

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

S.C. Supreme Court

Opinion No. 5020 (S.C. Ct. App. filed Aug. 8, 2012)

Ricky Rhame, ... Petitioner,

v.

Charleston County School District, ... Respondent.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ricky Rhame, Appellant,

v.

Charleston County School District, Respondent.

Appellate Case No. 2010-175566

Appeal from South Carolina Workers' Compensation
Commission

Published Opinion No. 5020
Heard April 11, 2012 – Filed August 8, 2012

DISMISSED

Blake A. Hewitt and John S. Nichols, both of Bluestein Nichols Thompson & Delgado, LLC, of Columbia; and Kenneth W. Harrell and Patrick L. Jennings, both of Joye Law Firm, LLP, of N. Charleston, for Appellant.

Catherine H. Chase, Leslie M. Whitten, and Stephen L. Brown, all of Young Clement Rivers, LLP, of Charleston, for Respondent.

LOCKEMY, J.: In this appeal from the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel), Ricky Rhame contends the Appellate Panel erred when it held that his claim for a repetitive trauma injury to his back was barred by the statute of limitations. We dismiss this appeal as untimely, and thus, we do not reach the merits of Rhame's arguments.

FACTS

Rhame was employed by the Charleston County School District (District) as a heating and air conditioning technician from 1987 to 2009. His job frequently required him to lift heating and air conditioning equipment. According to Rhame, some of this equipment weighed as much as fifty to one-hundred pounds.

Rhame admitted he began experiencing off-and-on back pain in 1994 or 1995. Additionally, in 2006, Rhame developed a problem with his neck due to his employment, which was diagnosed as a cervical fusion. After speaking with the District about the neck problem, he was told they would not take care of it. A follow-up letter was sent to Rhame from the District confirming their denial of workers' compensation benefits for his neck injury. Rhame did not contact anyone else concerning the incident.

Rhame initiated this case by filing a Form 50 with the South Carolina Workers' Compensation Commission (Commission) on September 29, 2009. He alleged that on May 4, 2009, he sustained a back injury from repetitively picking up heavy air conditioning units. Shortly after filing the Form 50, Rhame amended it to specifically "reflect repetitive trauma for the nature of the injury."

The District answered by filing a Form 51 on October 7, 2009, in which it denied Rhame had sustained an injury by accident. Additionally, the District asserted Rhame had not complied with the Workers' Compensation Act's (WCA) notice requirement and that the claim was barred by the statute of limitations. The District contended that in 1994 or 1995, as soon as Rhame knew he was having back pain caused by his job, Rhame knew or should have known he had a compensable injury and brought a claim for benefits. Rhame explained his delay in filing a workers' compensation claim, stating: (1) his back pain was off-and-on and was never the result of a single discreet or identifiable injury; (2) he had a fear of losing his job; (3) his ability to complete his work-related duties was not affected until 2009; and (4) he was ignorant of the workers' compensation system and the concept of repetitive trauma injuries until retaining counsel in 2009.

The commissioner heard the case on December 3, 2009, and issued an order dated February 24, 2010, and filed February 26, 2010, finding Rhame's claim was not barred by the statute of limitations.

On March 1, 2010, District filed a Form 30 requesting the Appellate Panel to review the commissioner's decision. Both parties submitted briefs to the Appellate Panel. The Appellate Panel conducted a hearing on May 17, 2010, and in an order dated and filed August 6, 2010, it reversed the commissioner's decision. The Appellate Panel found Rhame was aware of his "back injury" in 1994 or 1995, yet he did not file a claim within two years of when he knew or should have known that his claim was compensable. It also found Rhame "showed awareness of the workers' compensation system" by trying to file a claim for his 2006 neck injury, and that he delayed bringing the present claim out of fear of losing his job.

Rhame filed a petition for rehearing on September 8, 2010. The District opposed the petition, and in an order dated September 20, 2010, and filed September 21, 2010, the Appellate Panel dismissed the petition. On October 21, 2010, Rhame served and filed notice of this appeal.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act establishes the substantial evidence standard for judicial review of decisions by the [Appellate Panel]." *Murphy v. Owens Corning*, 393 S.C. 77, 81, 710 S.E.2d 454, 456 (Ct. App. 2011) (citing S.C. Code Ann. § 1-23-380(5) (Supp. 2011)). "Under the substantial evidence standard of review, this court may not substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." *Id.* at 81-82, 710 S.E.2d at 456 (citing *Stone v. Traylor Bros., Inc.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004)).

"Statutory interpretation is a question of law." *Id.* at 82, 710 S.E.2d at 456 (quoting *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007)). "This court is free to decide matters of law with no particular deference to the fact finder." *Id.* (citing *Pressley v. REA Constr. Co.*, 374 S.C. 283, 287-88, 648 S.E.2d 301, 303 (Ct. App. 2007)).

LAW/ANALYSIS

Tolling the Time for Appeal by Filing a Petition for Reconsideration

As a threshold matter, District argues there is no statute allowing for a petition for rehearing to be filed, and an appeal pursuant to section 42-17-60 of the South

Carolina Code (Supp. 2011) is the only route to review a decision by the Appellate Panel; thus, District argues the time period for filing this appeal was not tolled by Rhame filing a petition for rehearing, and this appeal is untimely. We agree.

Rhame argues his right to file a petition for rehearing with the Appellate Panel is derived from section 1-23-380 of the South Carolina Code (Supp. 2011). Section 1-23-380 provides that a party initiates judicial review of an agency's decision by serving and filing a notice of appeal "within thirty days after the final decision of the agency or, *if a rehearing is requested*, within thirty days after the decision is rendered." S.C. Code Ann. § 1-23-380(1) (Supp. 2011) (emphasis added). He admitted the Commission has no regulation regarding the applicability of petitions for rehearing, but relied upon *McCummings v. South Carolina Department of Corrections*, 319 S.C. 440, 462 S.E.2d 271 (1995), to support his position that statutory silence on an issue does not mean it is disallowed.¹

Section 42-17-50 of the South Carolina Code (Supp. 2011) provides the procedure for appealing the commissioner's decision. It states:

If an application for review is made to the [Appellate Panel] within fourteen days from the date when notice of the award shall have been given, the [Appellate Panel] shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

S.C. Code Ann. § 42-17-50 (Supp. 2011).

¹ *McCummings* determined whether statutory silence regarding the time limit for filing a petition for rehearing meant a party had infinite time to file it. *Id.* at 442-43, 462 S.E.2d at 272-73. Because it involved an employment grievance, we find *McCummings* inapplicable to the case at bar. Workers' compensation appeals are specifically governed by the WCA's appellate procedure statute. S.C. Code Ann. § 42-17-50 (Supp. 2011); see *SGM-Moonglo, Inc. v. S.C. Dep't of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008) ("An administrative agency has only the powers conferred on it by law and must act within the authority created for that purpose." (citing *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995))).

"The [Appellate Panel] is the ultimate fact finder in Workers' Compensation cases and is not bound by the [] [c]ommissioner's findings of fact." *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 281, 519 S.E.2d 583, 591 (Ct. App. 1999) (citing *Ross v. American Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989)). "Although it is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the . . . [c]ommissioner's opinion, the [Appellate Panel] is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the . . . [c]ommissioner." *Id.* at 281-82, 519 S.E.2d at 591 (citing *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 185-86, 414 S.E.2d 162, 163 (1992)). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. *Id.* at 282, 519 S.E.2d at 591 (citing *Ross*, 298 S.C. at 492, 381 S.E.2d at 730).

Section 42-17-60 of the South Carolina Code (Supp. 2011) provides the procedure for appealing the Appellate Panel's decision. It states:

The award of the [Appellate Panel], as provided in Section 42-17-40, if not reviewed in due time, or an award of the [Appellate Panel] upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the [Appellate Panel] to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law.

S.C. Code Ann. § 42-17-60 (Supp. 2011).

Further, case law specifically states Rule 59(e), SCRCF motions are not applicable in matters before the Commission itself; such motions are applicable when the circuit court sits in an appellate capacity, and they are required to preserve an issue for review by the appellate courts. *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 274 (2011) (citing *Stone v. Roadway Express*, 367 S.C. 575, 582, 627 S.E.2d 695, 699 (2006) ("Rule 59(e) is not applicable in proceedings before the commission.")); *Nettles v. Spartanburg Sch. Dist. # 7*, 341 S.C. 580, 588 n.4,

535 S.E.2d 146, 150 n.4 (Ct. App. 2000) (stating that workers' compensation law does not contain a motion to reconsider the commission's ruling; rather, a party must appeal)).

As with motions to reconsider, we find petitions for rehearing are not applicable in matters before the Appellate Panel. Thus, the petition for rehearing at issue did not toll the time to appeal the Appellate Panel's order to this court. On August 6, 2010, the Appellate Panel issued their order reversing the commissioner's award. On October 21, 2010, Rhame served and filed his notice to appeal. Rhame served and filed his notice of appeal well after the thirty day time period pursuant to section 42-16-70. Accordingly, we dismiss this appeal as untimely.

CONCLUSION

For the foregoing reasons, we dismiss this appeal as untimely.

DISMISSED.

WILLIAMS AND THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No. 0906212

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SC Court of Appeals

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent.

PETITION FOR REHEARING

This court published its decision in *Rhame v. Charleston County School District* on August 8, 2012. See Op. No. 5020 (Shearouse Adv. Sh. No. 27 at 46). This petition for rehearing is therefore timely under Rule 221(a) of the South Carolina Appellate Court Rules.

The opinion resolved the case on a procedural point. Mr. Rhame filed a petition for rehearing after the appellate panel of the workers' compensation commission ruled against him. After the commission dismissed the petition, Mr. Rhame initiated this appeal. This court's opinion held that petitions for rehearing do not exist for cases at the commission and that because Mr. Rhame did not file his notice of appeal within 30 days of the appellate panel's decision, his appeal was untimely.

Pursuant to Rule 221(a), Mr. Rhame respectfully submits that the court may have overlooked or misapprehended the following points.

I. If the Administrative Procedures Act and the Workers' Compensation Act Conflict, the Administrative Procedures Act Controls.

The Administrative Procedures Act controls the procedures that administrative agencies follow in contested cases, and it also governs the process of “appealing” an agency’s decision for judicial review. This was the holding in *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981), and it has been followed in several other cases. See *Bone v. U.S. Food Serv.*, Op. No. 27153 (S.C. Sup. Ct. filed Aug. 1, 2012) (Shearouse Adv. Sh. No. 26 at 113) (a recent example applying this principle to the workers’ compensation commission). If the APA conflicts with another statute, the APA controls. See *Bone*, (Shearouse Adv. Sh. No. 26 at 117) (“[T]he APA governs the review of administrative agency matters and is controlling over any provisions that conflict with its terms.”).

The *Rhame* opinion holds that a provision of the workers’ compensation act — section 42-17-60 of the South Carolina Code (Supp. 2011) — is the only route to review a decision of the commission’s appellate panel. In reaching that result, the court may have overlooked the principle that the APA, not the workers’ compensation act, controls here. Section 1-23-380 (Supp. 2001) is the provision of the APA that governs initiating judicial review of an administrative agency’s decision. Even if these sections were in conflict — and they are not — the APA would prevail.

II. The Supreme Court’s Decision in *McCummings v. South Carolina Department of Corrections* Was Not Limited to Procedures in Employee Grievance Proceedings; it Applies to All Administrative Agencies.

In *McCummings v. South Carolina Department of Corrections*, the Supreme Court wrote “we hold that in the absence of an agency rule specifying a time limit for petitions for rehearing, parties have thirty days to petition the agency or committee for rehearing or to appeal the agency’s decision.” 319 S.C. 440, 443, 462 S.E.2d 271, 273 (1995).

The *Rhame* opinion distinguished *McCummings* on the grounds that *McCummings* involved an employee grievance case, not a workers' compensation case. Nothing in *McCummings* is so limited. The opinion neither expresses nor implies that it was limited to one particular administrative agency. The statute it was interpreting — section 1-23-380 — applies to all agencies.

III. Cases Stating That Rule 59 Motions Do Not Apply to the Commission Cannot Control over a Supreme Court Decision Which Holds That the Commission Has the Power to Grant Rehearing.

Justice Stukes's concurring opinion in *In re Crawford* was joined by a majority of the court and holds that the power to authorize rehearing is necessary to give effect to the purpose and intent of the workers' compensation act. 205 S.C. 72, 93-94, 30 S.E.2d 841, 849-50 (1944). Part of the rationale for this holding is that until a party files an appeal, the commission can exercise all powers "incident to [its] jurisdiction," including rehearing its decisions. 205 S.C. at 94, 30 S.E.2d at 850. *Crawford* has never been distinguished, limited, or overruled.

The *Rhame* opinion cites three cases for the twin propositions that a motion to reconsider does not apply to the workers' compensation commission and that a party may only contest the commission's decision by filing an appeal. In two of those cases — *Pikaart v. A & A Taxi, Inc.*, and *Stone v. Roadway Express* — the relevant language consists of a statement that Rule 59 of the rules of civil procedure does not apply to cases at the commission. *Pikaart*, 393 S.C. 312, 324, 713 S.E.2d 267, 274 (2011) ("Although Rule 59(e), SCRCR motions are not applicable in matters before the Commission itself"); *Stone*, 367 S.C. 575, 582, 627 S.E.2d 695, 699 ("Rule 59(e) is not applicable in proceedings before the commission."). Those opinions offer no additional analysis.

Both *Pikaart* and *Stone* cite to *Nettles v. Spartanburg School District # 7*, a decision from this court and the third case upon which the *Rhame* opinion relies. In *Nettles*, this court recited that

workers' compensation law does not contain a specific provision for a motion to reconsider. 341 S.C. 580, 588 n.4, 535 S.E.2d 146, 150 n.4 (Ct. App. 2000). *Nettles* cited two authorities for this proposition. The first was the same statute this court cited in *Rhame* — section 42-17-60 — which provides that the appellate panel's decision is conclusive on questions of fact and that parties have thirty days to appeal. The second was the commission's regulation that it would not address a motion "involving the merits" of a claim. See S.C. Code Ann. Regs. 67-215(B) (Supp. 2011) (the current version of this regulation).

While *Pikaart*, *Stone*, and *Nettles* all state that Rule 59 motions are not applicable to procedures before the commission, none of those cases addressed the APA, none of them addressed *In re Crawford*, none of them involved a party who actually moved or petitioned for rehearing, and none of them say anything at all about the fact that the statute which controls initiating an administrative appeal — section 1-23-380 — sets a 30-day deadline for a party to appeal after an agency's decision on a petition for rehearing. The question presented in *Rhame* does not center on whether the rules of civil procedures do or do not apply here. Instead, it centers on what the APA says about initiating an appeal.

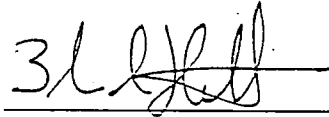
IV. The Court May Wish to Consider Certifying this Case under Rule 204.

As an alternative to rehearing this case, this court might request that the Supreme Court certify this case for review under Rule 204(b) of the South Carolina Appellate Court Rules. Mr. Rhame makes this suggestion because it is reasonably possible to interpret the Supreme Court's decisions in *In re Calhoun* and *McCummings* as conflicting with its decisions in *Stone* and *Pikaart*. On occasion, a party can reasonably perceive decisions of the Supreme Court as sending "mixed messages." See *Woodard v. Westvaco Corp.*, 315 S.C. 329, 334-336, 433 S.E.2d 890, 892-894 (Ct.

App. 1993) (acknowledging a Supreme Court decision that the denial of motion to dismiss for a lack of personal jurisdiction was not immediately appealable, but noting that the Supreme Court later affirmed the denial of a such a motion without addressing the issue of immediate appealability). The perception that a "mixed message" exists often lies in the fact that the controlling issue in one appeal differs from, or was not raised in, the previous decisions cited as precedent on an issue. See, e.g., *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995) (explaining that the issue of appealability had not been raised in the cases which this court noted seemed to conflict). Requesting certification of this case would allow the Supreme Court to address this perceived conflict.

August 17, 2012

Respectfully submitted,



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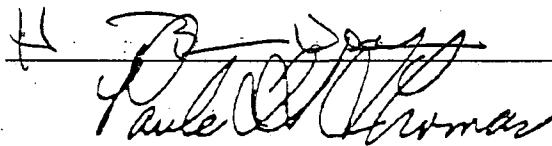
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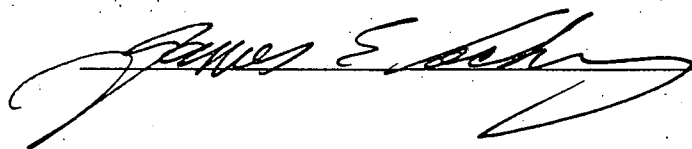
Charleston County School District, Respondent.

Appellate Case No. 2010-175566

ORDER

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


Paul C. Thomas J.


James E. Smith J.

Columbia, South Carolina

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FILED

20 September 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0906212

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent.

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STATEMENT OF ISSUES ON APPEAL

Whether the South Carolina Workers' Compensation Commission Erred When it Held That Ricky Rhame's Claim for a Repetitive Trauma Injury to His Back Was Barred by the Statute of Limitations.

STATEMENT OF THE CASE

This is an appeal in a workers' compensation case. The question presented is whether the South Carolina Workers' Compensation Commission erred when it held that Ricky Rhame's claim for a repetitive trauma injury to his back was barred by the statute of limitations.

Mr. Rhame was employed as a heating and air conditioning technician by the Charleston County School District from 1987 until 2009. (R.p.78, line 25 - p.79, line 2; p.83, line 23 - p.84, line 1). His job required that he frequently lift heating and air conditioning equipment. (R.p.79, line 7 - p.81, line 8). By his estimation, some of this equipment weighed as much as 50 or 60 pounds. *Id.* Other of this equipment, again, by his estimation, weighed as much as 90 or 100 pounds. *Id.* By all accounts, this was heavy-duty work.

This case centered on the fact that Mr. Rhame admitted to having off-and-on back pain as far back as 1994 or 1995. See, e.g., (R.p.85, line 13 - p.88, line 1) (testimony from Mr. Rhame's deposition). The School District argued that as soon as Mr. Rhame knew he was having back pain that was caused by his job, Mr. Rhame knew or should have known that he had a compensable injury and should have brought a claim for benefits. See, e.g., (R.pp.33-35) (a pre-hearing filing laying out the School District's position). For his part, Mr.

Rhame offered a number of reasons for his delay in filing a workers' compensation claim. Included in these reasons was the fact that his back pain was off-and-on and was never the result of a single discreet or identifiable injury. See, e.g., (R.pp.48-57) (Mr. Rhame's brief to the commission's appellate panel). Mr. Rhame also argued that he was afraid of losing his job, that he was able to complete his work-related duties, and that he was essentially ignorant of the workers' compensation system and the concept of repetitive trauma injuries until he retained counsel in 2009. *Id.*

Mr. Rhame initiated this case by filing a Form 50 with the commission on September 29, 2009. (R.p.27). Through this form, he alleged that on May 4, 2009, he sustained a back injury from repetitively picking up heavy air conditioning units. *Id.* Mr. Rhame amended this form shortly after filing it to specifically "reflect repetitive trauma for the nature of the injury." (R.p.30).

The Charleston County School District answered by filing a Form 51 on October 7, 2009. (R.p.28). On this form, the School District denied that Mr. Rhame had sustained an injury by accident. *Id.* The School District also asserted that Mr. Rhame had not complied with the Workers' Compensation Act's notice requirement and that the claim was barred by the statute of limitations. *Id.*

A single hearing commissioner heard the case on December 3, 2009, and in an order dated February 24, 2010, and filed February 26, 2010, the hearing commissioner found that Mr. Rhame's claim was not barred by the statute of limitations. (R.p.8, ¶10). This was a summary finding – the hearing commissioner did not specifically detail why the claim was timely filed. However, the body of the hearing commissioner's order did note Mr. Rhame's

testimony that no specific injury ever occurred to his back; that Mr. Rhame's back pain "gradually got worse over time;" that Mr. Rhame had never "been given a reason to think that he [had] a compensable workers' compensation claim;" and that when Mr. Rhame had investigated a significant work-related injury to his neck in 2006, the School District denied his claim. (R.pp.6-7).

On March 1, 2010, the School District filed a Form 30 requesting that a panel of the commission review the hearing commissioner's decision. (R.p.36). The parties submitted briefs to the commission, see (R.pp.38-47), and (R.pp.48-57), and the appellate panel conducted a hearing in the case on May 17, 2010.

In an order dated and filed August 6, 2010, the appellate panel reversed the hearing commissioner's decision. The appellate panel found that Mr. Rhame was aware that he had a "back injury" in 1994 or 1995, and that Mr. Rhame did not file a claim within two years of when he knew or should have known that his claim was compensable. (R.p.23, ¶ 2; p.24, ¶ 10). The appellate panel also found that Mr. Rhame "showed awareness of the workers' compensation system" by trying to file a claim for his 2006 neck injury, and that he delayed bringing the present claim out of fear of losing his job. (R.p.19).

Mr. Rhame filed a petition for rehearing on September 8, 2010. (R.p.58). The School District opposed the petition for rehearing, see (R.p.65), and in an order dated September 20, 2010, and filed September 21, 2010, the commission dismissed the petition. (R.p.26).

On October 21, 2010, Mr. Rhame served and filed notice of this appeal.

ARGUMENTS

The South Carolina Workers' Compensation Commission Erred When it Held That Ricky Rhame's Claim for a Repetitive Trauma Injury to His Back Was Barred by the Statute of Limitations.

Much of this case is not in dispute. For example, there is no dispute that Mr. Rhame never suffered a single, discreet, and identifiable injury to his back. Mr. Rhame also readily admits that he began having off-and-on back problems in 1994 or 1995, and that he knew those problems were caused by the heavy lifting he was doing at work.

This appeal is about inconsistency. The commission acknowledged that Mr. Rhame never suffered a specific injury to his back, but then it held that Mr. Rhame's first experience of back pain was a "back injury" and was the trigger point for when he knew or should have known that he had a compensable workers' compensation claim. This approach is inconsistent with a repetitive trauma injury – an injury that is gradual in onset and whose nature and severity are not apparent when the first symptoms of the injury appear.

The inconsistency did not end there. The commission held that Mr. Rhame showed awareness of the workers' compensation system by supposedly trying to file a claim for his 2006 neck injury, but the truth of the matter is that until 2009, Mr. Rhame had no interaction whatsoever with the workers' compensation system. Instead, the School District's actions – both in 2006 and in 1994 or 1995 – directly contributed to Mr. Rhame's delay in filing a claim. When Mr. Rhame reported work-related pain, he was told to "get the job done." When he asked the School District to pay for the surgery from his work-related neck injury, they told him "no."

Finally, the commission applied the current statute of limitations to Mr. Rhame's

claim, but that statute applies only to *injuries* that *occur* on or after July 1, 2007. This is somewhat of a trivial point because Mr. Rhame can still meet this test when it is properly applied, but the point is instructive because according to the commission's approach, Mr. Rhame's ability to bring a claim for his repetitive trauma injury was eviscerated as of July 1, 2007. What the commission did was apply 2007 law to what it said was a 1994 injury.

I. Referring to the First Time Mr. Rhame Experienced Back Pain as a "Back Injury" Is Inconsistent with the Well-established Notion That a Repetitive Trauma Injury Is Gradual in Onset and Has No Specific "Time of Occurrence."

The commission acknowledged that Mr. Rhame never suffered a specific injury to his back, but then it held that Mr. Rhame's first experience of back pain was a "back injury" and was the point at which he knew or should have known that he had a compensable workers' compensation claim. This was error because calling the first experience of pain an "injury" is inconsistent with the gradual nature of a repetitive trauma injury and it is not supported by the evidence in the record.

A. The Case That Recognized Repetitive Trauma Injuries as Compensable Specifically Noted That These Injuries Are Gradual in Onset and Do Not Have a Specific Time of Occurrence.

The Supreme Court of South Carolina recognized repetitive trauma injuries as compensable in the case *Pee v. AVM, Inc.*, 352 S.C. 167, 573 S.E.2d 785 (2002). In *Pee*, the injured worker had worked in various positions over the 8 years she had been employed by the same employer, and the court described that "each job involved the repetitive use of [the worker's] hands." *Id.* at 169, 573 S.E.2d at 786. The worker filed a workers' compensation claim after she was diagnosed with carpal tunnel syndrome.

The employer argued that a repetitive trauma could not be compensable because the worker's repetitive action – the use of her hands – was a part of the worker's normal work activity. *Id.* at 170-71, 573 S.E.2d at 787. Put differently, the employer argued that a repetitive trauma injury was not the result of an "accident;" it was just the result of work.

The Supreme Court rejected this argument, holding that the key for compensability is not the happening of an unexpected accident, but the happening of an unexpected injury, whatever the cause. *Id.* at 170-71, 573 S.E.2d at 787-88. The court noted that this approach was consistent with the purpose of the Workers' Compensation Act, which was to place the burden of injuries that result from the conditions of working on the employers. *Id.* at 171, n.3, 573 S.E.2d at 787, n.3. Put simply, the court held that having a job did not require a worker to expect to get injured and to have to bear the cost of that injury.¹

The employer also argued that an injury resulting from repetitive trauma "has no definite time of occurrence and therefore is not compensable as an injury by accident." *Id.* at 172, 573 S.E.2d at 788.

The Supreme Court looked at the Act's occupational disease statute, an occupational disease case, and its jurisprudence on work-related mental injuries, and the court rejected the argument that an injury needed a definite time of occurrence to be compensable. See *Id.* at

¹Persuasive authority instructs that the theory behind placing the financial burden of these injuries on the employers is that the cost of workplace injury is part of the cost of making the good or service, and that once this cost is placed on an employer, the cost will be built into the ultimate price of the good or service – where it belongs. See 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 1.03[2] (2004).

