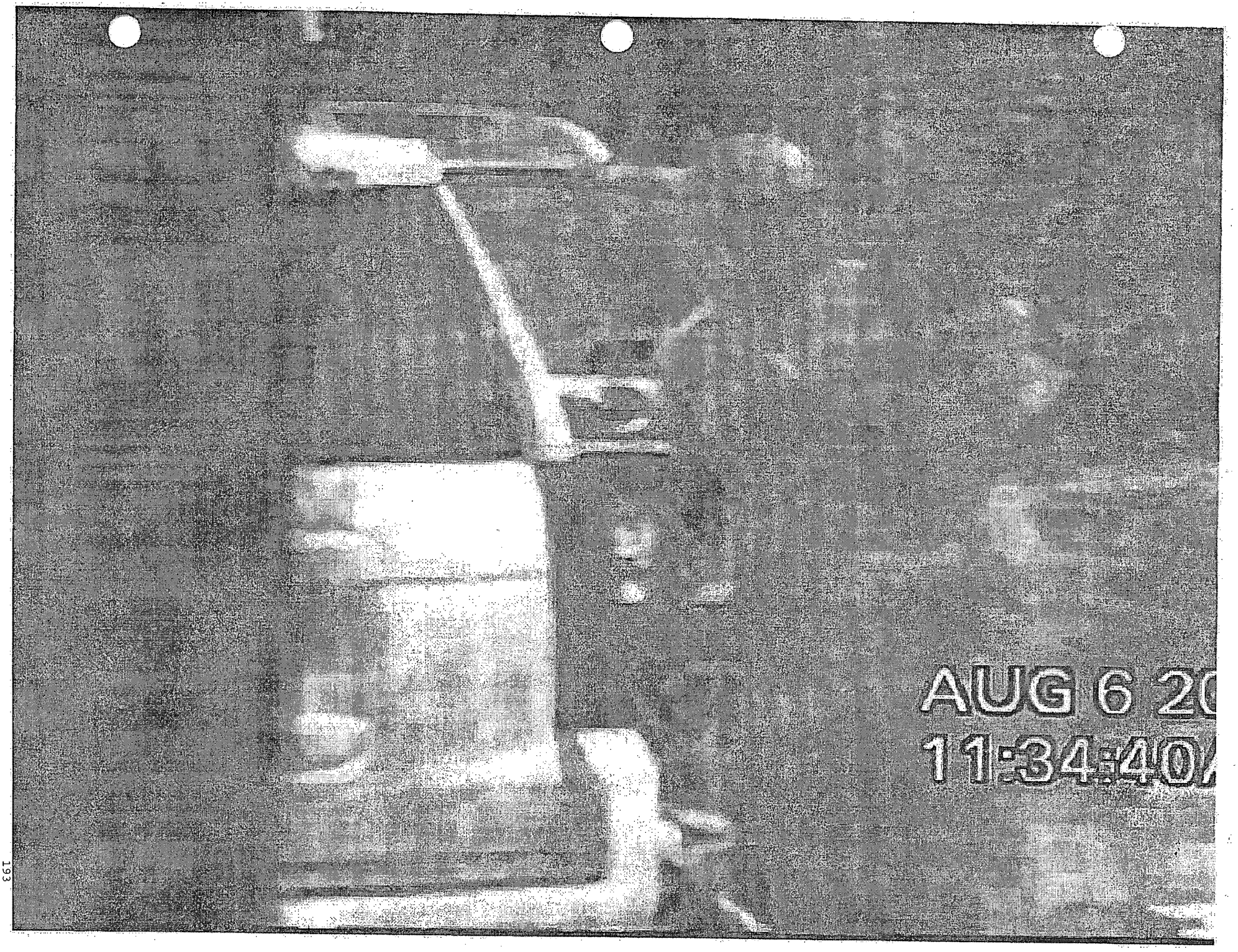
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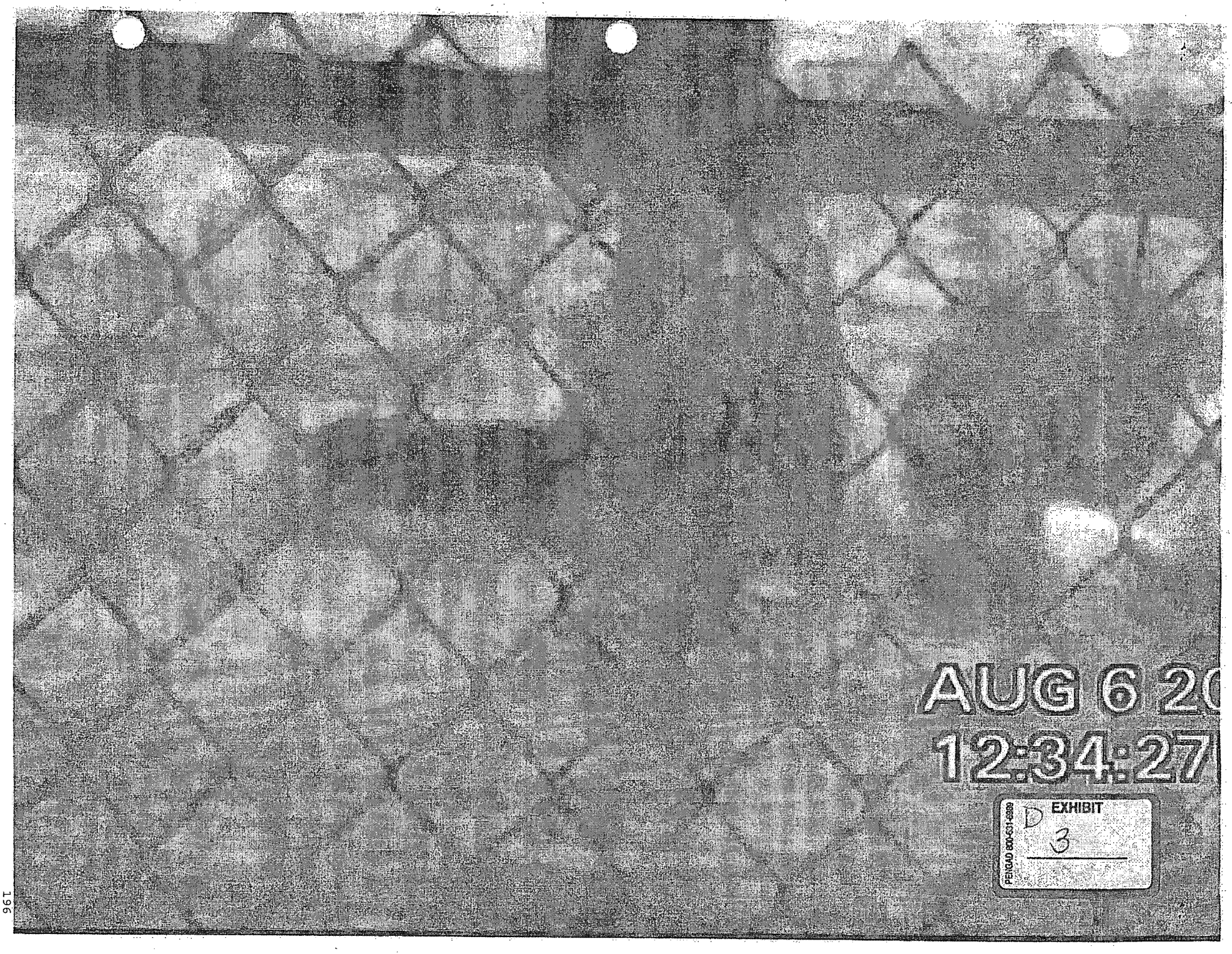
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Certificate of Counsel

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.

June 15, 2017

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