172, 573 S.E.2d at 788.² The court considered whether to treat repetitive trauma injuries as “occupational diseases” as opposed to “injuries by accident” and expressed difficulty with the question, observing:

As other courts have recognized, the difficulty in deciding this issue arises from the fact that a repetitive trauma injury has some of the characteristics of both accidental injury and occupational disease - it is the cumulative effect of repeated and distinct events that ultimately produces the disability. There is a split of authority on this issue with no real majority view. Further, it is not obvious that either approach is more favorable to finding coverage. Presumably, Employer is advocating the occupational disease approach based on case law from other jurisdictions where repetitive trauma is treated as an occupational disease and courts have found no coverage because the claimant failed to show a required element. For instance, in *Fuller v. Motel 6*, the North Carolina Court of Appeals found no coverage for carpal tunnel syndrome where the claimant failed to show it was caused by conditions peculiar to her employment that excluded all ordinary diseases to which the general public is equally exposed.

Pee, 352 S.C. at 173-74, 573 S.E.2d at 788-89 (internal citations and footnotes omitted).

The court ultimately chose not to answer the question. It instead observed that it had not interpreted South Carolina’s occupational disease statute in the same manner as the North Carolina courts had interpreted North Carolina’s statute, and it also observed that “[u]nder [South Carolina’s] more liberal approach, it is not clear that proof of a repetitive trauma injury as an occupational disease would be a more onerous burden than proving it as an injury by accident.” *Id.* at 174, 573 S.E.2d at 789.

²The then-applicable occupational disease statute was S.C. Code Ann. § 42-1-160 (Supp. 2001); *Sturkie v. Ballenger Corp.*, is an occupational disease case; and *Stokes v. First Nat’l Bank*, is a work-related mental injury case. See *Pee*, 352 S.C. at 172, 573 S.E.2d at 788 (citing §42-1-160; *Sturkie*, 268 S.C. 536, 235 S.E.2d 120 (1977); and *Stokes*, 306 S.C. 46, 410 S.E.2d 248 (1991)). The court looked at these types of cases because like a repetitive trauma, these are unusual when compared with “ordinary” workplace accident cases.

This case was the birth of South Carolina's repetitive trauma law, and its corner posts are acknowledgments that these injuries are gradual in onset and have no definite time of occurrence.

B. Repetitive Trauma Cases Have Continually Recognized That These Injuries Have No Definite Time of Occurrence, but Are the Result of a Series of "Mini-accidents" That Culminate in a Disability.

The notion that repetitive trauma injuries are gradual in onset and have no definite time of occurrence was a central observation in *Pee*, and it has been repeated in South Carolina's workers' compensation jurisprudence. For example, in *Schurlknight v. City of North Charleston*, the injured worker complained of hearing loss suffered during a career spent as a fireman which involved his riding next to the siren on a fire engine. 352 S.C. 175, 574 S.E.2d 194 (2002). The Supreme Court observed that unlike injuries occurring on a specific date, "[r]epetitive trauma injuries . . . have a gradual onset caused by the cumulative effect of repetitive traumatic events or 'mini-accidents.'" *Id.* at 178, 574 S.E.2d at 195. This Court quoted from *Schurlknight* for this very proposition in a case involving a back injury that was the result of repetitive trauma. See *White v. Med. Univ. of S.C.*, 355 S.C. 560, 565, 586 S.E.2d 157, 160 (Ct. App. 2003).

Schurlknight and *White* are statute of limitations cases, and both cases turn on the rule that the limitations clock for a repetitive trauma injury does not start until the last date that the injured worker is exposed to the condition that causes his or her injury. See *Schurlknight*, 352 S.C. at 179, 574 S.E.2d at 196 ("We hold the day of last exposure is the date from which the statute of limitations begins to run in a repetitive trauma case."); *White*, 355 S.C. at 566,

586 S.E.2d at 160-61 (citing *Schurlock* for the same). That law *does not* apply to injuries arising on or after July 1, 2007, see *infra* pp.26-28, but the point to be made here is that it is well-established that repetitive trauma injuries are gradual in onset and have no definite time of injury. The current statutory law recognizes this. It defines “repetitive trauma injury” as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.” S.C. Code Ann. § 42-1-172(A) (Supp. 2010).

C. The Commission’s Finding That Mr. Rhame Suffered a “Back Injury” in 1994 or 1995 Is Inconsistent with These Principles and Is Contrary to the Evidence That He Was Simply Experiencing His First Episode of Intermittent Back Pain.

The commission’s decision did not account for the gradual and progressive nature of repetitive trauma injuries. The commission recited that Mr. Rhame “never had any specific injury that caused his back pain,” (R.p.18), but the commission ultimately held that Mr. Rhame had an “injury” that started in 1994 or 1995. (R.p.17; p.23, ¶ 2) (“the claimant was aware that he had a back injury related to his job with [the School District] since 1994 or 1995”). Mr. Rhame did not testify to this effect, and the evidence in the record does not support the commission’s conclusion.

Mr. Rhame admitted that he began to have back *pain* in 1994 and 1995, and that he knew this pain was work-related. See (R.p.85, lines 13 - p.86, line 8) (describing that his back “problems” began in 1994 or 1995); (R.p. 86, line 20 - p.87, line 8) (describing that he knew his work was causing his back pain in 1994 or 1995). Mr. Rhame also testified that this was not constant pain. He testified that his back “was hurting him off-and-on,” (R.p.95, lines 23-24), and that he would sometimes seek medical attention where he would get

medicine for pulled muscles and return to work after his back pain eased. (R.p.85, lines 15-22; p.95, line 23 - p.96, line 4).

Mr. Rhame sought medical treatment on an off-and-on basis. The evidence in the record describes progressive and intermittent back pain that took Mr. Rhame to the doctor in either 1994 or 1995, as well as for visits in the years 2001, 2002, 2006, and 2007. (R.p.167) (letter to Mr. Rhame describing Mr. Rhame's admission that he has had low back pain beginning in 1994/1995 and off-and-on treatment since); (R.pp.169-198) (records of medical appointments from 2001, 2002, 2006, and 2007). According to Mr. Rhame, his back pain retained its off-and-on character until May of 2009, when he moved a particularly heavy blower and "couldn't even stand up straight" afterwards. (R.p.115, lines 15-24). Mr. Rhame's medical records from that point forward reflect that his doctors have now told him that he cannot work. (R.pp.157, 159). Mr. Rhame testified that after May of 2009, he stays in constant, throbbing pain which goes from his lower back down the front of his right leg. (R.p.120, line 17 - p.121, line 11). He cannot walk more than a block, stand upright for any substantial length of time, put on his pants, get clothes out of the dryer, or tie his shoes without pain. (R.p.121, line 15 - p.122, line 20).

The commission's decision takes the very first occurrence of Mr. Rhame's back pain and finds that occurrence of pain to be an "injury," but Mr. Rhame continued to work his same duties for the School District for another 15 years, was never given any light duty restrictions, and never missed work for more than "a day or two, here and there, for pulled muscles." (R.p.137, lines 5-11). If Mr. Rhame's back had truly been "injured" in 1994/1995, he could not have continued to work a job requiring so much heavy lifting for

the next 15 years.

The correct view was the view taken by the hearing commissioner. He found that Mr. Rhame's back started hurting in 1994 or 1995, and that although no specific back injury ever occurred, his back gradually got worse over time. (R.p.6). There was no suggestion in 1994 or 1995 that Mr. Rhame was experiencing any permanent injury to his back.³ The first evidence of permanent injury appears in a 2007 notation in Mr. Rhame's medical records which reads "[h]e may be at risk because of his job to get lumbar [meaning lower back] problems also." (R.p.185).⁴ The evidence again was that from 1994 or 1995 on, Mr. Rhame was having intermittent back pain – pain which was not diagnosed as relating to any permanent injury and which did not appear to offer any permanent restriction on his ability to perform his job. This Court has previously rejected the argument that a worker with a repetitive trauma injury experiences a discreet injury when the worker first experiences adverse symptoms. See *Bass v. Isochem*, 365 S.C. 454, 481, 617 S.E.2d 369, 383 (Ct. App. 2005) (rejecting the argument that the worker suffered a single injury on the date that she began to experience problems with her arms and holding that the only evidence in the record was that the worker suffered a sustained repetitive trauma injury which she experienced on

³The only references in the record to this 1994/1995 first experience of back pain are in a letter from a claims specialist to Mr. Rhame in 2009, (R.p.167), and Mr. Rhame's own testimony.

⁴The "also" in this quotation is a result of this record's reference to Mr. Rhame's 2006 surgery on his cervical spine (his neck). Though not directly related to Mr. Rhame's claim for repetitive trauma injury to his lower back, this surgery is relevant to *when* Mr. Rhame brought his repetitive trauma claim because the surgery was the result of a work-related injury, and when Mr. Rhame asked the School District to pay for the surgery from this injury, they told him "no." This is discussed on pages 15-17 of this brief.

that first occasion and which later culminated in disability). The Court should reach that same conclusion here.

The Commission's conclusion that Mr. Rhame had a "back injury" in 1994 or 1995 is clearly erroneous in view of the evidence in the record and should be reversed. See *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981) (the Administrative Procedures Act governs this Court's review of the Workers' Compensation Commission's decisions); and S.C. Code Ann. § 1-23-380(5)(e) & (f) (Supp. 2010) (factual findings and conclusions of administrative agencies are affirmed unless clearly erroneous, arbitrary, capricious, or characterized by an abuse of discretion). All of the evidence in this case suggested not that Mr. Rhame had a back "injury" in 1994 or 1995, but that he began at that time to have off-and-on back "pain" which he admittedly knew was caused by his work.

II. The Finding That Mr. Rhame Was Aware of the Workers' Compensation System by No Later than 2006 Is Clearly Erroneous, and the School District's Actions Directly Contributed to Mr. Rhame's Delay in Bringing His Claim.

The commission held that Mr. Rhame showed awareness of the workers' compensation system by trying to file a claim for his 2006 neck injury and that the primary reason he did not bring a claim was fear of losing his job. (R.p.23, ¶¶ 6, 8). The truth of the matter is that Mr. Rhame's employer misled him into believing that he did not have a claim. When Mr. Rhame reported work-related pain, he was not told about the workers' compensation system but was told to "get the job done." When he asked the School District to pay for the surgery from his work-related neck injury, they told him "no."

A. Where an Employer's Conduct Reasonably Tends to Mislead the Employee into Believing That an Injury Is Not Compensable, That Misleading, Whether Intentional or Not, Impacts the Availability of the Statute of Limitations as a Defense.

In the case *Altman v. Williams Furniture Co.*, the Supreme Court observed that the injured worker was "misled [by his employer], whether intentionally or not, into believing that he had no compensable injury for which a claim should be filed." 250 S.C. 98, 100, 156 S.E.2d 433, 434 (1967). *Altman* was a rather severe case. The conduct in question consisted of not disclosing an injured worker's X-ray results to him while "the company doctor and personnel manager told [the worker] that there was nothing wrong with him and to go back to work." *Id.* at 100, 156 S.E.2d at 434. The Supreme Court held that "[p]ersistence in the representation to the employee that nothing was wrong with him, and in the concealment of the X-ray findings, should be held to estop the employer from asserting as a defense the employee's delay in filing a claim." *Id.* at 100, 156 S.E.2d at 434.

The injured worker had filed a claim two years after his original injury, and the statute of limitations at that time provided that a claim should be filed within one year after the accident. *Id.* at 100-101, 156 S.E.2d at 434-35 (opinion of Moss, C.J., dissenting) (describing the case's factual history and citing the statute of limitations). The worker had suffered a back injury, and despite the facts that (1) the worker's back had continued to hurt since his original accident, and (2) the worker had continued to make periodic visits to the clinic in his plant, the Supreme Court nevertheless held the employer to the consequences of its having misled the injured worker. See *Id.* at 102, 156 S.E.2d at 435 (opinion of Moss,

C.J., dissenting) (the worker made periodic clinic visits when his back was hurting, he was told that his pain was "old back trouble," and no offer was made to send him to a doctor).

The Supreme Court applied a similar rule in *Robertson v. Brissey's Garage, Inc.*, 270 S.C. 58, 240 S.E.2d 810 (1978). The plaintiff in that case was the widow of the owner of a garage who had died as the result of a heart attack while at work. The garage's insurer concluded that since the deceased was the president and part-owner of the garage, he was not an employee and the injury was not compensable. *Id.* at 61, 240 S.E.2d at 810. In a letter sent to the widow, the insurance adjuster explained his decision that the death would not be compensable and informed the widow of her ability to contest this decision by filing a claim with the commission within one year. *Id.* at 61, 240 S.E.2d at 810-11. The widow filed a claim after the one year time period expired.

Despite the fact that the insurance adjuster had specifically advised the widow of the workers' compensation system *and* of her ability to contest the adjuster's decision that the claim would not be compensable, the commission found that the adjuster's conduct "led the [widow] to refrain from filing a timely claim or seeking counsel." *Id.* at 62, 240 S.E.2d at 811. In affirming, the Supreme Court observed:

Although the carrier acted in good faith, the fact is inescapable that it occupied a position far superior to that of the claimant. The claimant was ignorant of the Workmen's Compensation Act and of business practices generally. This factor may be taken into account in determining whether the claimant was misled. We also feel that it may properly be considered in determining whether the claimant's reliance was justified. Although claimant was advised that she could file a claim, it was reasonable under the circumstances for her to feel that such would be a futile gesture in view of the positive assertion by the carrier of the reasons why the death was not compensable.

Id. at 64, 240 S.E.2d at 812 (internal citation omitted).

B. Mr. Rhame Did Not Previously Interact with the Workers' Compensation System, and When Mr. Rhame Reported His Back Pain in 1994/1995, He Was Told "We Need to Get the Job Done."

The School District misled Mr. Rhame in two ways. First, Mr. Rhame testified that when he began to experience back pain in 1994 or 1995, he reported this back pain to his supervisor. He testified that he told his supervisor "that [his] back was burning like fire," and that his supervisor's exact words in response were "we need to get the job done." (R.p.87, line 15 - p.88, line 1). Mr. Rhame testified that he also told his supervisor that he was going to have to see a doctor because he could not "take the pain." (R.p.88, lines 5-9).

Telling a supervisor about pain would be sufficient to comply with the Workers' Compensation Act's requirement that Mr. Rhame notify his employer of any injury. See *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 295-96, 519 S.E.2d 583, 598 (Ct. App. 1999) (worker gave notice to "several of his superiors"); see also *Boggs v. U.S. Rubber Co.*, 201 S.C. 281, 22 S.E.2d 881 (1942) (foreman's knowledge of injury sufficient to give employer notice). But Mr. Rhame did more than tell his supervisor about his back pain – he told him he was going to see a doctor. His supervisor never offered to send him to the doctor, never referenced a need to report the pain to the School District's administration, and never advised Mr. Rhame about the workers' compensation system. He instead told Mr. Rhame "we need to get the job done." Mr. Rhame is like the worker with off-and-on back pain from the *Altman* case. Mr. Rhame's employer heard his complaints, but it encouraged him to keep working and stayed conspicuously silent when it came to his health. There was no outright

deceit like there was in *Altman*, but it would have been reasonable for Mr. Rhame to rely on his supervisor's encouragement to "get the job done" to mean that it was important for Mr. Rhame to complete his job duties despite his discomfort. It also reasonably suggests that Mr. Rhame's job depended on his ability to perform.

The School District also misled Mr. Rhame with respect to his earlier neck injury. The evidence in the record is that Mr. Rhame injured his neck in the year 2006. At work, Mr. Rhame was frequently required to climb a ladder with one hand while carrying a tool belt in the other, and in 2006, Mr. Rhame felt a pop in the back of his neck while climbing a ladder in this way. (R.p.89, lines 2-18) (Mr. Rhame's deposition testimony); see also (R.p.184) (medical records describing the injury). This injury ultimately required surgery. See (R.p.108, lines 5-11) (Mr. Rhame's testimony describing the surgery); see also (R.p.185) (medical records describing past surgery). Mr. Rhame testified that he talked to "somebody from the [School] District and they told me that it was – that – that they were not going to take care of it[,] [a]nd they sent me a – a letter within a day or two saying it was denied." (R.p.108, lines 12-17) (from the hearing before the hearing commissioner); (R.p.92, line 7 - p.93, line 5) (from Mr. Rhame's deposition). Mr. Rhame accepted the School District at its word and never spoke with anybody else about going forward with a claim. (R.p.109, lines 17-25). According to his testimony, the first time he became aware of what a worker's compensation claim was or that he might have one was when he met with a lawyer in 2009. (R.p.123, lines 5-25).

Here, Mr. Rhame is like the widow in *Robertson* who reasonably relied on the School District's assessment of his neck injury. This appeal does not directly involve Mr. Rhame's

neck injury, but that interaction with the School District is relevant because when it came to work-related injuries, Mr. Rhame's body of experience was that when he reported back pain, his supervisor told him "we need to get the job done," and when he reported a work-related neck injury, the School District denied any benefits. He testified that "if you don't perform [at the School District] you don't – you – you might not stay there long," (R.p.136, line 18 - p.137, line 4), and given his supervisor's admonishment to "get the job done," this belief was reasonable. He testified that he didn't know he had a compensable injury, and this is reasonable considering that when he went to the School District with work-related injuries, the School District was telling him that the injuries were not covered. (R.p.92, lines 18-22). The School District was misleading Mr. Rhame into believing that his injuries were not compensable and encouraging him to work through his pain until he could not work any more. The misleading may or may not have been intentional, but the important question is whether Mr. Rhame's reactions to the misleading were reasonable. They were.

This Court should accordingly reverse the commission's finding that Mr. Rhame showed awareness of the workers' compensation system in 2006. This finding is not supported by any evidence in the record. The great weight of the evidence also suggests that Mr. Rhame was misled into delaying to file his claim by the facts that when he reported work-related pain, he was told to "get the job done," and when he asked the School District to pay for a work-related neck injury, they told him "no."

III. When the “Discovery Rule” Is Properly Applied, Mr. Rhame’s Claim Was Timely Filed; but the Commission Should Have Never Applied the Discovery Rule.

The commission applied the current statute of limitations to Mr. Rhame’s claim, but that statute applies only to injuries that occur on or after July 1, 2007. Mr. Rhame can meet the current statute when it is properly applied, but it is important to note that this *should* be an “old law” case, and that according to the commission’s approach, Mr. Rhame’s ability to bring a claim for his repetitive trauma injury was completely eviscerated as of July 1, 2007.

A. The Commission Interpreted the Current Law to Mean That the Clock Starts When an Injured Worker Knew or Should Have Known That He Had an Injury Related to His Job.

The currently applicable statute of limitations for workers’ compensation cases is codified at S.C. Code Ann. § 42-15-40 (Supp. 2010). This statute instructs that for a repetitive trauma injury, “the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure.” *Id.*

The commission devoted just over four pages of its order to a “review of the statute of limitations law in repetitive trauma claims.” (R.pp.19-23). The bulk of this analysis was devoted to attacking the notion that a claimant’s knowledge of the worker’s compensation system was relevant, see (R.pp.19-20)⁵, and describing the “date of last injurious exposure” rule which the Supreme Court adopted in *Schurlknight*. See (R.p.21-22) (citing *Schurlknight* and *White v. Med. Univ. of S.C.*). In holding that the discovery rule provides that the

⁵Citing *Young v. Sonoco Products*, 210 S.C. 146, 41 S.E.2d 860 (1947) and *Samuel v. Appleton Co.*, 214 S.C. 157, 51 S.E.2d 508 (1949).

limitations period begins to run when the claimant becomes aware of an injury related to work, the commission relied on *Mauldin v. Dyna-Color/Jack Rabbit*, 308 S.C. 18, 416 S.E.2d 639 (1992). See (R.pp.20-21). The commission also used *Schurlknight* to observe that it is theoretically possible (and under the new law, impermissible) for a claimant to know that he has a compensable claim and still continue to work, and to hold that the discovery of a "compensable" claim is the same as the discovery of a work-related injury. See (R.p.21).

B. The Discovery Rule Does Not Provide That Work-related Pain Equals a Work-related Injury, and the Rule Also Takes Account of an Employee Being Misled by His Employer.

South Carolina courts have drawn from Professors Arthur and Lex Larson's treatise on workers' compensation law in the past,⁶ and that treatise devotes substantial discussion to how to determine when a workers' compensation claim actually accrues and when a limitations period should start.

The treatise begins by noting that statutes of limitations absolutely have a valid and vital purpose. Statutes of limitations carry a conclusive presumption that after the passage of a certain amount of time, an employer "is prejudiced by reason of the enhanced difficulty of preparing a defense." 7 ARTHUR LARSON & LEX K. LARSON, *LARSON'S WORKERS' COMPENSATION LAW*, § 126.02 (2003). South Carolina law is in accord, containing the observation that "[o]ne policy behind the statute of limitations is the protection of a defendant from false or fraudulent claims that might be difficult to disprove if not brought

⁶See, e.g., *Bass v. Isochem*, 365 S.C. at 474, 617 S.E.2d at 379-80 (examining the purpose of the Workers' Compensation Act's notice requirement); and *Shuler v. Tri-County Elec. Co-Op, Inc.*, 385 S.C. 470, 474-75, 684 S.E.2d 765, 768 (2009). But this should not be taken to suggest that the Larson treatise is anything more than persuasive authority.

until after relevant evidence has been lost or destroyed.” *Mauldin*, 308 S.C. at 21, 416 S.E.2d at 640 (citing *Santee Portland Cement v. Daniel Int’l Corp.*, 299 S.C. 269, 271, 384 S.E.2d 693, 694 (1989)).

When it comes to determining when the statute of limitations clock (and the notice clock) should start, the professors comment:

The time period for notice or claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of his or her injury or disease.

7 LARSON & LARSON, *supra* p.19, at § 126.05[1].

The treatise explains the justification for this rule. It observes that although the usual state’s statute of limitations “merely dates the period from the time of the injury, disability or accident,” “the great majority of courts have been sufficiently impressed by the acute unfairness of a literal application of this language to read in an implied condition suspending the running of the statute until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained.” *Id.* In other words, although most states have statutes of limitations providing that the limitations clock starts at the time of injury or accident, courts nevertheless construe those statutes as not starting until the worker knows (or should know) that he has a compensable injury.

The block quote indicates three aspects of determining when the limitations clock begins to run: it starts when the injured worker should recognize the (1) nature, (2) seriousness, and (3) probable compensable character of an injury.

The “nature” of an injury refers to both its diagnosis and the fact that it is caused by work. “[A] claimant should be expected to display no greater diagnostic skill than any other

uninformed layperson confronted with the early symptoms of a progressive condition,” but at the same time, “it is not necessary for the claimant to know the exact diagnosis or medical name for the condition if he or she knows enough about its nature to realize that it is both serious and work-connected.” *Id.* at § 126.05[4].

The “seriousness” of an injury is rather self-explanatory. The treatise refers to this as “a salutary requirement, since any other rule would force employees to rush in with claims for any minor ache, pain, or symptom.” *Id.* at § 126.05 [5]. Similarly, an injury’s “probable compensable character” refers to the injured worker understanding “not only the nature and gravity of the injury but its relation to employment.” *Id.* at § 126.005 [6].

The point of this multi-faceted (and somewhat overlapping) test is that it is not enough for a worker to know that he has an ache, pain, or even a minor injury caused by work. When properly applied, the discovery rule starts the clock when a reasonable worker would appreciate the nature, seriousness, and compensable character of an injury. Where a serious injury first presents through extremely dull symptoms, this rule will allow some delay. The commission’s approach to the discovery rule – that the clock starts as soon as the worker knows he has a work injury – would not.

South Carolina courts have been using the more favorable rule in workers’ compensation cases. The *Mauldin* case makes the point. In *Mauldin*, the worker suffered a knee injury and she was diagnosed with a sprain. 308 S.C. at 20, 416 S.E.2d at 640. She continued to experience problems with her knee, was diagnosed with arthritis, and when she went to a doctor over two years later, the doctor diagnosed her with a tear from the original accident. *Id.* at 20, 416 S.E.2d at 640.

Having experienced intermittent knee problems after the accident, it would probably be reasonable for the injured worker to have suspected that her knee pain was related to her accident at work. But the court held that the limitations clock did not start until the worker received the diagnosis of a tear some two years afterwards. *Id.* at 21, 416 S.E.2d at 640-41. The court took stock of the injured worker's educational background and the multiple medical diagnoses in making its decision. *Id.* at 21, 416 S.E.2d at 640-41. The Supreme Court has called *Mauldin* a misdiagnosis case where although the worker knew she was having pain, she did not learn until later that she had a "compensable injury." *Schurlknight*, 352 S.C. at 177-78, 574 S.E.2d at 195.

The Larson treatise also discusses gradual injuries and what it means when it is said that the limitations period does not begin to run until the claim is "compensable." 7 LARSON & LARSON, *supra* page 19, at § 126.10[1]. It observes "this rule does not mean that the claim period never runs until actual disability in the sense of quitting work." *Id.* For some injuries, a worker may never even miss work. "The worker should not be allowed, with full knowledge of his or her compensation rights, to delay the employer's opportunity of investigating the injury indefinitely, for the purpose of clinging to a full-wage position as long as the labor market permits." *Id.* The professors suggest:

A line must be drawn between the cases in which a person, with an objectively disabling injury, persists in hanging onto a job for some special reason, and the cases in which a person experiences some relatively minor back pains or other symptoms that would not necessarily impel a worker to quit work under normal conditions. After all, it is a rare adult who has not at some time experienced back pain at work; most of the time nothing comes of it, but sometimes it is the first ominous sign of a herniated disc. Often at that stage even the most competent specialists cannot tell the difference. To impose on a worker at that juncture the absolute duty of filing [a claim] in

case a disc disability related to the original pain develops would be preposterous. The boundary in these cases would never be easy to delineate. Generally, however, the safest rule would be to bar a claim in this class of cases only if it is affirmatively shown that it was for demonstrated special reasons that the claimant continued to work in spite of an otherwise objectively disabling injury.

Id.

This persuasive authority supports the commission's finding that it is possible for an injured worker to have a compensable claim while continuing to work, see (R.p.21), but it also supports the view that a worker should not be deemed to know that he has a compensable workers' compensation claim at the first occurrence of work-related pain or the first experience of the symptoms of a gradual and progressive condition. South Carolina has a history of holding that statutes of limitations, although they serve a valuable function, should not be construed mechanically and should be construed "in the manner most consistent with both their underlying purposes and the requirements of substantial justice to the parties." *White*, 355 S.C. at 567, 586 S.E.2d at 161 (quoting *Gattis v. Chavez*, 413 F. Supp. 33, 39 (D.S.C. 1976)); *Mauldin*, 308 S.C. at 21, 416 S.E.2d at 639 (quoting the same). South Carolina furthermore has a history of construing statutes of limitations in a manner that is favorable to an injured worker, which is based in part on the policy of construing the Workers' Compensation Act in favor of coverage. See *White*, 355 S.C. at 567, 586 S.E.2d at 161 (citing *Mauldin*, 308 S.C. at 22, 586 S.C. at 641); see also *Pee*, 352 S.C. at 173-74, 573 S.E.2d at 788-89 (looking at whether treating repetitive trauma as an injury by accident was more favorable than as an occupational disease). The commission's rule – that the clock starts simply when a worker knows he has an injury caused by work – does not appreciate

and account for more complicated scenarios like an injury which is gradual in onset and manifests first through intermittent symptoms. Put simply, the commission's rule does not account for injuries that have any kind of complex nature, seriousness, or compensable character that might justify holding the start of the limitations clock if all that has happened is that the worker has begun to have an off-and-on work-related ailment. In these circumstances, the more favorable rule is the fairer rule.⁷

C. Mr. Rhame Had Back Pain – Not a Back Injury – in 1994/1995, and the School District Misled Mr. Rhame into Believing That His Work-related Ailments Were Not Compensable.

If the two-year limitations clock did not start until the time it was or should have been apparent to Mr. Rhame that he had sustained a compensable injury, Mr. Rhame's repetitive trauma claim was timely. As outlined in section I of this brief, Mr. Rhame began to have back pain in 1994/1995. Mr. Rhame admittedly suspected that this pain was related to his work, but at the same time, he knew that he never had any particular accident that caused his back to hurt. The evidence in the record is that this back pain continued to come and go over the next 15 years, and that over this coming and going, it gradually worsened until it reached a point where it became constant and disabling. See, e.g., (R.pp.153-154) (medical records describing a progressively worsening condition). This was not a 1994 "injury." It was a repetitive trauma that was slow and gradual in onset.

⁷This approach would be in line with how the discovery rule is applied in regular civil cases, where it is by-and-large the rule of the road. See, e.g., *Bayle v. S.C. Dep't of Transp.*, 644 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) (The discovery rule is objective and asks "whether *the circumstances of the case* would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.") (emphasis added).

The medical evidence in the record describes treatments related to this back pain occurring in 2001, 2002, 2006, and 2007. (R.pp.169-198). Combined with the visits in 1994/1995, this is 5 years in a 15 year history of experiencing off-and-on back problems. Not until 2009 is there any mention of work restrictions. (R.p.165). Not until 2009 is there any diagnosis of permanent impairment. (R.pp.155, 156, 158, 159)(discussing discogenic pain and diagnoses of disc disruption and lumbar radiculitis). Records from 2007 suggest that Mr. Rhame "may be at risk [of developing lower back problems] because of his job," (R.p.185), but it is important to remember two things in conjunction with this. By this time, Mr. Rhame had already (1) told his supervisor about his back pain and been told to "get the job done," and (2) asked the School District about his work-related neck injury and been told that he had no claim. By 2007, Mr. Rhame was operating under the view that his work-related injuries were part of the job, and given this history, that view was reasonable. This is why Mr. Rhame feared for losing his job. The commission's observation that attrition was the primary reason Mr. Rhame did not bring a claim, see (R.p.23, ¶6), does not tell the true story of Mr. Rhame's case. Mr. Rhame was being told that completing work was the important consideration and that his injuries were not the School District's concern.

By applying an incorrect construction of the discovery rule, the commission committed an error of law. Because Mr. Rhame can meet the discovery rule when it is properly applied, the Court should reverse the finding that Mr. Rhame's claim was untimely.

D. The Discovery Rule Should Not Apply to Mr. Rhame's Case Because it Applies Only to Injuries That Occur on or after July 1, 2007, and the Effect of the Commission's Rule Is That Mr. Rhame's Claim Was Destroyed on July 1, 2007.

Until July 1, 2007, the statute of limitations for a repetitive trauma injury did not begin to run until the last day that the injured worker was exposed to the injurious condition. The Supreme Court adopted this rule in *Schurlknight*, and in doing so, the court observed that this approach “ha[d] the added advantage of fixing an outside date for filing that avoids the need to litigate the date of injury.” 352 S.C. at 178, 574 S.E.2d at 195.

The 2007 amendments to the Workers' Compensation Act changed this rule (and did away with this advantage). The law now provides that for a repetitive trauma, the limitations clock begins to run when the injured worker knew or reasonably should know “that his injury is compensable.” S.C. Code Ann. § 42-15-40 (Supp. 2010) (amended to its present form by Act. No. 111, Part I, Section 26, 2007 S.C. Acts 599, 626). This statute applies to injuries that occur on or after July 1, 2007. See Act. No. 111, Part IV, Section 2, 2007 S.C. Acts 599, 644 (providing that except as otherwise stated, Act 111 of 2007 applies to injuries that occur on or after July 1, 2007).

No South Carolina court has yet construed how this effective date provision interacts with a repetitive trauma injury that began before July 1, 2007, and became disabling after July 1, 2007. The doctrinal problems with this effective date provision are easy to spot. For one, the Supreme Court has specifically observed that a repetitive trauma injury has no specific date of occurrence. See, e.g., *Pee*, 352 S.C. at 172, 573 S.E.2d at 788. It is difficult to match an injury with no concrete date of “injury” or “occurrence” up with an effective

date provision referencing specific dates for both events. For another difficulty, a defining aspect of a repetitive trauma injury is that the injury is gradual in onset and is caused by a series of individually traumatic events. See *Schurlknight*, 352 S.C. at 178, 574 S.E.2d at 195; see also S.C. Code Ann. § 42-1-172(A) (defining “repetitive trauma injury” as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events”). By definition, Mr. Rhame’s injury was occurring over and over, a little bit at a time, from the time he started working in 1987 until he stopped in 2009.

Because Mr. Rhame can meet the requirements of the discovery rule when it is properly applied, the Court need not resolve this question to resolve the limitations issue in this case. But the commission’s approach is nevertheless instructive because the way it applied the new law completely destroyed Mr. Rhame’s ability to bring a claim for his repetitive trauma as of July 1, 2007. The Legislature cannot have intended such a result.

The day before this statutory change, the law was that the limitations clock did not start until the date of Mr. Rhame’s last injurious exposure. Thus, when Mr. Rhame was working for the School District in June of 2007, his limitations clock had not even started.

According to the commission’s view, effective July 1, 2007, that limitations clock went from not having started, to having started in 1994/1995 and stopped in 1996/1997. If this is a “new law” case, Mr. Rhame’s repetitive trauma claim evaporated on July 1, 2007.

The Court should reject this result. First, persuasive authority suggests that there may be a constitutional problem with an enactment that destroys a worker’s common law rights and also destroys the supposed substitute. See 7 LARSON & LARSON, *supra* page 19, at § 126.06[5] (“There may well be a question of the validity of an enactment that destroys

common-law rights for personal injury and also destroys the supposed compensation substitute by an inherently insurmountable procedural bar.”). Second, this approach would be inconsistent with South Carolina’s rich history of construing the Workers’ Compensation Act in favor of coverage and refusing to construe statutes of limitations mechanically. See, e.g., *Mauldin*, 308 S.C. at 220-22, 416 S.E.2d at 640-41 (applying the discovery rule in a way favorable to finding coverage under the Act). Third, the commission’s approach violated the letter of the statute’s effective date provision. The commission found that Mr. Rhame had an injury in 1994/1995, and it used the new law to determine that Mr. Rhame’s repetitive trauma clock began ticking at that point. Put differently, it took a law that only applied to 2007 injuries, and applied that law to an “injury” that it found in 1994/1995.

The Legislature cannot have intended to eviscerate the claims of injured workers who had experienced repetitive trauma injuries which began more than two years prior to July 1, 2007. Although the Court need not reach this issue in this appeal, this demonstrates that the commission’s approach to Mr. Rhame’s case was fundamentally flawed. Because Mr. Rhame’s claim is timely under both a proper application of the new law (the discovery rule) and the old law (the date of last injurious exposure), the Court should reverse the commission’s decision that Mr. Rhame’s claim is barred by the statute of limitations.⁸

⁸As an important housekeeping matter, the Court should note that Act No. 111 of 2007 is the act which amended the appeal statute for workers’ compensation cases to provide that those appeals bypass the circuit court and come directly to this court. See S.C. Code Ann. § 42-17-60 (Supp. 2010). That statute applies only to “injuries” that “occur” on or after July 1, 2007. See *Pee Dee Reg’l Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007). Because this case should be an “old law” case (it concerns a repetitive trauma occurring both before and after July 1, 2007), the appeal in the case should properly be in the circuit court. The commission, however, applied new law to this case, and Mr. Rhame accordingly has followed that law by taking his appeal in this Court. (Footnote continues)

CONCLUSION

The Workers' Compensation Commission took an inconsistent approach to Mr. Rhame's claim for a repetitive trauma injury to his back. The commission acknowledged that Mr. Rhame never suffered a specific injury to his back, but then it held that Mr. Rhame's first experience of back pain was a "back injury" and was the trigger point for when he knew or should have known that he had a compensable workers' compensation claim. The commission held that Mr. Rhame showed awareness of the workers' compensation system by supposedly trying to file a claim for his 2006 neck injury, but until 2009, Mr. Rhame had no interaction with the workers' compensation system, and the Charleston County School District's actions directly contributed to Mr. Rhame's delay in filing a claim. Finally, the commission applied the current statute of limitations to Mr. Rhame's claim, but that statute applies only to *injuries* that *occur* on or after July 1, 2007. This was important because according to the commission's approach, Mr. Rhame's ability to bring a claim for his repetitive trauma injury was completely eviscerated as of July 1, 2007.

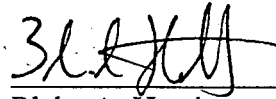
This is an unusual case because Mr. Rhame can meet the requirements of both the old statute of limitations and the new statute of limitations, and therefore the Court need not reach the issue of which statute of limitations applies. This Court should reverse the commission's decision and hold (1) that Mr. Rhame did not suffer a "back injury" in 1994/1995; (2) that the School District misled Mr. Rhame into delaying his claim; and (3)

The Court may therefore need to determine jurisdiction as the Supreme Court did in *Pee Dee Regional Transportation*. Although the merits of this appeal do not hinge on whether this case is governed by "old law" or "new law," the answer controls jurisdiction over the appeal. To avoid litigation on the point, the Court may wish to certify the case pursuant to Rule 204(b), SCACR, so the Supreme Court may provide the answer.

that regardless of whether the old law or the new law applies, Mr. Rhame's claim is not barred by the statute of limitations.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The South Carolina
Workers' Compensation Commission

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0906212

Ricky Rhame,

Appellant,

v.

Charleston County School District,

Respondent,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE CLAIMANT FAIL TO TIMELY FILE AND SERVE HIS NOTICE OF APPEAL?
- II. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY CONCLUDE THAT THE CLAIMANT'S REPETITIVE TRAUMA INJURY WAS BARRED BY THE STATUTE OF LIMITATIONS?

INTRODUCTION

This is an appeal in which the Claimant admittedly chose not to pursue a repetitive trauma injury claim when he knew that it was work related. As a result of his choice, the statute of limitations ran on his claim. The legislature specifically wrote the language of the discovery rule into the Workers' Compensation Act's statute of limitations to prevent this very type of action.

STATEMENT OF THE CASE

The Claimant/Appellant Ricky Rhame ("Claimant") filed a Form 50 with the South Carolina Workers' Compensation Commission ("Commission") on September 29, 2009 alleging that he sustained a compensable injury by accident to his back and neck on May 4, 2009. (R. p. 27.) The Claimant alleged that "[he] sustained a back injury from repetitively picking up heavy AC units" and gave notice of the injury to the Employer on May 4, 2009. (R. p. 27.) The Employer, Charleston County School District ("School District"), filed a Form 51 denying the injury alleged and asserted notice and statute of limitations defenses. (R. p. 28.)

On November 18, 2009, in the Claimant's pre-hearing brief, he amended his Form 50 "[t]o reflect repetitive trauma for the nature of the injury." (R. p. 30.) This case was originally heard before Commissioner Avery Wilkerson ("Single Commissioner") on December 3, 2009. (R. p. 1.) At the hearing before the Single Commissioner, the

Claimant argued that he was entitled to compensation for a repetitive trauma injury pursuant S.C. CODE ANN. § 42-1-172 (Supp. 2009). (R. p. 100, line 15 – p. 101, line 18.) The School District argued, among other defenses, that the Claimant failed to provide proper notice and failed to timely bring his repetitive trauma injury claim within two years of when he knew or should have known that his injury was compensable. (R. p. 101, line 19 – p. 102, line 16.)

On February 26, 2010, the Single Commissioner found that “the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009, to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County Schools.” (R. pp. 7-8, ¶ 4.) The Single Commissioner also found that the Claimant “provided timely notice to his employer of the repetitive trauma work injuries” and “filed his workers’ compensation claim within the applicable statute of limitations.” (R. p. 8, ¶¶ 8, 10.) The Single Commissioner concluded that the Claimant suffered a compensable repetitive trauma injury under § 42-1-172. (R. p. 9, ¶ 4.)

On March 1, 2010, the School District timely filed a Form 30 Request for Commission Review of the Single Commissioner’s Decision and Order and asserted, among other errors, that the Single Commissioner erred in finding that the Claimant filed his claim within the appropriate statute of limitations. (R. pp. 36-37.) The Claimant did not file a Form 30 Request for Commission Review of the Single Commissioner’s decision. The parties submitted briefs to the Commission, and on May 17, 2010, an Appellate Panel of the Commission heard the matter. (R. pp. 38-47; R. pp. 48-57; R. p. 11.)

On August 6, 2010, by unanimous vote, the Appellate Panel reversed the Single Commissioner's Decision and Order and made its own findings of fact and conclusions of law. (R. pp. 11, 23-25.) The Appellate Panel found that the Claimant "was aware that he had a back injury related to his job with the Charleston County School District since 1994 or 1995" and "was aware of the existence of a Workers' Compensation system by no later than 2006." (R. p. 23, ¶¶ 2, 8.) The Appellate Panel found that the Claimant "was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim or that his claim would be taken care of." (R. p. 24, ¶ 9.) After finding that the Claimant "did not file a Workers' Compensation claim within two years of when he knew or should have known that his claim was compensable," the Appellate Panel denied the Claimant's claim for a repetitive trauma injury to his back because of his "failure to timely file a claim." (R. pp. 24-25.)

On September 8, 2010, Claimant filed a Petition for Rehearing with the Commission. (R. pp. 58-64.) The School District filed its reply to the petition on September 14, 2010. (R. pp. 65-73.) Among its arguments, the School District asserted that the Commission did not have the authority to rehear a matter which had already been reheard by the Commission at the Appellate Panel hearing. (R. pp. 67-69.) On September 20, 2010, the Commission properly dismissed the petition. (R. p. 26.)

On October 21, 2010, Claimant served and filed his notice of appeal. This appeal follows.

STATEMENT OF FACTS

The facts of this appeal are best set forth by the Commission in its findings of fact. The Commission found as follows:

IT IS FOUND AS A FACT THAT [sic]:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the claimant was aware that he had a back injury related to his job with Charleston County School District since 1994 or 1995.
3. That the claimant continued to receive pain medications, injections, and physical therapy from various physicians related to his work injury since 1994 or 1995.
4. That the claimant missed days from work on and off from 1994 and 1995 due to ongoing pain in his back.
5. That the claimant's job required that he lift air conditioning units, weighing from 50 to 100 pounds, on at least a weekly basis.
6. That the claimant failed to file a Workers' Compensation claim until 2009 primarily due to a fear of losing his job.
7. That the claimant attempted to bring a Workers' Compensation claim in relation to a specific injury to his neck in 2006.
8. That the claimant was aware of the existence of a Workers' Compensation system by no later than 2006.
9. The claimant was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim or that his claim would be taken care of.
10. That the claimant did not file a Workers' Compensation claim within two years of when he knew or should have known that his claim was compensable.

(R. pp. 23-24.)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of the Commission's decisions and establishes the "substantial evidence rule" as the standard for

reviewing the Commission's factual findings. S.C. CODE ANN. § 1-23-380 (Supp. 2009); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). An appellate court can reverse or modify the Commission's decision only if the Claimant's "substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see § 1-23-380(5)(d),(e).

"The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence." Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001). "Where there is a conflict in the evidence, . . . the findings of fact of the Commission are conclusive." Id. at 492-93, 541 S.E.2d at 528. "[W]hether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard." Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007) (citing Bursey v. South Carolina Dep't of Health & Envtl. Control, 369 S.C. 176, 184-85, 631 S.E.2d 899, 904 (2006)).

ARGUMENTS AND CITATION OF AUTHORITY

I. THE CLAIMANT'S NOTICE OF APPEAL WAS UNTIMELY AND SHOULD BE DISMISSED.

On August 6, 2010, the Appellate Panel denied the Claimant's claim for a repetitive trauma injury to his back because of his "failure to timely file a claim." (R. pp. 24-25.) This appeal was not brought until October 21, 2010, more than thirty days after the Claimant received the Appellate Panel's Order. (See R. p. 59 (noting receipt of the notice of entry of the Appellate Panel's order on August 9, 2010).) This appeal should be

dismissed for the Claimant's failure to timely file and serve his appeal. Rule 203(b)(6), (d)(2)-(3), SCACR.

On September 8, 2010, Claimant filed a Petition for Rehearing with the Commission raising for the first time on appeal the argument that the Commission applied the incorrect law. (R. pp. 59-61.) The School District filed its reply to the petition and argued that (1) the petition for rehearing was improper, (2) the petition argued for the first time on appeal that the South Carolina Workers' Compensation Act ("the Act") prior to its amendment on July 1, 2007 applied to the present case, and (3) the Commission did not overlook any facts or law in this case. (R. pp. 65-73.) On September 20, 2010, the Commission properly dismissed the petition. (R. p. 26.) The Claimant's notice of appeal was not filed and served until October 21, 2010, seventy-three days after receipt of the notice of entry of the Appellate Panel's order.

Nothing within the Act expressly authorizes the Commission to rehear a matter already heard by the Appellate Panel because the Appellate Panel hearing itself is a rehearing of the case.¹ See S.C. CODE ANN. § 42-17-50 (Supp. 2009). The Claimant did not file a Form 30 Request for Commission Review of the Single Commissioner's decision, which applied the post-July 1, 2007 law regarding repetitive trauma injuries. Only the School District requested that the Single Commissioner's February 26, 2010 Order be reviewed by the Commission.

Section 42-17-50, titled "Review and rehearing by the Commission," provides that a party may apply for "commission review" within fourteen days of notice of the

¹ Even the letter from the Claimant's counsel filing the Petition for Rehearing acknowledged that "the Commission does not have a regulation which governs petitions for rehearing." (R. pp. 203-204.)

award. At that point the Commission will “review the award,” “reconsider the evidence,” “rehear the parties,” and “if proper, amend the award.” § 42-17-50 (emphasis added). Section 42-17-50 provides for the Appellate Panel review.² A party’s option for review after the Appellate Panel is to appeal to the Court of Appeals under S.C. CODE ANN. § 42-17-60 (Supp. 2009) for an injury that occurred on or after July 1, 2007.³

Section 42-17-60 sets forth how awards are determined to be conclusive and the procedure for an appeal from the Commission:

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. . . .

§ 42-17-60.

The Claimant cited S.C. CODE ANN. § 1-23-380(1) (Supp. 2009) as authority for filing the Petition for Rehearing. (R. p. 58.) This reliance was misplaced. Title 1 of the South Carolina Code of Laws applies to administrative agencies in general. Section 1-

² Section 42-17-50 requires that the request for review be made within fourteen days. The Claimant’s Petition for Rehearing was filed thirty days after the Appellate Panel Order was filed. Even if the Claimant’s Petition for Rehearing was proper under the Act, it was an untimely request for the Commission’s review. See § 42-17-50.

³ For injuries prior to July 1, 2007, an appeal from a Workers’ Compensation decision must first go to the circuit court for judicial review. S.C. CODE ANN. § 42-17-60 (Supp. 2006). The Claimant argues that “[b]ecause this case should be an ‘old law’ case (it concerns a repetitive trauma occurring both before and after July 1, 2007), the appeal in the case should properly be in the circuit court.” (Appellant’s Br., p. 28, n.8.)

If the Claimant believed that this case should be appealed to the circuit court, he should have filed a motion to determine jurisdiction with the Court as was done in Pee Dee Reg’l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 61, 650 S.E.2d 464, 465

23-380 does not provide authority for the Appellate Panel to rehear a case it has already heard. The section describes the procedure for judicial review upon the exhaustion of administrative remedies. The section does not provide authority for further administrative review. Subsection 1 states that “[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, *if a rehearing is requested*, within thirty days after the decision is rendered.” § 1-23-380(1) (emphasis added). The Claimant’s reliance on this section to support his Petition for Rehearing was improper because (1) it does not provide any agency authority to rehear a matter but merely advises how to institute proceedings for judicial review from administrative agencies that do not allow rehearings and for those that allow rehearings, and (2) the Appellate Panel hearing is the rehearing allowed under the Act, as plainly set forth in § 42-17-50.

As the Claimant has failed to perfect his appeal, this Court has no jurisdiction over this appeal. See Skinner v. Westinghouse Elect. Corp., 380 S.C. 91, 668 S.E.2d 795 (2008) (recognizing that under the present law, failure to file and serve the notice of appeal on the agency and all parties of record would result in the Court lacking jurisdiction over the appeal); cf. Canal Ins. Co v. Caldwell, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999) (holding failure to file the notice of appeal with the court within thirty days deprives the appellate court of jurisdiction). “Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a

(2007). The Claimant’s appeal to this Court is further acceptance by the Claimant that

rehearing is requested, within thirty days after the decision is rendered.” § 1-23-380(1) (emphasis added); see Rule 203(b)(6), (d)(2)-(3), SCACR.

The Claimant’s notice of appeal was filed and served more than thirty days after the Commission’s final decision. As such, the Claimant’s notice of appeal was untimely and should be dismissed because this Court lacks jurisdiction.

II. THE COMMISSION PROPERLY CONCLUDED THAT THE CLAIMANT’S REPETITIVE TRAUMA INJURY WAS BARRED BY THE STATUTE OF LIMITATIONS.

If the Court concludes that it has jurisdiction over this appeal, the Commission’s decision and order must be affirmed because it is not affected by an error of law and substantial evidence supports the factual findings. Shealy, 341 S.C. at 454, 535 S.E.2d at 442; Anderson, 343 S.C. at 492, 541 S.E.2d at 528.

The Commission properly denied the Claimant benefits under the statute of limitations, S.C. CODE ANN. § 42-15-40 (Supp. 2009). The Claimant contends the Commission’s denial of an award, pursuant to S.C. CODE ANN. §§ 42-1-172 and 42-15-40 (Supp. 2009), was an error of law. This was not an error of law, but instead, a proper application of the law alleged by the Claimant.

A. The facts found by the Commission are supported by substantial evidence in the record.

The Claimant challenges the Commission’s findings of facts on two points. First, the Claimant contends that the Commission found that the Claimant’s “first experience of back pain was ‘back injury’ and was the point at which he knew or should have known that he had a compensable workers’ compensation claim.”⁴ Second, the Claimant contends the Commission erred by finding that the Claimant “was aware of the Workers’

the post-July 1, 2007 law applies to his claim.

Compensation System by no later than 2006” and that the Commission should have found that the School District’s actions directly contributed to the Claimant’s delay in bringing his claim.⁵ Both of these assertions are incorrect, contrary to the Commission’s findings, and unsupported by the substantial evidence in the record. The Claimant does not challenge the remaining findings of fact. As such, the unchallenged findings are the law of the case. Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (“an unchallenged ruling, ‘right or wrong, is the law of [the] case and requires affirmance’”) (quoting Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

(1) The Claimant was aware that he had a back injury related to his job with Charleston County School District since 1994 or 1995.⁶

The Commission never found that the Claimant’s first experience of back pain was in 1994 or 1995 and that this was the point when he knew or should have known that he had a compensable injury. Instead, the Commission found:

2. That the claimant was aware that he had a back injury related to his job with Charleston County School District since 1994 or 1995.

3. That the claimant continued to receive pain medications, injections, and physical therapy from various physicians related to his work injury since 1994 or 1995.

⁴ (Appellant’s Br., § I, p. 5, *see generally* pp. 5-12.)

⁵ (Appellant’s Br., § II, p. 12, *see generally* pp. 12-17.)

Even if the Commission had not found that the Claimant was aware of the Workers’ Compensation System, “[t]he fact that claimant may have been unaware of the requirement as to filing a claim within one year furnishes no legal excuse for not filing her claim. [The claimant] is constructively charged with such knowledge.” Young v. Sonoco Products Co., 210 S.C. 146, 156, 41 S.E.2d 860, 864 (1947) (The statute of limitations has since been amended to be two years.); *see also* Samuel v. Appelon Co., 214 S.C. 157, 161, 51 S.E.2d 508, 509 (1949) (same).

⁶ (R. p. 23, ¶ 2.)

4. That the claimant **missed days from work on and off from 1994 and 1995** due to ongoing pain in his back.

(R. p. 23, ¶¶ 2-4 (emphasis added).) These findings are supported by the Claimant's own testimony at his deposition and at the hearing before the Single Commissioner and by his medical records. The Claimant testified that since the mid-1990s he knew that his back was hurting and his job was causing it. (R. p. 77; p. 81, line 25 – p. 82, line 4; p. 85, line 3 – p. 86, line 13; p. 87, line 3-22; p. 88, lines 5-16; R. p. 105, line 23 – p. 106, line 20; p. 116, lines 3-24; p. 125, lines 17-20; p. 130, lines 5-8.) The Claimant testified that he went out of work for his back in the mid-1990s and saw his own doctor, Dr. T. Pappas, over the years for this problem. (R. p. 130, line 5 – p. 131, line 5; R. p. 94, lines 19-22; p. 95, line 20 – p. 96, line 4; *see* R. pp. 179-180, 185.) He testified that he knew his back pain was related to work. (R. p. 137, line 17 – p. 138, line 19.)

The Claimant testified that he went to a chiropractor in 2001 and to a physical therapist in 2002 for problems with back pain. (R. p. 131, line 55 – p. 132, line 1; *see* R. pp. 169-180, 187-192.) Records from his physical therapist, Trident Medical Center, indicate that in 2002 he attributed his back pain to his job. (R. p. 187 (indicating condition related to employment, accident date of January 1, 1999, "hurt back on job," signed by the Claimant on September 19, 2002); *see* R. pp. 188-192.) The Claimant testified that he received shots in his back in 2006. (R. p. 90, lines 6-20.)

In January 2009, the Claimant went to Dr. John Johnson with the Southeastern Spine Institute because he "couldn't put it off no longer." (R. p. 95, line 1 – p. 96, line 4; *see* R. pp. 153-154 (indicating back pain since at least 2006 when he injured his neck); *see also* R. p. 85, line 3 – p. 86, line 13; p. 89, lines 2-8.) In April and May 2009, the

Claimant reported to Dr. Jeffrey Buncher that he had pain in his lower back which had lasted for years. (R. pp. 160-161, 168.)

The Claimant admitted to the Single Commissioner that Tracy Kessler, the School District's representative, probably wrote down what he told her regarding his repetitive trauma back injury. (R. p. 98; p. 135, line 2 – p. 136, line 6; *see* R. pp. 199-202 (School District's records of the Claimant's report of accident) (noting "[h]e stated that he was told two years ago that he had a work related issue with his lower back and felt that it wasn't that bad so **he chose not to pursue it** at that time" and noting the Claimant alleged that lifting equipment over the years at work caused his low back pain) (emphasis added).) The Claimant also admitted in his deposition to telling the claims specialist that he had low back pain since 1994 or 1995. (R. p. 85, line 23 – p. 86, line 13; *see* R. p. 167.)

Substantial evidence in the record supports the Commission's findings that the Claimant was aware of a job-related repetitive trauma back injury since 1994 or 1995, that he received treatment for this repetitive trauma injury, and that he missed work off and on for this repetitive trauma injury. Anderson, 343 S.C. at 492, 541 S.E.2d at 528; Shealy, 341 S.C. at 455, 535 S.E.2d at 442 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the [Appellate Panel].") (internal citation omitted); *see* Murphy v. Owens Corning, Op. No. 4807 (S.C. Ct. App. filed March 9, 2011) (Shearouse Adv. Sh. No. 9 at 83, 87) (deferring to the Commission as the fact finder regarding when the claimant knew or should have known her repetitive trauma injury was work related).

(2) The Claimant was aware of the existence of a Workers' Compensation system by no later than 2006.⁷

The Claimant argues, for the first time, that the Commission erred in finding that the Claimant "was aware of the existence of a Workers' Compensation system by no later than 2006" because he "attempted to bring a Workers' Compensation claim in relation to a specific injury to his neck in 2006." (Appellant's Br., § II, pp. 12-17; *see* R. p. 23, ¶¶ 7-8.) The Claimant sets forth an estoppel argument which was never raised to the Single Commissioner (in the pleadings, briefs, or oral arguments),⁸ to the Appellate Panel (in the briefs or oral arguments),⁹ or included in either orders by the Commission.¹⁰ The Claimant did not even raise this argument in his Petition for Rehearing,¹¹ which as discussed above the School District believes was improper.

This estoppel argument, and the facts which the Claimant contends support this argument, were never raised to or ruled upon by the Commission. Wilder Corp. v. Wilke, 300 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."

⁷ (R. p. 23, ¶ 8.)

⁸ (R. p. 27; R. p. 30; R. pp. 97-139.)

⁹ (R. pp. 48-57; R. p. 143, lines 8-10 ("Although Appellants raised multiple issues in their Form 30, I chose to just address one, the statute of limitations argument."), p. 143, line 5 – p. 150, line 13.)

¹⁰ (R. pp. 1-10; pp. 11-25.)

¹¹ As discussed *supra*, Section I (p. 5), the School District believes the Claimant's Petition for Rehearing was improper. As such, any issue raised in the petition was not properly raised to the Commission and is not preserved for appellate review. Transp. Ins. Co. v. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (Sept. 13, 2010), *reh'g denied*, 2010 S.C. LEXIS 337 (Oct. 6, 2010). The Claimant's failure to raise an estoppel argument in his petition further underscores the weakness of this argument.

Transp. Ins. Co. v. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (Sept. 13, 2010), *reh'g denied*, 2010 S.C. LEXIS 337 (Oct. 6, 2010); *see Charleston Lumber Co.*, 338 S.C. at 175, 525 S.E.2d at 871 (“an unchallenged ruling, ‘right or wrong, is the law of [the] case and requires affirmance’”) (*quoting Buckner*, 255 S.C. at 161, 177 S.E.2d at 544).

Assuming, *arguendo*, that the Claimant’s estoppel argument was properly before this Court, substantial evidence in the record supports the Commission’s finding that “the [C]laimant was not coerced into waiting to file a claim and was not told he would be laid off if he brought a claim or that his claim would be taken care of.” (R. p. 24, ¶ 9; *see* R. p. 110, lines 1-11; p. 132, lines 3-16; R. p. 91, line 21 – p. 92, line 10 (denying being told that he would be laid off for filing a workers’ compensation claim).)

The Claimant testified that he waited until 2009 to bring his repetitive trauma back injury claim because he wanted “to keep a low profile.” (R. p. 91, line 21 – p. 92, line 3.) He also testified that he did not report this injury in 1994 or 1995 because his wife was fighting cancer and he feared being laid off. (R. p. 110, lines 1-11.)

The Claimant readily admitted that he attempted to bring a Workers’ Compensation claim in relation to a specific injury to his neck in 2006. (R. p. 23, ¶ 7; R. p. 107, line 18 – p. 108, line 17; p. 132, line 19 – p. 133, line 7; *see* R. p. 184 (July 12, 2006 doctor’s note regarding neck and shoulder pain indicating that the Claimant “was seen at Doctors Care (because of workers comp)” (emphasis added); *see also* R. p. 88, line 17 – p. 89, line 19.) When asked “back in 2006 when you had surgery on your neck, why didn’t you ask for workers’ comp for that back then?,” the Claimant responded, “I did.” (R. p. 92, lines 7-10.) Substantial evidence also supports the Commission’s finding

that the Claimant was aware of the existence of a Workers' Compensation system by no later than 2006. Shealy, 341 S.C. at 455, 535 S.E.2d at 442 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the [Appellate Panel].") (internal citation omitted).

The Claimant was not like the employee in Altman v. Williams Furniture Co. who relied on her employer's company doctor, who misled the employee regarding certain medical findings. 250 S.C. 98, 100, 156 S.E.2d 433, 434 (1967). The Claimant chose to go to his own doctors (Dr. John Goeldi¹², Dr. Jeffrey Buncher¹³, Dr. T. Pappas¹⁴, and Trident Medical Center¹⁵) in addition to the School District directing him to Doctors Care.¹⁶ Similarly, the Claimant is not like the widow in Robertson v. Brissey's Garage, Inc., 270 S.C. 58, 240 S.E.2d 810 (1978), because the Commission found that "the [C]laimant was not coerced into waiting to file a claim and was not told he would be laid off if he brought a claim or that his claim would be taken care of." (R. p. 24, ¶ 9.) This finding is supported by substantial evidence in the record and must be affirmed.

Substantial evidence in the record supports the Commission's findings that the Claimant was aware of a work related repetitive trauma injury to his back as early as 1994 or 1995, was aware of the existence of the Workers' Compensation system by 2006 (when he tried to bring a claim for another injury), was not coerced into not bringing a Workers' Compensation claim, was not told he would be laid off if he brought a Workers' Compensation claim, and was never told that his Workers' Compensation claim

¹² (R. pp. 162-164, 165, 169-179.)

¹³ (R. pp. 160-161, 168.)

¹⁴ (R. pp. 179-186.)

¹⁵ (R. pp. 187-192.)

¹⁶ (R. p. 166.)

would be taken care of outside of the Workers' Compensation system. All of the Commission's findings of facts should be affirmed as they are supported by substantial evidence and/or are the law of the case. Anderson, 343 S.C. at 492, 541 S.E.2d at 528; Shealy, 341 S.C. at 455, 535 S.E.2d at 442; Charleston Lumber Co., 338 S.C. at 175, 525 S.E.2d at 871.

B. The Commission applied the correct version of the Act.

The Claimant argued that the statute of limitations set forth in S.C. CODE ANN. § 42-15-40 (Supp. 2009) should not be applied to the present repetitive trauma injury claim. He also argued that even if the current statute of limitations was controlling then his claim would not be barred if the statute was "properly applied." Both assertions are incorrect.

(1) The history of the statute of limitations as applied to repetitive trauma injury claims.

In 2007, the legislature greatly revised the Act. These revisions included adding § 42-1-172 to establish when a repetitive trauma injury may be compensable and revising § 42-15-40 to specifically set forth when the right to compensation for a repetitive trauma injury is barred. 2007 Act No. 111, Part I, §§ 7 & 26. These revisions apply "to injuries that occur on or after" July 1, 2007. Id., Part IV, § 2.

Prior the 2007 revisions, compensability for repetitive trauma injuries was determined under S.C. CODE ANN. § 42-1-160 (Supp. 2001), "'Injury' and 'personal injury' defined." See Pee v. AVM, Inc., 352 S.C. 167, 174, 573 S.E.2d 785, 789 (2002) (finding a repetitive trauma injury meets the definition of injury by accident). On the same day that Pee was decided, the Supreme Court also addressed how to apply the statute of limitations of the Act, S.C. CODE ANN. § 42-15-40 (Supp. 2001), to a repetitive

trauma injury in Schurlknight v. City of N. Charleston, 352 S.C. 175, 179, 574 S.E.2d 194, 196 (2002).

Prior to Schurlknight, the Supreme Court held the discovery rule as it relates to the statute of limitations also applied to Workers' Compensation actions. Mauldin v. Dyna-Color/Jack Rabbit, 308 S.C. 18, 21-22, 416 S.E.2d 639, 641 (1992) (concluding that the Claimant's discovery of a compensable knee injury was the date when it was discovered that her knee problem resulted from a previous work accident). The Schurlknight court, however, rejected the application of the discovery rule—that the two-year time period of the § 42-15-40 began to run when the claimant knew or should have known he had a compensable injury—for repetitive trauma injuries and instead looked to how other jurisdictions addressed the statute of limitations for repetitive trauma injuries. Id. at 177-78, 574 S.E.2d at 195. After concluding that using the “last day of exposure” as the date from when the statute of limitations begins to run was consistent with the Supreme Court's liberal construction of the Act and provided “the added advantage of fixing an outside date for filing that avoids the need to litigate the date of injury,” the Schurlknight court held that the “last day of exposure” rule applied to repetitive trauma injury claims. Id. at 178-79, 574 S.E.2d at 195-96.

In 2007 Act No. 111, the legislature specifically rejected the “last day of exposure” rule for repetitive trauma injury claims and added the following language to § 42-15-40:

For a “repetitive trauma injury” as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless

of whether the employee was aware that his repetitive trauma injury was the result of his employment. . . .

S.C. CODE ANN. § 42-15-40 (Supp. 2009) (emphasis added). “The legislature is presumed to be aware of [the] Court’s interpretation of its statutes.” State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 879 (2000) (citing Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 778 (1997) (“[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”)).

“The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003) (noting “when reading a workers’ compensation statute we strictly construe its terms, leaving it to the Legislature to amend and define its ambiguities”). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Kiriakides v. United Artists Commc’ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

The legislature’s 2007 revision to § 42-15-40 to include the plain language of the discovery rule—that a repetitive trauma injury claim is barred unless filed “within two years after the employee **knew or should have known** that his injury is compensable”—is clear and manifestly reflects the legislature’s intent to expressly apply the discovery rule to repetitive trauma injury claims. See Henry-Davenport v. School Dist. of Fairfield County, 705 S.E.2d 26, 27-28, 391 S.C. 85, 86-89, Op. No. 26912 (S.C. Sup. Ct. filed

Jan. 18, 2011) (Shearouse Adv. Sh. No. 2 at 21, 22-24), *reh'g denied*, Feb. 16, 2011 (Shearouse Adv. Sh. No. 6 at 7) (holding the legislature, in enacting S.C. CODE ANN. § 59-54-15 in 1998, overruled the Court's prior decision on the same issue).

The plain and unambiguous language of § 42-15-40 must be applied. "If a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" *Id.* at 28, 391 S.C. at 88 (*quoting Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000)). "For a 'repetitive trauma injury' . . . , the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable" § 42-15-40.

(2) The Claimant failed to argue that the pre-July 1, 2007 law applied and cannot do so on appeal.

The Claimant raised for the first time on appeal that the Act as written prior to July 1, 2007 applied to his case. (*See* R. pp. 59-61; Appellant's Brief, pp. 18, 26-28.) "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." *Transp. Ins. Co.*, 389 S.C. at 431, 699 S.E.2d at 691; *see Charleston Lumber Co.*, 338 S.C. at 175, 525 S.E.2d at 871.

The Claimant argued to the Single Commissioner that the date of his injury was May 4, 2009 and that his injury was compensable under § 42-1-172, which did not exist prior to the 2007 revision of the Act. (R. p. 27; R. p. 30; R. p. 100, line 15 – p. 102, line 16; R. p. 115, lines 11-13.) The Single Commissioner found "the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009" and applied § 42-1-172, (R. pp. 7-8, ¶ 4 & p. 9, ¶ 4.) The Claimant did not appeal this finding of a May 5, 2009

date of accident or the application of § 42-1-172, the post-July 1, 2007 statute used to determine compensability for repetitive trauma injuries. This “unchallenged ruling, ‘right or wrong, is the law of [the] case and requires affirmance.’” Charleston Lumber Co., 338 S.C. at 175, 525 S.E.2d at 871 (*quoting* Buckner, 255 S.C. at 161, 177 S.E.2d at 544).

The Claimant further failed to argue that the date of injury was before July 1, 2007 or that the pre-July 1, 2007 statute used to determine compensability for repetitive trauma injuries, § 42-1-160, applied when challenging the School District’s request for the Commission’s review. (*See* R. p. 48-57; R. p. 143, line 5 – p. 150, line 13.)

The application of § 42-1-172, the post-July 1, 2007 statute used to determine compensability for repetitive trauma injuries, is the law of the case and requires affirmation. Charleston Lumber Co., 338 S.C. at 175, 525 S.E.2d at 871.

(3) The Commission properly applied the post-July 1, 2007 law.

The Commission correctly applied the law argued by the Claimant to the facts which he presented. That is, the Commission applied the post-July 1, 2007 law regarding repetitive trauma injuries (§ 42-1-172 and § 42-15-40 (as amended)) to the Claimant’s facts.¹⁷

As set forth more fully above in Section II(A), substantial evidence in the record supports the Commission’s finding that the Claimant was aware of a work related repetitive trauma injury to his back as early as 1994 or 1995 and was aware of the existence of the Workers’ Compensation system by 2006 (when he tried to bring a claim for another injury). As such, it is only logical to conclude that on July 1, 2007 the

¹⁷ The most significant of the facts being that the Claimant’s work related repetitive trauma injury began in 1994 or 1995, that he was aware of the Workers’ Compensation

Claimant was both aware of a repetitive trauma injury to his back related to his job and was aware of the existence of the Workers' Compensation system. The Claimant did not file a claim for his repetitive trauma back injury until **September 29, 2009**¹⁸—more than two years after (1) he knew his repetitive trauma injury was related to his job, (2) knew of the existence of the Workers' Compensation system, and (3) the Act was revised to specifically adopt the discovery rule for repetitive trauma injuries. Under the plain language of § 42-15-40 and the facts of the case, the Commission properly concluded that the Claimant's claim for benefits should be denied for failure to timely file a claim.

The Claimant's assertions that the Commission "does not appreciate or account for the more complicated scenarios" associated with repetitive trauma injuries or that the revisions made to the Act in 2007 "evaporated" or "eviscerated" the Claimant's repetitive trauma injury claim are nothing more than red herrings. (See Appellant's Br., pp. 23-24 & 27-28.) As discussed above, the legislature overruled Schurlnight's "last day of exposure" rule and its supposed advantages of preventing the litigation of the date of injury and of not prejudicing an employee who discovers symptoms to a repetitive trauma injury but continues to work by adopting § 42-1-172 and including the language of the discovery rule in § 42-15-40. See Schurlnight, 352 S.C. at 178, 574 S.E.2d at 195.

The Commission applied the plain and unambiguous language of § 42-15-40. If the Claimant contends that this interpretation does not appreciate or account for the more complicated scenarios associated with repetitive trauma injuries or prejudices an employee who discovers symptoms to a repetitive trauma injury but continues to work,

system by no later than 2006, and that he filed the present claim on September 29, 2009. (R. pp. 23-24, ¶¶ 2 & 8; R. p. 27.)

¹⁸ (R. p. 27.)

then those are matters to be taken up with the legislature—not with this Court. Such arguments are public policy arguments and not assertions of an error in the application of the law. Such policy arguments are matters for the legislature and are not the province of the courts. Wigfall, 354 S.C. at 116, 580 S.E.2d at 109 (“[S]ources of inequities are the province of the Legislature to correct by balancing the interests, risks and rewards of such a large, comprehensive program” as South Carolina’s Workers’ Compensation laws.) “It is not the province of this Court to perform legislative functions.” Id. at 117, 580 S.E.2d at 108 (*quoting* Spoone v. Newsome Chevrolet Buick, 306 S.C. 438, 440, 412 S.E.2d 434, 434-35 (Ct. App. 1991), *aff’d* 309 S.C. 432, 424 S.E.2d 489 (1992)).

Furthermore, it was not the revisions made to the Act in 2007 that “evaporated” or “eviscerated” the Claimant’s repetitive trauma injury claim but the Claimant’s own delay that barred his right to benefits for his repetitive trauma back injury. The Claimant waited more than three years after he was aware both of a repetitive trauma injury to his back related to his job and of the existence of the Workers’ Compensation system and waited more than two years after § 42-15-40 was revised to adopt the discovery rule for repetitive trauma injury to file his claim for his injury.

As admitted by the Claimant, his repetitive trauma injury began before July 1, 2007 and continued after July 1, 2007. (Appellant’s Br., pp. 27, 28 n.8.) Under the plain and unambiguous reading of § 42-15-40, the Claimant’s right to compensation for his repetitive trauma back injury must be barred because his claim was not “filed with the commission within two years after the employee knew or should have known that his injury is compensable.” Under the Claimant’s admitted facts, his claim was barred on July 1, 2009, which was more than two years after he knew or should have known that he

had a compensable repetitive trauma injury. Clearly, the claim filed on September 29, 2009 was properly barred pursuant to § 42-15-40.

The Commission's decision and order must be affirmed because it is not affected by an error of law and substantial evidence supports the factual findings. Shealy, 341 S.C. at 454, 535 S.E.2d at 442; Anderson, 343 S.C. at 492, 541 S.E.2d at 528.

CONCLUSION

The Claimant's appeal should be dismissed for failure to timely file his appeal, which deprives the Court of jurisdiction.

If the Court concludes that it has jurisdiction, the Commission's decision and order must be affirmed. The Commission's decision and order is not affected by any error of law. The Commission properly determined that the Claimant's recovery for his repetitive trauma injury was barred by the statute of limitations. Further, the decision and order is supported by substantial evidence in the record.

Respectfully submitted,

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Dated: June 21, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0906212

RECEIVED
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SC COURT OF APPEALS

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent.

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ARGUMENTS

The arguments the Charleston County School District offers in response to this appeal are (1) Ricky Rhame's petition for rehearing was improper and this appeal is not timely; (2) the South Carolina Workers' Compensation Commission's findings – in particular, its findings that Mr. Rhame knew about the existence of the workers' compensation system at an early date; that Mr. Rhame was not coerced into waiting to file a claim; and that Mr. Rhame has known since 1994 or 1995 that he had a repetitive trauma injury to his back – are supported by substantial evidence; and (3) Mr. Rhame's argument about which law applies (old law or new law) is not preserved for review.

None of these arguments should be persuasive.

I. Ricky Rhame's Petition for Rehearing Was Proper under the Administrative Procedures Act, and His Appeal Was Timely under Both the APA and the Workers' Compensation Act.

Section 1-23-380 of the South Carolina Code is the provision of the Administrative Procedures Act that deals with judicial review after a party has exhausted his or her administrative remedies. This statute provides that a party initiates judicial review of an agency's decision by serving and filing a notice of appeal "within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered." S.C. Code Ann. § 1-23-380(1) (Supp. 2010).

The words of this statute should be the starting and ending points for this argument; the statute specifically contemplates that parties will file petitions for rehearing with administrative agencies. Mr. Rhame requested rehearing, and he initiated this appeal within thirty days of the decision on the petition. Under § 1-23-380(1), his appeal was timely filed.

The School District's contention is that this section does not provide any *authority* for an agency to rehear a matter. Instead, it merely advises *how* to institute an appeal *if* an agency happens to allow for rehearing. See (Resp.Br.p.8). The School District posits that the commission's appellate panel is actually the rehearing process contemplated by the APA. See (Resp.Br.pp.6-7).

These arguments should not be persuasive. There is no reason to hold that a party cannot ask the commission to rehear its decision, and doing so would conflict with the Administrative Procedures Act as well as Supreme Court precedent interpreting the APA. Prohibiting rehearing petitions would also be inconsistent with traditional notions of error preservation.

a. Section 1-23-380(1) Provides That Parties Have Thirty Days after an Agency's Decision on Rehearing to Initiate Judicial Review of the Agency's Decision.

On the first page of his petition for rehearing, Mr. Rhame cited the case of *McCummings v. South Carolina Department of Corrections*. (R.p.58) (citing 319 S.C. 440, 462 S.E.2d 271 (1995)). The issue in that case was the length of the deadline for filing a petition for rehearing with an administrative agency.

The case arose out of these circumstances: after he was fired from his job with the Department of Corrections, Mr. McCummings appealed his dismissal to the State Employee Grievance Committee. That committee affirmed the Department of Corrections's decision. Forty-five days after the employee grievance committee's decision, Mr. McCummings filed a petition for rehearing with the committee. The committee denied this petition as untimely

under § 1-23-380, and Mr. McCummings appealed to the circuit court. The circuit court followed suit and dismissed the appeal.

Mr. McCummings's argument to the Supreme Court was that the circuit court erred in construing § 1-23-380 to give a thirty day deadline for a party to either (a) file a notice of appeal or (b) file a petition for rehearing, or else forfeit their right to judicial review. See 319 S.C. at 442, 462 S.E.2d at 272 ("McCummings argues the circuit court erred in construing [§ 1-23-380] to require . . ."). His argument was that the statute's thirty-day deadline only applied to filing the appeal, and that there was no deadline at all in the statute for filing a petition for rehearing. The Supreme Court disagreed, and in reaching its decision, the court said:

the statute [§ 1-23-380] does not specify a time limit for filing a petition for rehearing. Furthermore, the regulations pertaining to hearings before the State Employee Grievance Committee do not specify a time limit for filing such petitions. Contrary to McCummings's argument, however, the lack of any express limitation on time for filing a petition for rehearing does not evince a legislative intent that the time be limitless. Instead, the time limit must be determined in a way that gives effect to all the provisions of the statute. See *Nucor Steel v. South Carolina Pub. Serv. Comm'n*, 310 S.C. 539, 426 S.E.2d 319 (1992) (statute should be construed to give force and effect to all its provisions); see also *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964) (court will reject construction of statute that would lead to absurd result not possibly intended by legislature).

McCummings, 319 S.C. at 442-43, 462 S.E.2d at 273. The court held that allowing someone an unlimited time to file a petition for rehearing would render the thirty-day deadline for appeals in § 1-23-380 meaningless. The court's holding in the case was "in the absence of an agency rule specifying a time limit for petitions for rehearing, parties have thirty days to petition the agency or committee for rehearing or to appeal the agency's decision." *Id.* at

443, 462 S.E.2d 273.¹

Though the case talks in terms of timing, it controls this outcome. It is true that the Workers' Compensation Commission does not have a regulation on petitions for rehearing, but when the Supreme Court decided the *McCummings* case, the employee grievance committee did not have any regulations on petitions for rehearing either. See 24 S.C. Code Ann. Regs. 59-1 to 59-36 (1982) (the State Employee Grievance Committee's regulations).² What matters is that § 1-23-380(1) contemplates a party asking an administrative agency to rehear its decision. This is why it was not important in *McCummings* that "the regulations pertaining to *hearings* before [the board] did not specify a time limit for such petitions." 319 S.C. at 442, 462 S.E.2d at 273 (emphasis added). The comp commission's regulations on hearings and motions are similarly silent. 25A S.C. Code Ann. Regs. 67-215 (motions), and 67-601 to 67-711 (regulations on hearings). What matters is that the APA is not silent on the question – it contemplates parties asking agencies for rehearing.

b. Section 42-17-60 Does Not Compel a Different Outcome, but Instead Works with § 1-23-380.

The School District's argument should find no refuge in the Workers' Compensation Act's statute that deals with appeals. That statute provides (a) that the hearing commissioner's award becomes binding if it is not reviewed by the full commission, (b) that if the hearing commissioner's award is appealed, the full commission's decision will be

¹The provision of § 1-23-380 that currently appears in § 1-23-380(1) was once codified at § 1-23-380(b). Compare S.C. Code Ann. § 1-23-380(1) (Supp. 2010) with S.C. Code Ann. § 1-23-380(b) (1986). The *McCummings* decision cites to this prior version of the statute.

²These regulations have since been repealed. See State Register Volume 6, Issue 9, page 212.

binding, and (c) that although these awards are “binding” – meaning “final” – either party may appeal to the court of appeals after thirty days. See S.C. Code Ann. § 42-17-60.

Although nothing in this statute references asking for rehearing after the commission’s final decision, that does not matter because the APA contemplates petitions for rehearing. Where the APA and the compact conflict, the APA controls. *Williams v. South Carolina Dep’t of Wildlife*, 295 S.C. 98, 100, 367 S.E.2d 418, 419 (1987) (overruled on other grounds (these statutes do not circumscribe *subject matter* jurisdiction) by *Dove v. Gold Kist*, 314 S.C. 235, 239, 442 S.E.2d 598, 601 (1994)). And the fact of the matter is that these statutes do not conflict. Read together, the statutes provide the point at which the commission’s decision becomes a “final decision” (§ 42-17-60); set a thirty-day deadline for an appeal (both § 1-23-380(1) and § 42-17-60); and provide that when rehearing is requested, the thirty-day clock starts when a decision on rehearing “is rendered.” § 1-23-380(1).

Mr. Rhame cited the *McCummings* case in his petition for rehearing because it interprets the statute at issue on the question at issue. The School District did not address the case in either its reply to the petition for rehearing or in its brief to this Court.

c. Appellate Panel Review Is Not “Rehearing,” and Preservation Principles Dictate That a Party Try to Convince an Administrative Agency That it Has Erred Before Seeking Judicial Review.

In a contested case, the commission is required by statute to hear the parties at issue and “determine the dispute in a summary manner.” S.C. Code Ann. § 42-17-40 (Supp. 2010). This statute provides that the parties may be heard by a “deputy” who shall swear witnesses and transmit all testimony to the commission for its award. S.C. Code Ann. § 42-

17-40(A). This is what happens in most workers' compensation cases. A single hearing commissioner serves as the commission's deputy, conducts a hearing, and makes a preliminary determination of the award in a case. See, e.g., (R.pp.9-10) (the hearing commissioner's award in this case). If this award is not "appealed" to the full commission, it becomes the commission's final decision in the case. See S.C. Code Ann. § 42-17-60.

If a party asks for review of the hearing commissioner's decision, the comp act provides that the commission shall review the award and can "reconsider the evidence, receive further evidence, rehear the parties . . . and . . . amend the award." S.C. Code Ann. § 42-17-50. This is colloquially known as review by the "full commission" or the "appellate panel." The regulations governing this process designate the party requesting the review as the "appellant" and the opposing party as the "respondent," set a briefing schedule, and give rules for the review hearing. See 25A S.C. Code Ann. Regs. 67-701 to 67-709.

Although this process uses phrases like "reconsider the evidence" and "rehear the parties," this is not the same as asking an agency to rehear its final decision. If it were, some of the language in § 1-23-380(1) would be meaningless. Section 1-23-380(1) talks of rehearing after an agency's *final* decision, and the comp act – in § 42-17-60 – instructs that the hearing commissioner's award is not "final" unless it has not been appealed to the full commission. The School District's interpretation would give no effect to the language of § 1-23-380(1) that puts rehearing *after* the final decision. This would be contrary to the rule that a statute should be construed to give effect to all its provisions. See, e.g., *Nucor Steel*, 310 S.C. at 545, 426 S.E.2d at 323.

This process – asking for rehearing before appealing – honors error preservation rules. A party must present an issue to the lower court before it is preserved for review. *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716, 724 (2000). This rule “underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” *Id.* at 422, 526 S.E.2d at 724. If the commission’s final order contains an error, a petition for rehearing serves this purpose.

Here the commission made its final decision on August 6, 2010, and Mr. Rhame received notice of the entry of this order on August 9, 2010. See (R.p.59). Mr. Rhame filed his petition for rehearing on September 8, 2010 – 30 days later. (R.p.58). The commission dismissed the petition for rehearing in an order served September 21, 2010. (R.p.26). Mr. Rhame served and filed his notice of appeal in this Court on October 21, 2010 – again, 30 days later. (R.p.74). The Court should hold that this appeal is timely.

II. The Findings Mr. Rhame Has Appealed Are Clearly Erroneous in View of the Evidence in the Record.

As the School District correctly observes, see (Resp.Br.p.10), Mr. Rhame is challenging the commission’s findings that (a) he has known since 1994 or 1995 that he had a repetitive trauma injury to his back; (b) he knew about the workers’ compensation system at an early date; and (c) he was not coerced into waiting to file a claim. The School District argues that each is supported by substantial evidence in the record, but saying it does not make it so. A genuine review of the commission’s order and the record demonstrates that the commission equated Mr. Rhame’s very first experience of work-related back pain with

knowing that he had a compensable repetitive trauma injury, and that the School District misled Mr. Rhame – perhaps unintentionally – into believing that his work-related ailments were not compensable.

a. The Commission Improperly Equated Mr. Rhame's First Episode of Back Pain with a Compensable Repetitive Trauma Injury.

The findings at issue here are the commission's findings number 2 and 10, which assert that Mr. Rhame has been aware that he had a back injury related to his job since 1994 or 1995, and that Mr. Rhame did not file his claim within two years of when he knew or should have known that his claim was compensable. See (R.pp.23-24). Again, Mr. Rhame's theory of the case on this argument is that the only conclusion supported by the evidence is that in 1994 or 1995, he began to have off-and-on back *pain*. He did not have a "repetitive trauma injury." The Court should hold that equating Mr. Rhame's first episode of back pain with a repetitive trauma injury was clearly erroneous.

i. Gradual onset and the lack of a definite time of occurrence are the hallmarks of a repetitive trauma.

As Mr. Rhame's principle brief described, the defining characteristics of a repetitive trauma injury are that it is gradual in onset, has no definite time of occurrence, and is caused by a series of mini-accidents. See (App.Br.pp.5-9) (citing both "old" and "new" law). Someone does not have a repetitive trauma injury when they feel the first "twinge" of work-related pain – after all, the pain may come for a short period and then go – and they certainly do not know at that point that they have an "injury" that is "compensable." As Mr. Rhame's principle brief recounted, the Larsons' treatise describes what it means to know that an

“injury” is “compensable.” (App.Br.p.20). It describes that the limitations clock should begin to run only when “the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of his or her injury or disease.” 7 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW, § 126.05[1] (2003).

This is more than just a worker knowing that he or she has pain that is caused by work. This is a worker knowing, or being where he should reasonably know, that there is a permanent *injury* occurring, that this injury is not trivial and has some degree of seriousness, and not only that the injury is work-related, but that it is compensable in character.

In the context of an individual case, these requirements are sometimes not all given a full discussion. For example, this Court’s decision in *Murphy v. Owens Corning* affirmed the commission’s finding on a statute of limitations question based on the commission’s finding that the injured worker did not realize her symptoms were “work-related” until right before she initiated a claim. Op. No. 4807 (S.C. Ct. App. filed Mar. 9, 2011) (Shearouse Adv. Sh. No. 9 at 83, 86-87). The School District cites this case in its brief. (Resp.Br.p.13).

But unlike Mr. Rhame’s case, the question in *Murphy* did not involve discovering the point at which Ms. Murphy knew she had a permanent injury. The question in that case was the point at which she discovered that her job was a cause of her injury. This was an argument about when Ms. Murphy discovered the job-related aspect of her injury’s “nature” and “compensable character.” Again, when she discovered her “injury” was not at issue.

The Court should take this opportunity to describe that there is more to a worker knowing that he or she has an “injury” that is “compensable” than knowing that he or she has work-related pain, and it should reject the School District’s argument that the two are equal.

- ii. The Commission found that Mr. Rhame's first experience of pain was a repetitive trauma injury.

The School District's argument opens by observing that the commission "never found that [Mr. Rhame's] first experience of back pain . . . was the point when he knew or should have known that he had a compensable injury," (Resp.Br.p.11), but this argument should be done in by the School District's doublespeak. The proposition that the limitations clock for Mr. Rhame started in 1994 or 1995 has been the School District's theory of this case throughout this claim. In its brief to the commission, the School District argued "[s]ince the claimant knew he had a compensable *injury* in 1994, and since he did not file a claim until well over two years after this knowledge, his claim is barred based on the statute of limitations." (R.p.43) (emphasis added); see also (R.pp.31, 42) (arguing the same). The School District followed suit in oral argument when it argued that "knowing something is compensable means knowing you have a work injury [and] [t]here is not any factual dispute that the claimant knew that this started in 1994 or 1995, that his job never changed[,] he said it gradually got worse over the years and there was never a specific injury." (R.pp.141-142). The School District's brief follows the same logic. It recounts what is uncontested – that Mr. Rhame began having back problems in 1994/1995, that he knew this pain was related to his job, that he missed some time from work and saw doctors, off and on, over the next 15 years – and then says that what this means is that Mr. Rhame "was aware of a job-related repetitive trauma back injury since 1994 or 1995." (App.Br.pp.11-13). There is no escaping the fact that this argument equates the first occurrence of off-and-on pain with a repetitive trauma injury – that is precisely what it says.

- iii. Starting the limitations clock as soon as a worker knows he has work-related pain is not the better approach.

That argument – the argument that the limitations clock should start as soon as a worker experiences work-related pain – can and should be judged on its own terms. In addressing it, Mr. Rhame's principle brief drew again from the Larsons' treatise. (App.Br.pp.22-23). That treatise observes that the trigger for the limitations clock – knowing that an "injury" is "compensable" – should not be delayed until after there is an actual disability in terms of quitting work. LARSON & LARSON, *supra* page 9, at § 126.10[1]. This is because there is injustice in allowing a worker "with full knowledge of his or her compensation rights, to delay the employer's opportunity of investigating the injury indefinitely, for the purpose of clinging to a full-wage position as long as the labor market permits." *Id.* But this does not mean that the first instance of work-related pain should be the trigger, for at the same time, the treatise observes:

After all, it is a rare adult who has not at some time experienced back pain at work; most of the time nothing comes of it, but sometimes it is the first ominous sign of a herniated disc. Often at that stage even the most competent specialists cannot tell the difference. To impose on a worker at that juncture the absolute duty of filing [a claim] in case a disc disability related to the original pain develops would be *preposterous*.

Id. (emphasis added).

South Carolina law enforces statutes of limitations, see, e.g., *Ashe v. Rock Hill Hardware Co.*, 219 S.C. 159, 167, 64 S.E.2d 396, 400 (1951) (they apply "to the most meritorious claims"), but it also construes statutes of limitations to do substantial justice to the parties and in a manner that is favorable to the injured worker. *White v. Med. Univ. of*

S.C., 355 S.C. 560, 567, 586 S.E.2d 157, 161 (Ct. App. 2003) (quoting *Gattis v. Chavez*, 413 F. Supp. 33, 39 (D.S.C. 1976)); *Mauldin v. Dyna-Color/Jack Rabbit*, 308 S.C. 18, 21, 416 S.E.2d 639, 639 (1992). Construing the statute of limitations to apply a “preposterous” rule violates both principles. Injuries are generally thought to be permanent and have permanent effects. Nothing that happened to Mr. Rhame in 1994 or 1995 suggested that he had a permanent injury. He instead experienced off-and-on back pain.

- iv. The only reasonable conclusion supported in the record is that Mr. Rhame had off-and-on low back pain – not a repetitive trauma injury – in 1994/1995.

The only reasonable reading of the commission’s order is that it took Mr. Rhame’s first experience of pain and called it a back injury. The commission’s order recounts that Mr. Rhame “admitted that his work *injury* started in 1994 or 1995,” and that he “did not report his *injury* right away.” (R.p.17) (emphasis added). Two of its “findings of fact” use the same terminology. (R.p.23) (findings 2 and 3).

What the evidence in the record suggests – and the only evidence of the 1994/1995 episode in the record is Mr. Rhame’s testimony and a 2009 letter from a claims adjuster, see (R.p.167) – is that this rather non-specific period sometime in 1994 or 1995 is when Mr. Rhame first-experienced low back pain. (R.p.85, lines 13 - p.86, line 8). He testified that when he had an episode of pain over the years, he would go see a doctor, take a few days rest, and his pain would ease. See, e.g., (R.p.95, line 23 - p.96, line 4). Again, this was not *permanent* pain suggesting a *permanent* injury. That came in either 2009, when he moved a heavy blower and could not stand up afterwards, or, at the earliest, in 2007, when medical

records suggest that he might be at risk of developing back problems because of his job. See (R.p.115, lines 15-24) (describing the 2009 incident); and (R.p.185) (medical records from March of 2007). And this 2007 notation is equivocal. It says Mr. Rhame *might* be at risk of getting back problems. (R.p.185). The year 2009 is when doctors started telling Mr. Rhame he could not work and Mr. Rhame started having constant, throbbing pain. (R.pp. 157, 159); (R.p.105, lines 2-5) (before May of 2009, was in good health; had back problems but working through them); (R.p.120, line 17 - p.121, line 11) (his present back problems).

Equating the first episode of back pain with a repetitive trauma injury runs contrary to the gradual nature of a repetitive trauma injury and applies a rule that persuasive authority calls “preposterous.” As Mr. Rhame’s principle brief argued, the Court should hold that the commission’s decision did not account for the gradual nature of repetitive trauma injuries, and the finding that Mr. Rhame had a “back injury” in 1994/1995 is clearly erroneous.

b. By Telling Him to “Get the Job Done” and That His 2006 Injury Was Not Compensable, the School District Misled Mr. Rhame into Thinking His Work-related Ailments Were His Own Problem.

The findings at issue here are the Commission’s findings numbers 6, 8, and 9. (R.pp.23-24). These are the findings that Mr. Rhame failed to file a claim primarily due to fear of losing his job, that he was “aware” of the workers’ compensation system by no later than 2006, and that he was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim. *Id.* If the Court agrees with Mr. Rhame on either the previous issue (that the first occurrence of pain does not equal an injury), or on the question of whether the commission improperly applied “new” law to an “old” law injury

(Issue III), the Court need not reach this question because those issues will be dispositive. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

- i. Conduct that reasonably tends to mislead a worker defeats the statute of limitations as a defense.

As Mr. Rhame's initial brief describes, the cases of *Altman v. Williams Furniture Co.* and *Robertson v. Brissey's Garage* stand for the proposition that when the employer's conduct reasonably tends to mislead the employee – whether intentional or not – into believing that an injury is not compensable, the employer is estopped from asserting the statute of limitations as a defense. See (App.Br.pp.13-14) (citing *Altman*, 250 S.C. 98, 156 S.E.2d 433 (1967) and *Robertson*, 270 S.C. 58, 240 S.E.2d 810 (1978)). This is why the School District's repeated citations to the cases of *Young v. Sonoco Products Co.* and *Samuel v. Appleton Co.* should be inapposite. See (Resp.Br.p.10, n.5); and (R.pp.44-45). The School District is relying on both cases for the proposition that ignorance of the statute of limitations is not an excuse for failing to timely file a claim, and both cases say this very thing. But what makes Mr. Rhame's case different from a run-of-the-mill "ignorance of the law" case is that the School District's conduct misled him, and he was not unreasonable in being misled.

Even the *Young* case – the case the School District cites – discusses this. In *Young*, although the injured worker failed to meet the statute of limitations, her claim was ultimately compensable. The court said that although ignorance of the law was no excuse, the claimant's "inexperience in these matters and limited education were facts which could be

properly taken into consideration in determining whether she was actually misled by the conduct and acts of the employer.” 210 S.C. 146, 156, 41 S.E.2d 860, 864 (1947).

This is precisely the point Mr. Rhame is making. His theory of the case on this issue is that he *was* ignorant of the law, but he was also inexperienced and misled by his employer.

ii. The School District’s conduct misled Mr. Rhame.

The panel found that Mr. Rhame failed to file a claim primarily due to fear of losing his job, that he was “aware” of the workers’ compensation system by no later than 2006, and that he was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim. (R.pp.23-24) (findings 6, 8, and 9). To support these findings, the commission cited testimony from pages 27 and 28 of Mr. Rhame’s deposition where Mr. Rhame (a) described that he did not bring his claim earlier because he was worried about getting laid off, and (b) said that he had asked for workers’ compensation back for a neck injury in 2006. See (R.pp.18-19).

This was taking Mr. Rhame’s statements out of their full context in the record. Mr. Rhame did indeed testify that no one ever told him he was going to be laid off if he filed a workers’ compensation claim. See *Id.* (Citing Dep. of Ricky Rhame, R.p.92, lines 4-6). But he also testified that when he told his supervisor that his back “was burning like fire,” his supervisor’s response was “we need to get the job done.” (R.p.87, line 15 - p.88, line 1); see also (R.p.105, line 24 - p.106, line 10).

As far as “asking for workers’ compensation in 2006,” the context for this testimony is that Mr. Rhame approached the School District with a work-related injury to his neck in

2006. See (App.Br.p.16) (recounting this incident with citations to the record; e.g., R.p.108, lines 5-17; p.132, line 25 - p.133, line 16). The School District denied his claim.

These actions may not have “coerced” Mr. Rhame, but they certainly misled him. They misled Mr. Rhame into believing that his work-related ailments were his responsibility, and that his number one job was to get his job done. He testified that “if you don’t perform [at the School District] you don’t – you – you might not stay there long,” (R.p.136, line 18 - p.137, line 4), and given his supervisor’s admonishment to “get the job done,” his fear that he would be let go if he could not perform was reasonable.

With this context supplied, the commission’s findings are, in a sense, correct but incomplete. Yes, Mr. Rhame did not file a claim because of fear he would lose his job, see (R.p.23) (finding 6); but the full and uncontested context of this was his supervisor’s admonishment to “get the job done.” Yes, Mr. Rhame did attempt to bring a claim related to his neck injury in 2006, see *id.* (finding 8); but context shows that this consisted of his taking the claim to the School District and the School District denying it. Yes, Mr. Rhame was not *coerced* into waiting to file his claim, see (R.p.24) (finding 9); but context shows that the School District’s conduct *misled* him. The standard of review for factual findings is very deferential – in general, this Court may reverse only where a finding is clearly erroneous in view of the reliable, probative, and substantial evidence in the record. See S.C. Code Ann. § 1-23-380(5). But findings that cherry-pick isolated statements and divorce them from their context are clearly erroneous.

This situation is not meaningfully distinguishable from the widow in *Robertson* who had been told that she had no claim and took the insurance representative at his word. 270

S.C. at 64, 240 S.E.2d at 812. The only conclusion supportable in the record is that Mr. Rhame was justified in concluding that taking his complaints to the School District would be a “futile gesture.” See *Id.* at 64, 240 S.E.2d at 812 (insurance agent’s representations justified the widow in assuming that pursuing a claim would be a “futile gesture”). If the Court reaches this issue, it should reverse these findings as clearly erroneous.

iii. This argument is preserved.

The School District asserts that this argument is not preserved, observing that Mr. Rhame’s appeal argues these findings “for the first time.” (Resp.Br.p.13).

This statement is a little hard to figure, because the first time the commission made these findings was at the appellate panel level of review. The facts supporting this argument are drawn entirely from the administrative record presented to the hearing commissioner and to the commission – they are drawn exclusively from Mr. Rhame’s deposition and from his hearing testimony. The hearing commissioner described that Mr. Rhame attempted to file a claim in 2006 and was turned down, (R.p.4), and in his brief to the commission, Mr. Rhame argued that the School District “knew about [his] work-related pain” since 1994 and “refused to provide treatment for the same.” (R.p.56); see also (R.p.52) (noting the same) and (R.p.62) (from Mr. Rhame’s petition for rehearing, raising the School District’s denial of Mr. Rhame’s 2006 injury). A party need not use the precise name of a doctrine to preserve an argument, see, e.g., *Strickland v. Strickland*, 375 S.C. 76, 85-86, 650 S.E.2d 465, 470-71 (2007), and this argument was raised to the commission. The commission simply rejected it by cherry-picking the record and divorcing Mr. Rhame’s testimony from its context.

III. The Argument That the Commission's Decision Applies New Law to an Old Injury Is Absolutely Accurate and Is Preserved.

This issue is about the fact that the commission's decision applies the two-year statute of limitations in S.C. Code Ann. § 42-15-40 (Supp. 2010), to an injury that it found occurred in 1994 or 1995. The problem is that the act that passed § 42-15-40 specifically instructs that it applies to "injuries" that "occur" on or after July 1, 2007. See Act. No. 111, Part IV, Section 2, 2007 S.C. Acts 599, 644.

a. The Commission's Order Is Clear: it Applies a Law Applicable Only to "Injuries" That "Occur" on or after July 1, 2007 to a 1994 or 1995 "Injury."

The School District calls this a "red herring," (Resp.Br.p.22), but applying "new" law to an "old law" injury is precisely what the commission did. The commission found that Mr. Rhame "was aware that he had a back injury . . . since 1994 or 1995," (R.p.23) (finding 2); and then it found that Mr. Rhame did not file a claim "within two years of when he knew or should have known that his claim was compensable." (R.p.24) (finding 10). There is just no other way to read the commission's order, and as Mr. Rhame has described, the School District offered this approach as its theory of the case throughout this claim. See *infra* p.10.

b. Of the Conceivable Ways to Treat Repetitive Trauma Injuries That Span the July 1, 2007 Change in the Law, the Commission's Approach Is the Most Unfair and Unjust.

There are at least a few conceivable ways to treat the situation of a worker with a repetitive trauma injury that spans the July 1, 2007 transition date from old law to new law. One way is the way the commission treated it – at 12:01 a.m. on July 1, 2007, Mr. Rhame's claim changed from one on which the statute of limitations had not even started (using the

date of last injurious exposure rule, per the law in effect on June 30, 2007), to one on which the statute started with his 1994 or 1995 "injury" and stopped two years later.

The problem with this approach is that it eviscerates Mr. Rhame's claim and conflicts with the cases specifically instructing that statutes of limitations should be construed in favor of the claimant and to do justice to the purposes of workers' compensation law. See *White*, 355 S.C. at 567, 586 S.E.2d at 161 (quoting *Gattis*, 413 F. Supp. at 39); *Mauldin*, 308 S.C. at 21, 416 S.E.2d at 639; *Young*, 210 S.C. at 155, 41 S.E.2d at 863-64 (statute of limitations protects against "long-delayed demands" but is subject to a "liberal construction").

Another way is to recognize that a repetitive trauma injury is a continuous injury and that if one spans the July 1, 2007 date, it implicates both old and new law. If Mr. Rhame truly had a repetitive trauma injury prior to July 1, 2007, the effective date of Act. 111 instructs that the amended § 42-15-40 *cannot* apply to that part of the injury. The "new" statute might apply to the continuous injuries that occur July 1, 2007 and after, but the "old" date of last injurious exposure rule would have to apply to the "old" portion of the injury.

A third way to treat a repetitive trauma injury that spans July 1, 2007 would be to say that if the worker truly had a repetitive trauma "injury" that first-occurred prior to July 1, 2007, the old "date of last injurious exposure" rule applies. This approach would be the most beneficial to the injured worker and would honor the purpose of workers' compensation, which is to compensate people for work-related injuries.

The Court can avoid this question in this case because Mr. Rhame can meet both the old law and the new law when they are properly construed, but these examples should illustrate that the approach the commission took to this case was incorrect and unfair.

c. This Error Was Raised to the Commission Immediately and Is Preserved.

The Supreme Court has repeatedly observed that all it has ever required “is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court.” See, e.g., *State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (quoting *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939)). The commission’s decision was the first time that “new” law was applied to a 1994 or 1995 injury. Preserving this issue was precisely why Mr. Rhame filed a petition for rehearing.

The School District’s argument assigns significance to the fact that Mr. Rhame’s Form 50 alleged a date of injury of May 4, 2009, and to the fact that the hearing commissioner found a date of accident of May 5, 2009. (Resp.Br.p.21). The Court should find that these observations are beside the point.

Mr. Rhame’s theory of the case was that it was not until 2009 that he understood the nature, seriousness, and compensable character of his injury. He became disabled in 2009, and his theory was that he could meet the terms of the statute of limitations in effect in 2009 if that statute was properly construed and applied. The hearing commissioner agreed with this theory. There was nothing in that commissioner’s decision for Mr. Rhame to appeal.

Mr. Rhame did not create the error that he is challenging here, the commission did. In reversing the hearing commissioner, the commission found a 1994 injury and applied post July 1, 2007 law. That error is plain on the face of the commission’s order, Mr. Rhame raised it to the commission’s attention through rehearing, and the commission dismissed the argument. “Raised and ruled upon” is the standard, and both were done here.

CONCLUSION

First, the Court should hold that this appeal is timely under § 1-23-380(1) and the Supreme Court's decision in *McCummings v. South Carolina Department of Corrections*. These authorities directly control on the question of whether this appeal is timely, and the Respondents' reading of the statute would render part of § 1-23-380(1) meaningless.

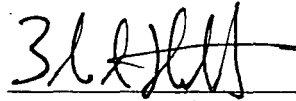
Second, this Court should reverse the commission's finding that Mr. Rhame's first episode of back pain qualifies as a repetitive trauma injury as clearly erroneous in light of the evidence in the record and the fact that a gradual onset and lack of a definite time of occurrence that are the defining characteristics of repetitive trauma injuries. The Court should also reverse the commission's decision because it purports to apply "new" law that applies to post-July 1, 2007 injuries to an injury that supposedly occurred in 1994 or 1995. As the conclusion of Mr. Rhame's principle brief described, the Court could avoid the question of how to treat repetitive trauma injuries that span the July 1, 2007 change in the law by finding that Mr. Rhame can meet the terms of either rule when they are properly applied.

As Mr. Rhame's principle brief described, this appeal is about inconsistency, because while everyone agrees that Mr. Rhame never suffered a discrete injury to his back, the School District and the commission took Mr. Rhame's first episode of back pain and called it a "repetitive trauma injury." But the case is also about the School District trying to get something for nothing. No one seems to contest that Mr. Rhame's injury was work-related. What the School District asked the commission to do, and what it asks this Court to affirm, is the creation of a trap where the School District benefits by having stonewalled an injured

worker while the law changed. That is not an approach that this Court should accept, especially where the uncontested evidence is that Mr. Rhame reported his back pain to his supervisor when it first occurred.

May 25, 2011

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0906212

RECEIVED
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SC Court of Appeals

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent.

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 0906212

RICKY RHAME,
Employee,
Claimant,
vs.
CHARLESTON COUNTY SCHOOLS,
Employer,
and
CORVEL, TPA,
Carrier,
Defendants.

DECISION AND ORDER

HEARING:

Hearing held on December 3, 2009
in North Charleston, South Carolina.

APPEARANCES:

Patrick L. Jennings, Esquire, on
behalf of the Employee/Claimant.

Leslie Whitten, Esquire, on behalf
of the Employer-Carrier/Defendants.

PURPOSE OF HEARING:

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

DECISION AND ORDER:

Avery Wilkerson, Commissioner.

FILED:

February 26, 2010

STIPULATIONS

It was stipulated and agreed upon at the time of the hearing that jurisdiction and venue were proper. It was further stipulated that the Claimant was entitled of an average weekly wage of \$899.63, with a corresponding compensation rate of \$599.78.

APA SUBMISSIONS AND EXHIBITS

The following APA Submissions were submitted on behalf of the Employee/Claimant:

<u>MEDICAL PROVIDERS/DESCRIPTION</u>	<u>DATE(S) OF REPORTS</u>	<u>PAGES</u>
APA 1. Southeastern Spine Institute	1/29/09 to 9/10/09	1-13
APA 2. Jeffrey W. Buncher, M.D.	9/2/08 to 5/12/09	14-20
APA 3. John Goeldi, M.D.	5/1/09 to 5/4/09	21-26
APA 4. Doctor's Care - West Ashley	5/5/09	27-29

The following Exhibits were submitted on behalf of the Employee/Claimant:

<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
EXH A. Letter to Mr. Rhame from Glenn Martin	5/6/09	30
EXH B. Standard Insurance Long Term Disability Benefits	5/13/09	31-37

The following APA Submissions were submitted on behalf of the Employer-Carrier/Defendants:

<u>DESCRIPTION/MEDICAL PROVIDERS</u>	<u>DATES</u>	<u>PAGES</u>
APA 5. Jeffrey W. Buncher, M.D.	4/14/09	38
APA 6. John Goeldi, M.D.	8/24/01 to 11/20/01	39-49

APA 7. T. Pappas, M.D.	9/11/02 to 3/19/07	50-56
APA 8. Trident Medical Center	9/19/02 to 5/27/06	57-69

The following Exhibits were submitted on behalf of the Employee/Claimant:

<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
EXH.C. CCSD Records on Claimant's Report of Accident	Misc.	70-73

SUMMARY OF EVIDENCE AND STATEMENT OF THE CASE

The above-case came to be heard before the undersigned Commissioner in North Charleston, South Carolina on December 3, 2009, pursuant to notice timely and properly given to all parties of record.

The Hearing was scheduled pursuant to a Form 50 hearing request, filed by the Employee/Claimant. The Claimant sought a finding of compensability for a repetitive motion trauma to his back, right hip, and right lower extremity. The Claimant also sought additional medical treatment for these body parts, payment of causally related medical treatment, and temporary, total disability benefits from May 5, 2009 to the present and continuing. The Claimant contends that it is premature to address permanent disability at this time, as the Claimant has not been rendered at maximum medical improvement.

The Claimant believes the requirements of § 42-1-172 have been met in which the Claimant would be entitled to a finding of compensability under repetitive motion trauma.

The Defense denies the Claimant's current medical condition is related to a repetitive motion trauma, nor has he suffered an injury by accident. They contend that the Claimant has not properly filed this claim within the period afforded under the statute of limitations. Additionally, the defense claims that the Claimant has not given proper notice to his employer.

CLAIMANT'S TESTIMONY

The Claimant testified that he is 53-years old. He has high blood pressure, diabetes, and had anxiety and panic attacks prior to his injury of May 2009. He has had prior problems with his back before of May of 2009, with problems starting around 1994 or 1995 from normal work activities. The Claimant has had no prior workers' compensation claims; however, he did have a cervical fusion in 2006. This injury occurred while he was going through a roof hatch at work. However, workers' compensation did not cover the medical bills or pay for any of the Claimant's time out of work. The case was denied after the Claimant reported it to the Charleston County School District. After he received a denial letter, the Claimant did not speak with anyone else regarding his cervical injury.

The Claimant testified that he did not report his lower back problems in 1994 or 1995 and was able to continue with his same job duties. He was never put on light duty work restrictions. The Claimant has not had any personal injury claims, nor has he filed for unemployment.

The last grade of education the Claimant completed was the 9th grade. He has not received his GED, nor has he taken the test. The Claimant testified that after the 9th grade, he worked for the City Housing Authority for 11 years. While there, he did refrigeration repairs and installation in homes. The Claimant next began work with the Charleston County School District in 1987. His employment has lasted approximately 22 years. The Claimant testified that the Charleston County District was the "best place I have ever worked."

The Claimant serves as an air condition technician and has never had a sit-down job. All of his past employment has been physical in nature.

As an air conditioning technician, the Claimant travels from school to school repairing air conditioning units. For example, the Claimant testified that if a compressor was down, he would

un-wire the same, come off the roof, get another compressor, go back the ladder with the tools, and install the new compressor. He stated that he will lift compressors, ladders, fan motors, and coils. The lifting the Claimant does on the job ranges anywhere from 20 to 100 pounds. Throughout the course of the day, he spends most of the time walking, bending, stooping, squatting, climbing, pushing, and pulling.

May 4, 2009 was the last date that the Claimant worked for the Employer. On that date, "I was trying to finish up a job at St. John's High and then I had to take this big blower -- I mean, it was really too much to handle but I did the best I could with it. I had to get out the ceiling. And when I loaded it up on the truck -- I -- I had an appointment to go see a chiropractor that afternoon but I couldn't wait. My back -- I -- I couldn't -- I couldn't even stand up straight. That's how bad my back was." (Claimant's testimony, Page 19, Lines 16-24).

The Claimant testified that he knew at that point that he would not be able to do his job as an air conditioning technician any longer. The Claimant thinks his back was injured pulling air conditioning units out of walls. The Claimant has had the same job for his entire tenure of work with Charleston County School District.

The Claimant testified he first told Debbie Gunter on May 5, 2009 about this injury. He additionally informed her supervisor, Eric Cook. Mr. Cook told the Claimant that this time around, Charleston County School District was going to do this "the right way". As understood by the Claimant, this statement was in reference to the Claimant's not filing a workers' compensation claim for his previous cervical injury. At that time, the Claimant was informed he was supposed to go see his employer's doctor, Doctor's Care.

The Claimant received medical treatment at Doctor's Care. He later went to see Dr. John Johnson at the Southeastern Spine Institute. At the Southeastern Spine Institute, the Claimant received four or five injections to his lower back.

The Claimant has not worked since May 5, 2009, nor has he been paid for his time out

of work. The Claimant does not know at this time whether or not he is employed with the Charleston County School District, as he was never sent a letter of termination.

The Claimant does not feel that there is any way he could perform his former job duties as an air conditioning technician because of his physical problems and inability to lift. The Claimant states that he has constant pain in his lower back, and that the injections performed by Dr. Johnson did ease this pain temporarily. The pain is described as sharp, and it travels down from his back to his thighs. The Claimant has trouble walking, standing, cleaning his house, doing laundry, and even dressing himself.

The Claimant testified that he never knew that he had a compensable workers' compensation since he didn't know what a compensable one was. He first became aware of the potential to file a workers' compensation when he spoke to a lawyer in May of 2009, after he last worked for Charleston County School District. The Claimant testified that he does not really know what a repetitive trauma claim is. He has never discussed a repetitive trauma workers' compensation with anyone at his work. The Claimant further testified that he is not familiar with § 42-1-172, § 42-15-20, or § 42-15-40 of the South Carolina Workers' Compensation Code.

Upon cross-examination from Defense counsel, the Claimant testified that he was hired in 1987 to do heating and air conditioning work with the Defendant Employer. He stated that not every job was the same, and therefore cannot say how often he would lift various weighted objects on the job. The Claimant testified that his back started hurting in either 1994 or 1995, but no specific injury ever occurred. He stated that his back gradually got worse over time. In reference to the Claimant's neck injury in 2006, the Claimant testified that he spoke to Diane about this injury. However, the workers' compensation process was never explained to him after he was initially turned down.

Upon redirect examination, the Claimant testified that he has never filed a workers' compensation claim prior to this injury. The Claimant testified that he never knew he had a

compensable workers' compensation claim before speaking with his employer about his injuries in May of 2009, nor had he ever been given a reason to think that he did have a compensable workers' compensation claim. The Claimant never missed an extended period of time from work nor was he ever given any light duty work restrictions for his back, right hip, or right lower extremity prior to this workers' compensation claim.

MEDICAL EVIDENCE

The medical evidence was consistent with the Claimant's testimony detailing his injury to his back, right hip, and right lower extremity, as a result of his repetitive trauma work injury. As outlined in the Claimant's testimony, the Claimant underwent injections to his back, performed by Dr. John Johnson at Southeastern Spine Institute as well as medical treatment at Doctor's Care.

FINDINGS OF FACT

After due consideration of the claim and defenses, and after reviewing all of the evidence contained in the record, the following Findings of Fact as required under Section 42-17-40, South Carolina Code of Laws, 1976, as Amended, are set forth:

1. That the South Carolina Workers' Compensation Commission has jurisdiction over this claim. The Claimant was a covered employee and the Employer was a covered employer at the time in question. The employee/employer relationship existed at the time of the Claimant's injury by accident.
2. That the claim was heard before the undersigned Commissioner on December 3, 2009, in North Charleston, South Carolina in accordance with notices timely and properly served upon all parties of interest.
3. That venue for this claim was proper.
4. That the Claimant suffered a compensable repetitive trauma injury on or about

May 5, 2009, to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County Schools.

5. That by a preponderance of evidence, a direct causal connect is established by medical evidence between the repetitive activities that occurred while the Claimant was engaged in his regular duties of employment as an air conditioning technician with Charleston County Schools and the injuries to his back, right hip, and right lower extremity.
6. That the Claimant is not at maximum medical improvement and is in need of additional medical treatment. Said treatment is to be provided with Dr. John Johnson at the Southeastern Spine Institute, as he is familiar with the Claimant's injuries.
7. That the Defendants are to pay the Claimant temporary, total disability benefits from May 5, 2009 to the present and continuing.
8. That the Claimant provided timely notice to his employer of the repetitive trauma work injuries.
9. That the Defendants are to pay for all causally related medical treatment regarding these repetitive trauma injuries to the Claimant's back, right hip, and right lower extremity.
10. That the Claimant has filed his workers' compensation claim within the appropriate statute of limitations.
11. That at the time of the Claimant's injury by accident, the Claimant had an average weekly wage of \$899.63, thereby entitling him to a compensation rate of \$599.78.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as Amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-130, the Claimant was a covered employee at the time in question.
2. Under Section 42-1-140, the Defendant Employer was a covered employer under the Act.
3. Under Section 42-1-40, the Claimant's average weekly wage was \$899.63, resulting in an appropriate compensation rate of \$599.78.
4. Under Section 42-1-172, the Claimant suffered a compensable repetitive trauma injury to his back, right hip, and right lower extremity arising out of and in the course and scope of the Claimant's employment with the Defendant Employer.
5. Under Section 42-15-20, proper notice was provided to the Defendant Employer.
6. Under Section 42-15-40, this claim was properly filed within the statute of limitations under the Act.
7. Under Section 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries, and prescription medications related to his work injury which tends to effect a cure, provide relief and/or tends to lessen the period of disability.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Ricky Rhame, sustained a compensable repetitive trauma injuries to his back, right hip, and right lower extremity arising

out of and in the course and scope of his employment with Charleston County School District on or about May 5, 2009; and it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant, Ricky Rhame, is entitled to receive necessary and proper medical care, treatment and surgeries from Dr. Johnson. All of his medical care, treatment, therapy, injections, consultations, diagnostic procedures, medications, rehabilitations, and other attendant care shall be the responsibility of the Defendants, including reimbursement to the Claimant for mileage and prescription medications; and it is further

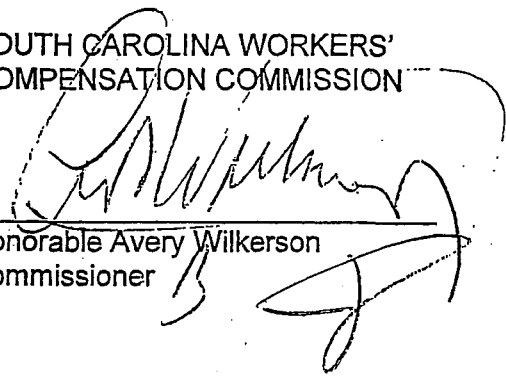
ORDERED, ADJUDGED, AND DECREED, that the Claimant, Ricky Rhame, has not reached maximum medical improvement; and it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant, Ricky Rhame, is entitled to receive temporary, total disability benefits from May 5, 2009 to the present and continuing.

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Honorable Avery Wilkerson
Commissioner

Columbia, SC

Dated: 22nd 2010

CERTIFICATE OF SERVICE
This is to certify that the foregoing has been served this 26th day of February, 2010, on all parties to this case. A true and correct copy of, postage paid, in the amount of \$0.00, is being delivered to the attorney or each party, as directed.

This 26 day of February, 2010
By Ernie M. Bagd
Administrative Assistant to the Commissioner

PLT
LW

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

WCC FILE 0906212

RICKY RHAME,

Claimant/Respondent,

vs.

CHARLESTON COUNTY SCHOOL DISTRICT,

Employer/Self-Insured,

Appellant.

Appellate Panel Review
Columbia, South Carolina
May 17, 2010

Appellate Panel Decision & Order filed
on 8/6, 2010.

REVERSED

Patrick L. Jennings of Joye Law Firm, LLP, of North Charleston, on behalf of Respondent.

Leslie M. Whitten, of Young Clement Rivers LLP, of Charleston, on behalf of Appellant.

AUG 9 2010

STATEMENT OF THE CASE

The above case was heard before Commissioner Avery B. Wilkerson, Jr. in North Charleston, South Carolina, on December 3, 2009 pursuant to notice timely and properly given to all parties of record. On February 26, 2010, Commissioner Wilkerson issued the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

After due consideration of the claim and defenses, and after reviewing all of the evidence contained in the record, the following Findings of Fact as required under Section 42-17-40, South Carolina Code of Laws, 1976, as Amended, are set forth:

1. That the South Carolina Workers' Compensation Commission has jurisdiction over this claim. The Claimant was a covered employee and the Employer was a covered employer at the time in question. The employee/employer relationship existed at the time of the Claimant's injury by accident.
2. That the claim was heard before the undersigned Commissioner on December 3, 2009, in North Charleston, South Carolina in accordance with notices timely and properly served upon all parties of interest.
3. That venue for this claim was proper.
4. That the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009, to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County Schools.
5. That by a preponderance of evidence, a direct causal connect is established by medical evidence between the repetitive activities that occurred while the Claimant was engaged in his regular duties of employment as an air conditioning

technician with Charleston County Schools and the injuries to his back, right hip, and right lower extremity.

6. That the Claimant is not at maximum medical improvement and is in need of additional medical treatment. Said treatment is to be provided with Dr. John Johnson at the Southeastern Spine Institute, as he is familiar with the Claimant's injuries.

7. That the Defendants are to pay the Claimant temporary, total disability benefits from May 5, 2009 to the present and continuing.

8. That the Claimant provided timely notice to his employer of the repetitive trauma work injuries.

9. That the Defendants are to pay for all causally related medical treatment regarding these repetitive trauma injuries to the Claimant's back, right hip, and right lower extremity.

10. That the Claimant has filed his workers' compensation claim within the appropriate statute of limitations.

11. That at the time of the Claimant's injury by accident, the Claimant had an average weekly wage of \$899.63, thereby entitling him to a compensation rate of \$599.78.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as Amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-130, the Claimant was a covered employee at the time in question.

2. Under Section 42-1-140, the Defendant Employer was a covered employer under the Act.
3. Under Section 42-1-40, the Claimant's average weekly wage was \$899.63, resulting in an appropriate compensation rate of \$599.78.
4. Under Section 42-1-172, the Claimant suffered a compensable repetitive trauma injury to his back, right hip, and right lower extremity arising out of and in the course and scope of the Claimant's employment with the Defendant Employer.
5. Under Section 42-15-20, proper notice was provided to the Defendant Employer.
6. Under Section 42-15-40, this claim was properly filed within the statute of limitations under the Act.
7. Under Section 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries, and prescription medications related to his work injury which tends to effect a cure, provide relief and/or tends to lessen the period of disability.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,
ORDERED, ADJUDGED, AND DECREED, that the Claimant, Ricky Rhame, sustained a compensable repetitive trauma injuries to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County School District on or about May 5, 2009; and it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant, Ricky Rhame, is entitled to receive necessary and proper medical care, treatment and surgeries from Dr. Johnson. All of his medical care, treatment, therapy, injections, consultations, diagnostic procedures, medications, rehabilitations, and other attendant care shall be the responsibility of the Defendants, including reimbursement to the Claimant for mileage and prescription medications; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Ricky Rhame, has not reached maximum medical improvement; and it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant, Ricky Rhame, is entitled to receive temporary, total disability benefits from May 5, 2009 to the present and continuing.

No hearing costs are assessed in this matter.

Within the statutory period, counsel for Charleston County School District, Leslie M. Whitten, filed a Form 30, Application for Review in the case setting forth the appeal grounds, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on May 17, 2010. All proffered testimony had been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members or the Appellate Panel and has since been under study and consideration.

In its appeal, Appellant respectfully submits the following:

1. Whether the Commissioner erred in finding that the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009 arising out of and in the course and scope of his employment?
2. Whether the Commissioner erred in finding a direct causal connection in the medical evidence between repetitive activities and the Claimant's regular duties of employment?

3. Whether the Commissioner erred in finding that the Claimant was not at Maximum Medical Improvement or in need of additional medical treatment to be provided by Dr. John Johnson?
4. Whether the Commissioner erred in awarding the Claimant temporary total disability benefits from May 5, 2009 to the present and continuing?
5. Whether the Commissioner erred in finding that the Claimant provided timely notice to the Employer of repetitive trauma work injuries?
6. Whether the Commissioner erred in finding that the Defendants are to pay for all causally-related medical treatment regarding these repetitive trauma injuries?
7. Whether the Commissioner erred in finding that the Claimant has filed his workers' compensation claim within the appropriate statute of limitations?
8. Whether the Commissioner erred in Conclusions of Law #4, #5, #6, and #7?
9. Whether the Commissioner erred in ordering future medical care and temporary total disability benefits to the Claimant?

STANDARD OF REVIEW

When reviewing evidence in the award of the single commissioner, the Appellate Panel makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the single commissioner. S.C. Code Ann. § 42-17-50 (1985); *Lowe v. Am-Can Trans. Servs., Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. *Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000). An award of benefits may not rest on surmise, conjecture, or speculation but, rather, must be founded on evidence of sufficient substance to afford it a reasonable basis. *Linen v. Ruscon Constr. Co.*, 286 S.C. 67, 332 S.E.2d 211 (1985).

EVIDENCE OF THE CASE

The claimant was the only witness to testify at the hearing. The claimant testified that he is 53 years old and has had lower back issues for a long time. (Transcript of hearing, p. 9-10). He admitted that his work injury started in 1994 or 1995 when his supervisor was Buddy Parsons. From 1987 until he stopped working in May of 2009, the claimant's job consisted of lifting heavy air conditioning units. He had to lift 50-60 pounds almost every day and 90-100 pounds 5-6 times a month. (Transcript of claimant's deposition, p. 11 -12). He indicated that he told Buddy in 1994 or 1995 that he was having back pain related to work and that he went to the doctor at that time for pain in his low back, and he has had physical therapy, injections, and pain medications for his low back in the past. Id. The medical records in evidence date back to 2001 and indicate that the claimant treated with Dr. Pappas and Dr. Goeldi for pain in his low back. (APA 6 & 9). The medical records consistently relate the claimant's back pain to lifting air conditioner units at work or simply lifting on the job site. Id.

At first, the Claimant indicated that he did not report his injury right away because his wife was fighting cancer, and he was afraid he would get laid off. (Transcript of hearing, p. 14). He admitted that he did not bring a claim later, again because he thought he would get laid off and wanted to stay under the radar. (Transcript of hearing, p. 36). However, he also testified that he did not know what a workers' compensation claim was and did not know what repetitive trauma meant. (Transcript of hearing, p. 27). He denied that he had any idea that he could do anything other than get medical benefits under his health insurance, even though he has able to articulate that he made no attempt to get any money or get benefits because he was concerned with getting laid off. (Transcript of hearing, p. 36). The claimant admitted that no one with Charleston County School

District ever told him that he would be laid off nor was he told that his claim would be taken care of. (Transcript of claimant's deposition, p. 28).

The Claimant testified that he stopped working completely on May 4, 2009 because he was simply worn out and did not feel like he could continue with his back hurting the way that it was. (Transcript of hearing, p. 19-20). The Claimant admitted that, up until that point, he had been doing the exact same job since 1987 and that he never had any specific injury that caused his back pain. He just started having back pain since 1994 and was aware from the beginning that his problems were related to his job. (Transcript of claimant's deposition, p. 10-11). He also admitted that he had gone to Dr. Pappas over the years for problems with his back and that at times he would take a few days off of work to recover and would get better until he returned to work. (Transcript of hearing, p. 34-35). He admitted that he waited to file a claim because he did not want to get laid off and wanted to keep a low profile. At the hearing, the claimant would not admit specifically that he knew the Workers' Compensation system existed, but he admitted that in 2006 that he tried to file a Workers' Compensation claim related to his neck. (Transcript of hearing, p. 36).

A review of the claimant's deposition testimony reveals that the reason he failed to bring a claim timely was from a fear of getting laid off, rather than an alleged ignorance of the law:

Q. Sure. Okay. Why have you waited you waited until 2009 to bring a claim?

A. Two thousand - - because I couldn't take it anymore. I mean, I've tried to work and keep my job too because I was worried about being laid off and I tried to keep a low profile, as low as I could, and that's why I paid for a lot of this out of my pocket.

Q. Did somebody tell you you were going to get laid off if you filed a workers' comp claim?

A. No, ma'am.

Q. I mean, back in 2006 when you had the surgery on your neck, why didn't you ask for workers' comp for that back then?

A. I did.

Transcript of claimant's deposition, p.27, line 21 – p.28, line 10.

The claimant testified clearly that he was aware of the Workers' Compensation system and did not bring a claim for 15 years because of a concern with losing his job. He also showed an awareness of the Workers' Compensation system by trying to file a claim in 2006 for a specific injury to his neck.

REVIEW OF STATUTE OF LIMITATIONS LAW IN REPETITIVE TRAUMA CLAIMS

The Workers' Compensation Act states that a claimant must file a repetitive trauma claim with the Worker's Compensation Commission "within two years after the employee knew or should have known that his injury is compensable." S.C. CODE ANN. §42-15-40. This law was enacted on July 1, 2007 and is a reinstatement of the law prior to the case of Schurlock v. City of North Charleston, 352 S.C. 175, 574 S.E.2d, 195 (2002). Respondent argues that the word "compensable" in this statute requires the claimant to be aware of the Workers' Compensation system and be eligible for temporary or permanent disability benefits. However, a review of the case law on this issue reveals quite a different meaning.

In 1947, the Supreme Court decided the case of Young v. Sonoco Products, 210 S.C. 146, 41 S.E.2d 860 (1947). The claimant in Young described a sudden tearing pain in her elbow on February 4, 1944. She continued working until September of 1944. She did not file a claim until October 19, 1945, greater than one year from her injury (at that time the statute of limitations

was one year). The claimant's excuse at that time was that she was not properly educated by her employer about the Workers' Compensation system. The court held that the "fact that claimant may have been unaware of the requirement as to filing a claim within one year furnishes no legal excuse for not filing her claim. She is constructively charged with such knowledge." Young at 156, 864.

Two years later, the court decided the case of Samuel v. Appleton Co. et al., 214 S.C. 157, 51 S.E.2d 508 (1949). In Samuel, the claimant was injured in a slip and fall on January 11, 1946. The claimant was illiterate and argued that because he did not understand what he was required to do to obtain compensation, he did not bring his claim within the one year statute of limitations. In reiterating its decision in Young, the court held that "the fact that [the claimant] may have been unaware of the requirement as to filing a claim within one year does not excuse his failure to make timely claim [sic]. He is constructively charged with such knowledge." Samuel at 160, 509. The court also noted that "no exceptions to the requirement of the act in respect of a timely filing of a claim or excuses for non-compliance therewith may be invoked other than those provided for in the act." Id. at 161, 509.

The Supreme Court first adopted the discovery rule in Mauldin v. Dyna-Color, 308 S.C. 18, 416 S.E.2d 639 (1992). In Mauldin, the claimant injured her knee at work on January 2, 1985. She was diagnosed with a sprain, missed no time from her work, and her case was closed. Thereafter, the claimant had intermittent swelling and pain in her knee and returned to her doctor. She was diagnosed with a torn medial meniscus on November 1, 1987 and filed a claim on December 30, 1987. The court found that her claim was not barred under the statute of limitations because she brought her claim within two years of when she "knew or should have known of her compensable injury." Id. 20, 640. In discussing the discovery rule, which

contains the same language as the current law, S.C. CODE ANN. §42-15-40, the court explained that the statute begins to run when the claimant was aware her claim was related to her work. The court noted that the two-year statute of limitations “commenced on November 1, 1987, when the petitioner discovered that her knee problem resulted from the January 2, 1985 accident.” *Id.* at 21, 641.

The discovery rule continued to be the applicable law in repetitive trauma claims until the Supreme Court decided the case of Schurlnight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d, 195 (2002). Schurlnight was a repetitive trauma, hearing loss claim in which the claimant was a fireman and had been exposed to the noise of the siren and air horn for several years. The claimant first discovered that he had noise-induced hearing loss in 1995. However, he did not actually file a Workers’ Compensation claim until May of 1998. The court acknowledged that the discovery rule had been the law and noted that “[a]pplying the discovery rule to such an injury often works to the prejudice of an employee who discovers symptoms of a repetitive trauma injury but continues to work.” Schurlnight at 178, 195. The court indicated that the discovery rule was inequitable because it might mean that a claimant who knows he has a repetitive injury related to work will continue to work without bringing a claim. This interpretation of the discovery rule clarifies that under this rule (1) a claimant can have a “compensable” claim while continuing to work, and (2) the discovery of a “compensable” claim is the same as the discovery of a work related injury.

The court in Schurlnight reversed the discovery rule and held that the statute of limitations does not begin to run in a repetitive trauma claim until “the last date of exposure.” *Id.* at 179, 196. The Court of Appeals heard White v. MUSC, 355 S.C. 560, 586 S.E.2d 157 (Ct. App. 2003) about 8 months after the Supreme Court heard Schurlnight. In White, the claimant

was a technician/nursing assistant who had back pain that he related to his job beginning in 1997. He continued to work and did not file a claim until December 6, 2000. The Workers' Compensation Commission found that the claim was barred by the statute of limitations. The Commission's decision was based on the discovery rule because Schurlknight had not yet been filed. The Court of Appeals ultimately reversed the Commission's order based on the law as laid out in Schurlknight, but not before detailing the reasoning for the Commission's decision. The Commission held that "White's claim was barred by the statute of limitations because White either knew or should have known that repetitive lifting of patients and gurneys was causing injury to his back as far back as 1997." *Id.* at 565, 160. The claimant did not go out of work until April of 2000. Thus, again, under the discovery rule, when the claimant is entitled to compensation in terms of temporary or permanent benefits is irrelevant. The statute begins to run when the claimant is aware that his job is causing injury. There is no language about when the claimant became aware of the Workers' Compensation system; rather, the term "compensable" is used interchangeably with "work related," meaning, once again, that under the discovery rule the statute begins to run when the claimant knows his work is causing his injury.

The "last day of exposure" rule as detailed in Schurlknight remained the controlling law on the statute of limitations for repetitive trauma injuries until the legislature overruled it on July 1, 2007, at which time the rule once again became the discovery rule. If the legislature had intended to maintain the rule that the statute does not begin to run until the claimant was entitled to temporary benefits, as suggested by the claimant, there would have been no need to change the "last day of exposure" rule. Instead, the legislature returned to the language that the claimant must file a claim "within two years after the employee knew or should have known that his injury is compensable." S.C. CODE ANN. §42-15-40. As a result, based on the plain language

of the statute and the long history of cases interpreting the discovery rule, the statute should be interpreted to mean that a claimant must file a claim within two years after he knew or should have known that he had an injury related to his job.

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the claimant was aware that he had a back injury related to his job with Charleston County School District since 1994 or 1995.
3. That the claimant continued to receive pain medications, injections, and physical therapy from various physicians related to his work injury since 1994 or 1995.
4. That the claimant missed days from work on and off from 1994 and 1995 due to ongoing pain in his back.
5. That the claimant's job required that he lift air conditioning units, weighing from 50 to 100 pounds, on at least a weekly basis.
6. That the claimant failed to file a Workers' Compensation claim until 2009 primarily due to a fear of losing his job.
7. That the claimant attempted to bring a Workers' Compensation claim in relation to a specific injury to his neck in 2006.
8. That the claimant was aware of the existence of a Workers' Compensation system by no later than 2006.

9. The claimant was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim or that his claim would be taken care of.

10. That the claimant did not file a Workers' Compensation claim within two years of when he knew or should have known that his claim was compensable.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. S.C. Code Ann. § 42-1-172 defines repetitive trauma injury;
3. S.C. Code Ann. § 42-15-40 sets forth the requirement that a repetitive trauma injury claim must be filed within two years after the employee knew or should have known that his injury is compensable.
4. Young v. Sonoco Products, 210 S.C. 146, 41 S.E.2d 860 (1947) is relied upon in this order.
5. Samuel v. Appleton Co. et al., 214 S.C. 157, 51 S.E. 2d 508 (1949) is relied upon in this order.
6. Mauldin v. Dyna-Color, 308 S.C. 18, 416 S.E.2d 639 (1992) is relied upon in this order.
7. The reasoning in Schurilknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d, 195 (2002) is relied upon in this order.

8. The reasoning in White v. MUSC, 355 S.C. 560, 586 S.E.2d 157 (Ct. App. 2003) is relied upon in this order.

ORDER

Based on the foregoing, the single commissioner's order is **REVERSED**.

It is hereby:

ORDERED, ADJUDGED, AND DECREED that the claim of the claimant for benefits under the South Carolina Workers' Compensation Act for injuries sustained to his back is hereby denied for failure to timely file a claim.

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

By:

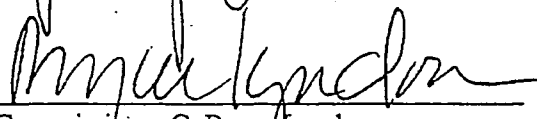


Commissioner T. Scott Beck

CONCURRING:



Commissioner Susan S. Barden



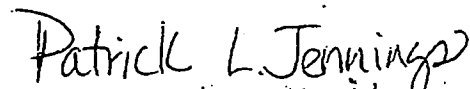
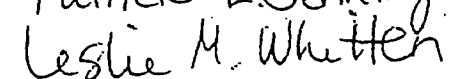
Commissioner G. Bryan Lyndon

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 6th day of August, 2010
By Valerie D. Doleen

Administrative Assistant to the Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Ricky Rhame v Charleston County School District

SCWCC: 0906212

Commissioner:

Commissioners:

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted. _____ Denied. _____ Set for Hearing.

BEFORE THE;

_____ Hearing Comm. _____ Jurisdictional Comm. _____ X Full Commission.

_____ Interlocutory. _____ X Dismissed.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.

_____ Barden

_____ Lyndon

_____ Williams

_____ Beck

_____ Roche

_____ Wilkerson

_____ Huffstetler

_____ Remand for Order consistent with the Order of the Court.

_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

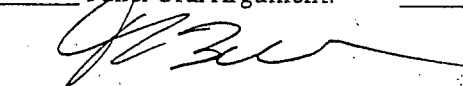
_____ Other: _____

_____ Remand:

_____ Panel Oral Argument.

_____ En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

9/22 2010

CONCURRING:

Commissioner David Huffstetler

Commissioner Susan S. Barden

Commissioner G. Bryan Lyndon

Commissioner Derrick Williams

Commissioner Avery Wilkerson

Commissioner Andrea C. Roche

NOT PARTICIPATING:

_____ X _____

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 21 day of September, 2010.

By: Vaquer D Deller
SCWCC Judicial Department

John S. Nichols
Patrick L. Jennings
Blake A. Hewitt
Leslie M. Whitten

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675
www.wcc.sc.gov



WC File #: 0906212
Claimer File #: 0709000298
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Ricky Rhame SSN: _____ Employer's Name: Charleston County School District
Address: _____ Address: 75 Calhoun Street
City: North Charleston State: SC Zip: 29420 City: Charleston State: SC Zip: 29401
Home Phone: (843) Work Phone: _____ Insurance Carrier: Charleston County Schools
Preparer's Name: Patrick L. Jennings Law Firm: Joye Law Firm, L.L.P. Preparer's Phone #: (843) 554-3100

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

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

Date of Injury or Illness: 05/04/2009

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to Back and neck (Part(s) of Body Injured) on 05/04/2009 (Month/Day/Year) in Charleston county, state of South Carolina.
- 1b. Body part(s) affected are: back, neck, right hip, right lower extremity
Briefly describe how the accident occurred. Claimant sustained a back injury from repetitively picking up heavy AC units.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 05/04/2009 (Month/Day/Year) in the following manner:
- ☒ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: back, neck, right hip, right lower extremity
☐ (b) additional medical examination and treatment for:
- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: TBD
- ☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☒ (2) Specific Disability: ☒ Total
☒ (3) Wage Loss ☒ Partial ☒ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ Form 20 requested, 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: Employer herein
- 11a. Further grounds or unusual aspects of claim: Lump sum award and Utica-Mohawk structuring of disability award sought; and to provide all applicable benefits under the Act.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Southeastern Spine Institute, 1106 Chuck Dawley Blvd. Ste. 200, Mt. Pleasant, SC 29464 / Jeffrey W. Buncher, MD, Charleston Pain & Rehab Center 1124 Sam Rittenberg Blvd., Ste. 1, Charleston, SC 29407 / Theodore M. Pappas, M.D., 1435 Stuart Engals Blvd., Mount Pleasant, SC 29464 / John Goeldi, M.D., 8988 University Blvd., N. Charleston, SC 29406 / Doctor's Care-West Ashley, 1851 Sam Rittenberg Blvd, Charleston, SC 29407 / Trident Medical Center, 9330 Medical Plaza Drive, Charleston, SC 29406
- 11c. To the best of your knowledge, did you have any prior permanent disability? Yes
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 30 minutes

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

Preparer's Signature
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

Attorney
Title

piennings@joyelawfirm.com
Email

September 29, 2009
Date

South Carolina Workers' Compensation Commis
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov

W/ File # 0906212
C. File # 07-09000298
Carrier Code # 1656
Employer FEIN 57-6000322

Ricky Rhame				Charleston County School District			
SSN				Employer's Name			
75 Calhoun Street, Charleston, SC 29401							
Address	City	State	Zip	Address	City	State	Zip
Home Phone: ()	Work Phone: ()			Charleston County School District			
Date of Injury:	5/4/2009			Insurance Carrier			
Leslie M. Whitten				Young Clement Rivers, LLP			
Preparer's Name:				Law Firm:			
				(843) 724-6642			
				Phone #			

Date of Injury or Illness: 5/4/2009

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

- It is ~~ADMITTED~~/DENIED the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
The investigation of the employer/carrier does not reveal an injury by accident arising out of and in the course and scope of employment; employer/carrier asserts the notice defense and statute of limitations.
- It is ~~ADMITTED~~/DENIED both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See number 1.
- It is ~~ADMITTED~~/DENIED the relationship of employer and employee existed at the time in question. The reasons for denial are:
See number 1.
- It is ~~ADMITTED~~/DENIED at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See number 1.
- It is ~~ADMITTED~~/DENIED notice of injury was given the employer. The reasons for denial are:
See number 1.
- It is ~~ADMITTED~~/DENIED the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
No medical evidence.
- It is ~~ADMITTED~~/DENIED the employee is entitled to temporary total disability for the period(s) of :
No medical evidence.
- It is ~~ADMITTED~~/DENIED the employee is permanently disabled. The reasons for denial are:
No medical evidence.
- It is ~~ADMITTED~~/DENIED the employee has serious disfigurement.
- It is contended that an average weekly wage of \$ 899.63, applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are:
Employer/Carrier denies notice of injury pursuant to §42-15-20.
- Estimated time needed for hearing: 30-45 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Patrick L. Jennings, Esquire
Address: P. O. Box 62888, North Charleston, SC 29419-2888

on October 7, 2009 by ☒ first class mail ☐ personal service ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Attorney for Employer/Carrier	lwhitten@vcrlaw.com	October 7, 2009
	Title	Email	Date

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

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File #

Carrier File # 07-09-000298

Carrier Code # 1656

Employer FEIN 57-600322

Ricky Rhame

Claimant's Name

SSN

N. Charleston SC 29420

Address City State Zip

(843)

Home Phone

Work Phone

Charleston County School District

Employer's Name

75 Calhoun Street Charleston SC 29401

Address City State Zip

Self-Insured c/o CorVel

Insurance Carrier

Francie Fisk

Preparer's Name

(843)

Phone #

A. Total Wages Paid

Date of injury: 05-04-2009

month day year

1. Check Applicable Method:

- ☒ Report of earnings of injured employee based on four completed quarters.
- ☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
- ☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: 7-1-87
- ☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid		
1st	06-30-2008	11,063.50		
2nd	09-30-2008	11,761.71		
3rd	12-31-2008	13,606.94		
4th	03-31-2009	10,348.75	Total Paid	2. 46,780.90

3. List total value of other allowances of any character made in lieu of wages during four quarters above. 3. 0

4. Add lines 2 and 3 TOTAL WAGES PAID: 4. 46,780.90

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred. 5. 52

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE: 6. 899.63

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate. 7. 599.78

8. The compensation rate is as follows (choose one):

- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
- ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
- ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line-8.
- ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8:
- ☒ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. 599.78

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803) 737-5723.

South Carolina Workers' Compensation Commission
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0906212
Carrier File # 0709000298
Carrier Code #
Employer FEIN

Ricky Rhame

Charleston County School District

Claimant's Name

SSN

Employer

North Charleston SC 29420 75 Calhoun Street Charleston SC 29401

Address City State Zip Address City State Zip

(843) Charleston County School District

Home Phone #

Work Phone #

Insurance Company

Patrick L. Jennings, Esquire, Jove Law Firm, LLP, 5861 Rivers Avenue, N. Charleston, SC 29406 (843) 554-3100

Preparer's Name

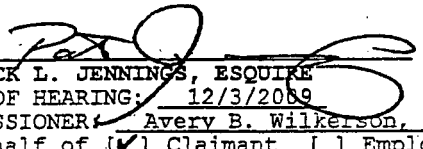
Phone #

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

[] Injury [] Illness [☒] Repetitive Trauma

1. Compensation Rate: \$ 599.78 2. AWW: \$ 899.63 Date of Injury: 5/4/2009
3. Type of injury and body part(s): Claimant sustained a back injury from picking up heavy AC units. / back, right hip, right leg
4. Facts in controversy: Whether the Claimant sustained a compensable injury to the body parts listed above through repetitive motion trauma; Claimant seeks additional medical treatment for the body parts listed above; payment for causally related medicals and temporary, total disability benefits from May 5, 2009 to the present and continuing; Claimant contends that it is premature to address permanency at this time.
5. Legal issues involved: See No. 4 Above.
6. Unusual aspects: Claimant reserves the right to submit additional evidence upon receipt.
7. Witnesses (designate if expert)*: Claimant - Ricky Rhame
8. Exhibits: See Attached Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of Claimant.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): See Attached Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of Claimant.
10. Name, address, and specialty, if any, of the treating physician: Southeastern Spine Institute 1106 Chuck Dawley Blvd. Ste. 200 Mt. Pleasant, SC 29464
11. Impairment rating(s); body part(s); physician and date of opinion: None assigned to date.
12. I am amending my Form 50/51 in the following manner: To reflect repetitive trauma for the nature of the injury.

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


PATRICK L. JENNINGS, ESQUIRE
DATE OF HEARING: 12/3/2009
COMMISSIONER: Avery B. Wilkerson, Jr.
On behalf of ☒ Claimant [] Employer

Dated: November 18, 2009
E-Mail: pjennings@jovelawfirm.com
TIME NEEDED FOR HEARING: 30 minutes
TYPE OF HEARING: 50/51

File this form and proof of service on the opposing party according to R.67-611 and R.67-212.

Do not send medical reports.

*Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58. Rev. Date 9/07

PRE-HEARING BRIEF

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0906212

Ricky Rhame,)
)
 Claimant,)
)
 vs.)
)
 Charleston County School District,)
 Employer/Self-insured,)
)
)
)
 Defendant.)

MEMORANDUM OF LAW ON
COMPENSABILITY AND
THE STATUTE OF LIMITATIONS
IN A POST-7/1/07 REPETITIVE
TRAUMA CLAIM

STATEMENT OF THE CASE

This matter comes before the South Carolina Workers' Compensation Commission to determine compensability as set forth on the Forms 50 and 51. The claimant alleges a repetitive trauma injury to his back culminating in disability on May 4, 2009. The employer/carrier denies this claim based on the fact that no accident occurred as well as the statute of limitations defense because the claimant failed to bring a claim within two years of when he knew or should have known he had a compensable claim.

ARGUMENT

The claimant alleges a repetitive trauma injury to his back arising out of and in the course and scope of his employment. However, since the claimant admits that he knew this injury was related to his job beginning in 1994, since he continued to do that job until May of 2009, and since he did not file a claim until September 19, 2009, his claim is barred as not being an accident and also by the statute of limitations.

No Injury By Accident

In any Workers' Compensation claim, a compensable claim must involve an injury by accident. S.C. Code Ann. § 42-1-160. In the case of *Capers v. Flautt*, the South Carolina Court of Appeals found that the claimant's contact dermatitis was not a compensable injury under the Act because the outbreak of his condition was not an unlooked for and untoward event that was unexpected. *Capers v. Flautt*, 407 S.E.2d 660, 660-61 (S.C. Ct. App. 1991). In other words, the injury was not an "accident." According to the court, substantial evidence existed in the record to support the conclusion that the contact dermatitis experienced by Capers was not accidental. Specifically, the claimant *had been aware of the situation for several years* and had previously left a job due to the same problem caused by exposure to detergents and water. Therefore, the outbreak of dermatitis was not an "unlooked for" event that Capers did not expect. It was, in fact, an event that Capers could anticipate would occur given his past experience.

Likewise, in *Havird v. Columbia YMCA*, the court stated that the "aggravation of [the claimant's varicose veins] was the natural and expected result" of working on the job while standing, rather than accidental. *Havird v. Columbia YMCA*, 418 S.E.2d 329, 331 (S.C. Ct. App. 1992). As the court acknowledged, "Havird himself knew standing would worsen his condition over time and did his best to reduce further injury to his legs by elevating them when he could. The injury to his legs was real, but it was not injury by accident." *Id.*

The same rule of law applies in the present claim, where the claimant was aware that his lower back was being repetitively injured as a result of his work environment. The claimant admits that he knew that his work environment caused his low back injury, yet he continued to work at the same job, and any increase in his back pain after he realized this in 1994 is not an unlooked for and untoward event that the claimant did not expect. (Transcript of the claimant's

deposition p. 13, 17-, p.14, 2 & p. 20, 3-12). There is no dispute that the claimant knew his work environment was causing lower back pain. The claimant openly admits as much. (Transcript of the claimant's deposition p. 13, 17-, p.14, 2 & p. 20, 3-12).

In *Capers*, the claimant's injury was not compensable because it was not an accident. It was not an accident because the claimant had been aware for several years that exposure to detergent would cause contact dermatitis, yet he willingly exposed himself to the detergent. Likewise, in *Havird*, the claimant's injury was not compensable because it was not an accident. It was not an accident because the claimant had been aware that standing for long periods of time would worsen his varicose veins, yet he continued in the job that required lengthy periods of standing. In the present claimant, the claimant's injury is not compensable because it was not an accident. It was not an accident because the claimant had been aware beginning in 1994 that his heavy job in heating and air conditioning was causing and worsening his lower back pain, yet he continued to do the exact same job until May of 2009.

Statute of Limitations

The South Carolina Legislature revised many provisions of the Workers' Compensation statute on July 1, 2007. The revisions included an entire section addressing repetitive trauma claims and making such claims a separate category of injury with its own standards for notice and the statute of limitations. See S.C. CODE ANN. § 42-1-172. A repetitive trauma injury is now defined as "an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events." S.C. CODE ANN. §42-1-172 (A). The section of the statute, § 42-1-172 is the section of the law that determines the compensability of a repetitive trauma injury.

The statute indicates that a repetitive trauma injury occurs when "the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is

compensable.” S.C. CODE ANN. §42-1-172(E). A claimant must now prove that his repetitive trauma injury is compensable by a “preponderance of the evidence,” and this must be “established by medical evidence” of a causal connection between the injury and the “regular duties” of the claimant’s employment. S.C. CODE ANN. §42-1-172(B). Specifically regarding the statute of limitations defense, the amended law requires that the claim be filed within two years after the employee knew or should have known that his injury is compensable. S.C. CODE ANN. §42-1-172(E). In the present claim, there is no question that the claimant knew for 15 years prior to filing his claim that he had a compensable injury to his lower back and simply chose not to file a Worker’s Compensation claim.

The claimant began working in heating and air conditioning with the employer since 1987, and his job never changed at all since that time. (Transcript of the claimant’s deposition p.11, 3-6 & 14-16). From the beginning, the claimant’s job required that he lift fifty to sixty pounds on a daily basis and ninety to one hundred pounds three to four times a month (Transcript of the claimant’s deposition p.11, 17 - p.12, 20). Beginning around 1994, the claimant started experiencing pain in his lower back (Transcript of the claimant’s deposition p. 18, 13-p.19, 13). His unwavering testimony is that he knew from the beginning that his job was the cause of his low back pain. (Transcript of the claimant’s deposition p. 13, 17-, p.14, 2 & p. 20, 3-12). He further testified that no one with the employer ever told him that his injury would be covered as a workers’ compensation claim. (Transcript of the claimant’s deposition p.28, 18-22).

The Workers’ Compensation Act is quite clear that a claimant must file claim with the Worker’s Compensation Commission within two years after the employee knew or should have known that his injury is compensable. S.C. CODE ANN. §42-1-172(E). The claimant’s unwavering testimony is that he knew that his low back problems were related to his job since

1994, about fifteen years before he filed a Form 50 hearing request on this issue. Since the claimant knew he had a compensable injury in 1994, and since he did not file a claim until well over two years after he had this knowledge, his claim is barred based on the statute of limitations.

Respectfully submitted,

YOUNG CLEMENT RIVERS LLP

By: Leslie M. Whitten

Leslie M. Whitten

P. O. Box 993

Charleston, SC 29402-0993

Attorney for the Employer/Self-Insured

Charleston, South Carolina

Dated: December 2, 2009

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

File # 0906212
Carrier File # 07-09000298
Carrier Code #
Employer FEIN

Ricky Rhame
City Charleston, SC 29420
Address City State Zip
0 0
Home Phone Work Phone

Charleston County School District

Employer's Name

75 Calhoun Street, Charleston, SC 29401

Address City State Zip

Charleston County School District

Insurance Carrier

Leslie M. Whitten

P.O. Box 993, Charleston, SC 29402

(843) 724-6642

Preparer's Name

Address

Phone #

Request for Commission Review by [] claimant [X] employer (check one)

Date of injury: 5/4/2009

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 GROUNDS FOR APPEAL

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

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

Patrick L. Jennings, Esquire

P. O. Box 62888, North Charleston, SC 29419-2888

Name, Address

ON 3/1/2010 BY [] FIRST CLASS MAIL [X] CERTIFIED MAIL [] PERSONAL SERVICE

Preparer's Signature

Attorney for Employer/Carrier
Title

3/1/2010
Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC FORM # 30 REV. DATE 3/97

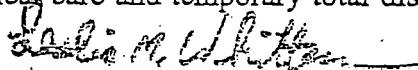
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REQUEST FOR COMMISSION REVIEW

ATTACHMENT TO FORM 30
WCC FILE 0906212

GROUND FOR APPEAL:

1. Whether the Commissioner erred in finding that the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009 arising out of and in the course and scope of his employment?
2. Whether the Commissioner erred in finding a direct causal connection in the medical evidence between repetitive activities and the Claimant's regular duties of employment?
3. Whether the Commissioner erred in finding that the Claimant was not at Maximum Medical Improvement or in need of additional medical treatment to be provided by Dr. John Johnson?
4. Whether the Commissioner erred in awarding the Claimant temporary total disability benefits from May 5, 2009 to the present and continuing?
5. Whether the Commissioner erred in finding that the Claimant provided timely notice to the Employer of repetitive trauma work injuries?
6. Whether the Commissioner erred in finding that the Defendants are to pay for all causally-related medical treatment regarding these repetitive trauma injuries?
7. Whether the Commissioner erred in finding that the Claimant has filed his workers' compensation claim within the appropriate statute of limitations?
8. Whether the Commissioner erred in Conclusions of Law #4, #5, #6, and #7?
9. Whether the Commissioner erred in ordering future medical care and temporary total disability benefits to the Claimant?



Leslie M. Whitten
Attorney for the Employer/Carrier

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0906212

Ricky Rhame,)
)
 Claimant,)
)
 vs.)
)
 Charleston County School District,)
 Employer/Self Insured,)
)
)
 Defendant.)

APPELLANT'S BRIEF

This matter was heard before the Single Commissioner on December 3, 2009 in North Charleston, South Carolina. This was a denied case in which the claimant allegedly sustained an injury to his back on May 4, 2009. Charleston County School District took the position that the claimant's claim should be denied on the basis that the claimant failed to file his Form 50 within the two-year period of the statute of limitations, pursuant to Section 42-1-172 of the South Carolina Workers' Compensation Act because the claimant alleged a repetitive trauma claim beginning in 1995.

In an Order dated February 26, 2010, the Single Commissioner determined that the claimant sustained a compensable injury to his back, right hip, and right lower extremity, which arose out of and occurred within the course and scope of his employment, from a repetitive trauma on or about May 4, 2009. Furthermore, the Single Commissioner determined that the claim was not barred by the statute of limitations. The Single Commissioner held that the defendant was to provide medical treatment and temporary total disability benefits beginning May 5, 2009.

On March 1, 2010, Charleston County School District filed an Application for Commission Review (Form 30) of the Single Commissioner's order. Charleston County School District submits this brief in support of its position.

STATEMENT OF THE FACTS

The claimant was the only witness to testify on his behalf. The Claimant testified that he is 53 years old and has had lower back issues for a long time. (Transcript of hearing, p. 9-10). He admitted that his work injury started in 1994 or 1995 when his supervisor was Buddy Parsons. He indicated that he had told Buddy that he was having back pain related to work and that he went to the doctor at that time for his low back, and he has had physical therapy and pain medications for his low back in the past. Id.

At first, the Claimant indicated that he did not report his injury right away because his wife was fighting cancer and he was afraid he would get laid off. (Transcript of hearing, p. 14). He admitted that he did not bring a claim later, again because he thought he would get laid off and wanted to stay under the radar. (Transcript of hearing, p. 36). However, he also testified that he did not know what a workers' compensation claim was and did not know what repetitive trauma meant. (Transcript of hearing, p. 27). He denied that he had any idea that he could do anything other than get medical benefits under his health insurance, even though he has able to articulate that he made no attempt to get any money or get benefits because he was concerned with getting laid off. (Transcript of hearing, p. 36).

The Claimant testified that he stopped working completely on May 4, 2009 because he was simply worn out and did not feel like he could continue with his back hurting the way that it was. (Transcript of hearing, p. 19-20). The Claimant admitted that, up until that point, he had been doing the exact same job since 1987 and that he never had any specific injury that caused

his back pain. He just started having back pain since 1994 and was aware from the beginning that his problems were related to his job. (Transcript of claimant's deposition, p. 10-11). He also admitted that he had gone to Dr. Pappas over the years for problems with his back and that at times he would take a few days off of work to recover and would get better until he returned to work. (Transcript of hearing, p. 34-35). He admitted that he waited to file a claim because he did not want to get laid off and wanted to keep a low profile. He would not admit specifically that he knew the workers' compensation system existed, but he admitted that in 2006 that he tried to file a claim relating to his neck. (Transcript of hearing, p. 36).

QUESTION PRESENTED

Charleston County School District raised nine (9) grounds on appeal in its Request for Commission Review (Form 30). Without waiving any of those specific issues, the defendant has consolidated the issues into the following question:

DID THE SINGLE COMMISSIONER ERR IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW THAT THE CLAIMANT FILED HIS CLAIM WITHIN THE STATUTE OF LIMITATIONS?

LEGAL ARGUMENT

THE SINGLE COMMISSIONER ERRED IN FINDING AS A MATTER OF FACT AND CONCLUDING AS A MATTER OF LAW THAT THE CLAIMANT FILED HIS CLAIM WITHIN THE STATUTE OF LIMITATIONS.

The Single Commissioner erred in finding as a matter of fact and concluding as a matter of law that the claimant filed his claim within the statute of limitations. The Full Commission is the ultimate fact finder in Workers' Compensation cases, and is not bound by the Single Commissioner's findings of fact. See Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728

(1989); see also Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) (Full Commission is fact finder and it is not within the appellate court's province to reverse Commission's findings if they are supported by substantial evidence). Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992); see also Brayboy v. Clark Heating Co., 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review award of Single Commissioner and make its own findings of fact and conclusions of law). A court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law. Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp. 2001). The defendant asserts that the Single Commissioner erred in finding as a matter of fact and concluding as a matter of law that the claimant filed his claim within the statute of limitations. The Single Commissioner's decision in this case is not supported by the evidence in the record, and is affected by an error of law; thus, it must be overturned.

Section 42-15-40 of the South Carolina Workers' Compensation Act governs the time for filing claims, including repetitive trauma claims. More specifically, Section 42-15-40 states that "[f]or a 'repetitive trauma injury' as defined in § 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee *knew or should have known* that his injury is compensable but no more than seven years after the last date of injurious exposure. *This section applies regardless of whether the employee was aware that his*

repetitive trauma injury was the result of his employment.” S.C. Code Ann. § 42-15-40 (emphasis added).

The South Carolina Legislature revised many provisions of the Workers’ Compensation statute on July 1, 2007. The revisions included an entire section addressing repetitive trauma claims and making such claims a separate category of injury with its own standards for notice and the statute of limitations. See S.C. CODE ANN. § 42-1-172. A repetitive trauma injury is now defined as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.” S.C. CODE ANN. §42-1-172 (A). The section of the statute, § 42-1-172 is the section of the law that determines the compensability of a repetitive trauma injury.

The statute indicates that a repetitive trauma injury occurs when “the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable.” S.C. CODE ANN. §42-1-172(E). A claimant must now prove that his repetitive trauma injury is compensable by a “preponderance of the evidence,” and this must be “established by medical evidence” of a causal connection between the injury and the “regular duties” of the claimant’s employment. S.C. CODE ANN. §42-1-172(B). Specifically regarding the statute of limitations defense, the amended law requires that the claim be filed within two years after the employee knew or should have known that his injury is compensable. S.C. CODE ANN. §42-1-172(E). In the present claim, there is no question that the claimant knew for 15 years prior to filing his claim that he had a compensable injury to his lower back and simply chose not to file a Worker’s Compensation claim.

The claimant began working in heating and air conditioning with the employer since 1987, and his job never changed at all since that time. (Transcript of the claimant’s deposition p.11, 3-6 & 14-16). From the beginning, the claimant’s job required that he lift fifty to sixty

pounds on a daily basis and ninety to one hundred pounds three to four times a month. (Transcript of the claimant's deposition p.11, 17 - p.12, 20). Beginning around 1994, the claimant started experiencing pain in his lower back. (Transcript of the claimant's deposition p. 18, 13-p.19, 13). His unwavering testimony is that he knew from the beginning that his job was the cause of his low back pain. (Transcript of the claimant's deposition p. 13, 17-, p.14, 2 & p. 20, 3-12). He further testified that no one with the employer ever told him that his injury would not be covered as a workers' compensation claim. (Transcript of the claimant's deposition p.28, 18-22).

The Workers' Compensation Act is quite clear that a claimant must file a claim with the Worker's Compensation Commission within two years after the employee knew or should have known that his injury is compensable. S.C. CODE ANN. §42-1-172(E). The claimant's unwavering testimony is that he knew that his low back problems were related to his job since 1994, about fifteen years before he filed a Form 50 hearing request on this issue. Since the claimant knew he had a compensable injury in 1994, and since he did not file a claim until well over two years after he had this knowledge, his claim is barred based on the statute of limitations.

Our courts have held that the purpose of the statute of limitations in workers' compensation claims is to protect employers and their insurance carriers against long delayed demands. Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (1967); Young v. Sonoco Products Co., 210 S.C. 146, 41 S.E.2d 860 (1947). The Single Commissioner found that the claimant suffered an injury on May 5, 2009. However, the claimant readily admitted that he had known that he had a back injury arising from his work since 1995. (Transcript of hearing p. 34-35) Clearly, the Single Commissioner erred in finding as a matter of fact and concluding as a

matter of law that the claim was not barred by the statute of limitations, and, in doing so, undermined the Supreme Court decisions as articulated in cases like Young v. Sonoco Products Co., 210 S.C. 146, 156, 41 S.E.2d 860 (1947) and Samuel v. Appleton Co., 214 S.C. 157, 161, 51 S.E.2d 508 (1949).

The Decision and Order does not specify the exact reasoning for the finding that the claimant's claim was not barred by the statute to limitations. However, the order details the claimant's testimony that the claimant did not understand the workers' compensation process (Order p. 6-7), and the claimant's attorney argued at the hearing that the law requiring the claimant to bring a claim with two years of the date he knew or should have known that his injury is compensable means not that the claimant had to know his injury was work related, but rather that the claimant had to understand what the word "compensable" means along with some knowledge of the workers' compensation system. (Transcript of the hearing, p. 7). This is unabashedly and utterly wrong.

The commissioner's decision that the statute of limitations is not a bar to this claim seems to be based on the presupposition that a claimant must understand the term "compensable" and that this claimant did not understand that term. This is erroneous both under the facts of this case as well as the law. It is incorrect under the facts because the claimant had a workers' compensation claim in 2006 regarding his neck. (Transcript of hearing, p. 36). He admitted that he spoke with "Workman's Comp just briefly on the phone" concerning his neck at that time. Id.

The Commissioner's decision is also erroneous under the law. The case law on this issue could not be more clear. In Young v. Sonoco Products Co., 210 S.C. 146, 156, 41 S.E.2d 860 (1947), the Supreme Court held that the "fact that claimant may have been unaware of the requirement as to filing a claim within one year furnishes no legal excuse for not filing her

claim. She is constructively charged with such knowledge." The Commissioner's order in this matter seems to be based solely on his belief that the claimant was ignorant of the law, but Young makes it clear that this is no excuse whatsoever. In Samuel v. Appleton Co., 214 S.C. 157, 161, 51 S.E.2d 508 (1949), the Supreme Court quoted Young and added "no exceptions 'to the requirement of the act in respect of a timely filing of a claim or excuses for non-compliance therewith may be invoked other than those provided for in the act." The language used in the one year limitation under consideration is plain and unambiguous. We are not at liberty by judicial construction to add to or amend this section so as to excuse an employee from complying with this mandatory requirement if his employer neglects to post the notice required by Rule 7. The judgment below must be upheld." The Order in the present case contains no findings whatsoever as to any exception "provided for in the act" that would excuse the claimant's failure to bring a workers' compensation claim within two years of when he knew he had a work related injury. The reason for this is simple - there is no exception for waiting 14 years to bring a claim based on an alleged ignorance of the law.

While it is true that the provision providing for the statute of limitations should be given a liberal construction, our courts are not justified in so construing this provision as to do violence to a specific requirement of the Workers' Compensation Act. See Ashe v. Rock Hill Hardware Co., 219 S.C. 159, 64 S.E.2d 396 (1951) (claim barred by statute of limitations where evidence did not establish waiver or estoppel by the employer). More importantly, however, our Supreme Court in Ashe unequivocally held that the statute of limitations provisions "apply with full force to the most meritorious claims." Ashe, 64 S.E.2d at 400 (quoting Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 311).

The claimant alleges that we waited 14 years to bring a workers' compensation claim because he was ignorant of workers' compensation law. Under Young and Samuel, this is irrelevant. The claimant has provided no excuse whatsoever that is provided for in the Act. As a result, the Full Commission must reverse the Single Commissioner's Order.

CONCLUSION

The Single Commissioner erred in finding as a matter of fact and concluding as a matter of law that the claimant's claim was not barred under the statute of limitations. Section 42-15-40 of the South Carolina Workers' Compensation Act states that the right to compensation in a repetitive trauma injury under this title is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury was compensable.

In the present case, absent from the Order of the Single Commissioner was any finding that the employer induced or misled the claimant to believe that his claim was compensable, and would have been taken care of without its being filed with the Commission within the requisite period. The claimant, at no point, testified that he was induced, or misled, to believe that his claim is compensable, and would have been taken care of without its being filed with the Commission. For the foregoing reasons, the defendants implore the Full Commission to reverse the decision of the Single Commissioner.

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Dated: April 19, 2010

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

RICKY RHAME,

Employee,

Claimant/Respondent,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT,

Employer/Carrier,

Defendants/Appellants.

WCC FILE NO. 0906212

CLAIMANT/RESPONDENT'S
APPELLATE BRIEF

TO THE FULL COMMISSION

STATEMENT OF THE CASE

The Claimant sustained compensable repetitive trauma injuries to his back, right hip, and right lower extremity, arising out of and in the course and scope of his employment while working as a heating and air conditioning technician with for the Defendant Employer on or about May 5, 2009. The Claimant reported his work injury on May 5, 2009. At this time, he additionally informed his employer that he believed that the low back pain was a result of years of heavy lifting on the job. The Claimant testified at the single Commission hearing that he has had back pain since 1994 or 1995 stemming from the job. However, at no time did this pain hold him out of work for a considerable amount of time, nor did he file a workers' compensation claim for these injuries until 2009. After the Claimant was sent to Doctor's Care by his employer on May 5, 2009, he was

referred to the Southeastern Spine Institute where he saw Dr. John Johnson. Dr. Johnson performed lumbar epidural steroid injections. The Claimant had very little improvement following these injections. Dr. Johnson repeatedly notes his belief that Mr. Rhame's injuries were a result of his repetitive work with the Charleston County School System and clearly states this with a reasonable degree of medical certainty in a questionnaire completed on September 10, 2009. In a questionnaire, Dr. Johnson links Mr. Rhame's repetitive work activities and the current back injuries. Dr. Johnson additionally states that if the Claimant were to have any preexisting injuries to either his cervical or lumbar spine, these would have been aggravated by the repetitive duties of Mr. Rhame's job. Dr. Johnson also recommended medication, physical therapy, injections, and surgery, to which the Claimant sought at the single Commission level hearing. Dr. Johnson, in his professional opinion, to a reasonable degree of medical certainty, feels that the Claimant is unable to perform his work as an air conditioning technician with the Charleston County School System and recommends no lifting over five pounds, no repetitive bending, twisting, pushing, pulling, no prolonged sitting or standing positions either sitting or standing, and the need to alternate between these two positions.

On December 3, 2009, an evidentiary hearing was held before Avery B. Wilkerson, pursuant to the Claimant's Form 50 hearing request to address the issues of compensability, the Claimant's entitlement to additional medical treatment, temporary, total disability benefits, and the payment of causally-related medical treatment. Following this evidentiary hearing, Commissioner Wilkerson issued a Decision and Order on February 26, 2010, ruling that the Claimant had sustained compensable repetitive trauma injuries to his back, right hip, and right lower extremity, arising out of and in the course and scope of his employment with the Charleston County School System. He found that the Claimant was entitled to additional medical treatment, temporary, total disability benefits from May 5, 2009 to the present and continuing, as well as the payment of causally-related medicals, and that it was premature to address permanency at the current time. On March 1,

2010, the Defendant/Employer filed a Form 30 Request for Commission Review. While the Defendants cite numerous issues on their Form 30, their Appellate Memorandum focuses on just one. The issue is whether the Claimant had filed his claim within the proper statute of limitations under the South Carolina Workers' Compensation Act.

ISSUE PRESENTED

1. Whether the Hearing Commissioner erred in finding that the Claimant filed his claim within the statute of limitations?

ARGUMENT

1. The Hearing Commissioner did not err in ruling that the Claimant had filed his claim within the appropriate statute of limitations.

The evidence in this case over-whelmingly supports a finding that the Hearing Commissioner' correctly ruled that the Claimant had properly filed a repetitive motion workers' compensation claim within the appropriate statute of limitations. Mr. Rhame began working for the Charleston County School System in 1987. (Hearing Tran., p. 16, lines 7-8). He has worked as an air conditioning technician since this time. The Claimant's duties include traveling from school to school repairing air conditioning units on top of the schools' roofs and assisting in the repair of refrigeration. He frequently climbs ladders, installs and uninstalls compressors and air conditioning units, fan motors, condenser motors, and coils. These typically weigh up to 100 pounds. (Hearing Tran., p. 17, line 2, p. 18, line 13). His job as an air conditioning technician involves repetitive trauma to the low back. On May 4, 2009, while working at St. John's High School on a blower, the Claimant began to feel pain in his low back, to the point in which he could not stand. While the Claimant testified that he has had pain prior to this point, this is when he knew that he would not be able to perform his normal job duties. The Claimant testified that this is not a single incident. He had been injured working on units over the course of his tenure with Charleston County. The factual scenario presented in this claim was governed

by the Court of Appeal Decision in White v. Medical University of S.C. and 355 S.C. 560, 586 S.E.2d. 157 (Ct. App. 2003).

In White, the employee, White, complained of work-related low back pain in 1997 and 1999. On April 12, 2000, White presented to a physician with low back pain radiating into his legs. On December 26, 2000, White filed a Form 50 requesting workers' compensation benefits for a repetitive trauma injury. His employer denied the claim, alleging a date of injury in 1997, which would be barred by the statute of limitations. The Court noted:

... although White complained of back pain in 1997, his injuries were not severe enough at that time to warrant any changes to his duties at work. As White conditioned to lift heavy equipment and patients at work, his back pain worsened, and eventually, he was diagnosed with a disc herniation and ordered not to lift heavy objects.

Based on these facts, the court held "substantial evidence supports [Commission's] finding that White's injury was the result of repetitive trauma, which arose out of and in the course and scope of White's employment. (*Id.*). Because White's compensable injury was the result of repetitive trauma culminating in disability in 2000 - rather than the non-disabling back pain he complained of in 1997 - this court held the statute of limitation had not run.

The Charleston County School System devotes a tremendous amount of space in its Appellate Memorandum arguing that Rhame "clearly knew for 15 years prior to his claim, that he had a compensable injury to his lower back and simply chose not to file a workers' compensation claim". (Brief of the Appellants, p. 5). While the Claimant testified he had experienced back pain from his job duties during this time, at no point was he aware that he had compensable workers' compensation injuries. The mere fact that an employee may know his work activities are causing lower back pain, is not enough for that employee to have a compensable claim, let alone knowledge of a compensable claim. In fact, Charleston County has not accepted payment for the

medical bills related to this claim or admitted that Mr. Rhame has been hurt as a result of his employment. Mr. Rhame had no knowledge or grounds to file a claim based on what his employer had told him. Just two days after the Claimant reported his low back to pain to his employer, he received a letter from Glenn Martin denying his claim before it was even filed. (Claimant's APA, Exhibit A, p. 30) Mr. Martin states that because Mr. Rhame had low back pain since 1994 and 1995, Charleston County is unable to accept this claim under workers' compensation. (Id.). This is the same scenario White was faced with.

In our claim, Mr. Rhame felt back pain while pulling air conditioning units and cleaning them in 1994 or 1995. He reported this to his foreman, Buddy Parsons, but at that time he did not have any specific acute accidents. He felt this pain from normal activities on the job. Similarly to White, Mr. Rhame missed very little time at work due to his pain that originated in 1994 or 1995 until this present claim was filed. He continued to work in this repetitive and heavy manual labor role until May 4, 2009, at which time he "sustained a compensable repetitive trauma injury to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County Schools" (Single Commissioner Order, p. 8). The Single Commissioner found by specific Findings of Fact and Conclusions of Law, that Mr. Rhame suffered a compensable repetitive motion injuries. His Findings are supported by sufficient evidence, this is most clearly shown by the medical evidence of Dr. John Johnson, in which he finds a direct causal relation between Mr. Rhame's repetitive work activities as an air conditioning technician with the Charleston County School System and his job duties such as lifting, bending, pushing, pulling, and the injuries that he has sustained to his lumbar spine. (Claimant's APA 1, p. 12).

As in the analysis of White, the statute of limitations began to run on the date in which Mr. Rhame knew or should have known that his injury is compensable . . ." S.C. Code Ann. § 42-15-40 (2007). On January 1, 2009, the Claimant had an MRI test performed, which for the first time revealed the injuries he had

sustained to the back. Only at this point were they recognized and could they have been linked to the Claimant's employment. As his compensable claim did not arise January 29, 2009, at the earliest, the filing of the claim on September 29, 2009, was well within the two year statute of limitations.

In 2007, the legislature created a new category of "repetitive trauma injury". S.C. Code Ann. § 42-1-172 (2007). Along with this new category of injury, the legislature amended the statute of limitations to explicitly apply the discovery rule to repetitive trauma cases. This section states that the right to *compensation* is barred unless a claim is filed with the Commission within two years after the employee knew or should have known that his injury is *compensable* but no more than seven years after the last date of injurious exposure. The discovery rule in workers' compensation claims is based on the knowledge that a work related injury is compensable. The word compensable refers to the right of an employee to receive "compensation" - specifically, "the money allowance payable to an employee" for disability caused by a work related injury. See S.C. Code Ann. § 42-1-100 (1976). Compensation is payable only when an injury keeps an employee out of work for more than seven days or results in permanent disability. S.C. Code Ann. § 42-9-10; § 42-9-20; § 42-9-30; § 42-9-260. Mere awareness of a work place injury is not enough to trigger the statute of limitations. The employee must know or should have known that the nature, seriousness, and probable compensable character of the injury. Mauldin v. Dyna-Color/Jackrabbit, 308 S.C. 18, 416 S.E.2d. 639 (1992) (rejecting "mechanical" application of statute of limitations and favor of discovery rule when Claimant could not have known seriousness of injury until after expirational limitations).

In Mauldin, the Claimant injured her left knee on January 2, 1985, while she was at work, immediately reported it to her supervisor, and was treated and released by the emergency room. The emergency room doctor diagnosed her injury as a "medial collateral sprain", and advised her to use crutches for four days. She did not lose time from work due to her injury and it was processed as a medical only claim with minor injury. The claim

was then closed. (*Id.* at 20). Over the next two years, Mauldin experienced intermittent pain and swelling in her knee. She was eventually seen by an orthopaedic surgeon who diagnosed her with a "torn medial meniscus" which required surgery. Only after she received this diagnosis, nearly 3 years after her original injury, did Mauldin become aware that this injury would result in compensable disability.

Mauldin filed a claim on December 30, 1987. This claim was originally denied as the defendant maintained that she was barred by the two year statute of limitations. The Commission awarded compensation to Mauldin, specifically applying the discovery rule to the statute of limitations. The Supreme Court affirmed that the discovery rule was applicable. (*Id.*)

Mauldin recognized that discovery of a "compensable injury" is the triggering event for the statute of limitations. It recognizes the difference between a "medical only" claim and a compensable claim. Injuries involving lost time or permanency are *compensable* claims. The legislature made a distinction between these two types of claims because it intended only that serious injuries, which result in significant medical expenses, compensable time lost from work, or permanent disability, required a filing with the Commission. See 25a S.C. Code Ann. 67-411 through 67-414 (2007).

The Supreme Court held that Mauldin discovered a *compensable* claim only when she was diagnosed with a meniscal tear by an orthopaedic surgeon. Even though Mauldin knew that she had been injured on the job when she had the accident on January 2, 1985, she did not know that she had a compensable claim. Moreover, it is not merely that she did not know that she had a compensable claim; she did not have a compensable claim. Had she filed for compensation, her claim would have been denied, as is our fact pattern. Mauldin's claim for compensation only accrued upon the diagnosis and recommendation for surgery. As is admitted by the Defense, public policy of the Act certainly favors a liberal construction of the workers' compensation statute of limitations.

While it was unquestionably the purpose of the limitations written in the Act to protect employers and insurance carriers against "long delayed demands . . ." it is also evident that this section should be given a liberal construction, especially in view of the fact all bonafide cases (except death cases) the Claimant is an injured person, and frequently must be confined in a hospital, as was the Claimant in this case. Moreover, many of the Claimants are without counsel as was the Claimant in this case until after the expiration of the one year period. *Furthermore, the extent of the injury is not always immediately apparent; nor was it in this case.* Gold v. Moragne 202 S.C. 281, 288-89, 24 SE.2d. 491 493-94 (1943 emphasis added, internal citation omitted).

The mere fact of a work-related injury is not enough; the work-related injury must be severe enough to be considered compensable. Only then does the statute of limitations begin to run.

By definition, repetitive trauma claims have additional complications not found in single accident injuries. A repetitive trauma injury is defined as "an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events". S.C. Code § 42-1-172 (d) (2007). It is the cumulative effect of repeated and distinct events that ultimately produces liability. Pee v. AVM, Inc., 352 S.C. 167, 573 S.E.2d. 785 (2002). All repetitive claims by definition have a delayed onset.

If the limitations for a repetitive trauma injuries began to run on the first date that an injured worker experienced work-related trauma or pain, nearly every gradually occurring injury would be barred by the statute of limitations. This cannot have been the intention of the legislature as they continuously use the word *compensable* rather than *work-related*. Additionally, the fact that a claim remains viable up to seven years after the last date of injurious exposure, allows an employee an extended period of time to become disabled and have their claim compensable rather than just a medical only claim.

As the Court of Appeals found in Schurknight v. City of North Charleston, 345 S.C. 45 545 S.E.2d. 833 (Ct. App. 2001) that the time at which the Claimant learned of his injury by the doctor, was the time at which his case became compensable. This date was April 14, 1995. Schurknight filed his workers' compensation claim on March 6, 1998. Although Schurknight had been experiencing a repetitive trauma injury since 1976,

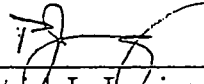
the court found that the statute of limitations began to run on April 14, 1995 - the time at which he was informed by his doctor of the repetitive traumatic injury. Schurlknight is consistent with Mauldin in showing that the fact of an accident or knowledge of work-related pain does not start the limitations for filing a claim. Requiring that this be the standard set by the Commission would overwhelm employers, insurance carriers, and the Commission.

It would be a travesty if the Claimant were denied workers' compensation benefits. He was a long time employee for Charleston County Schools, who knew about work-related pain, stemming back to 1994. Unfortunately, his employer refused to provide treatment for the same. They continued to employ him for an additional 16 years with the same repetitive job duties and at no time did they provide light duty positions or payment for the Claimant to be out of work. It would be inequitable for the employer to blame the Claimant's serious injuries on his pain stemming to 1994 now that they are significantly worse. This is exactly the type of situation which the Workers' Compensation Act is designed to avoid. As former Chief Justice, Howard wrote in Schurlknight, "The employee is punished for continuing to perform the job during the early stages of the injury by denial of the right to make a legitimate claim for benefits when the injury finally renders the Claimant unable to perform their job. Furthermore, it is likely to undermine the employee/employer relationship by requiring the employee to file an early claim even though he or she is able and ready to work" (Id.)

CONCLUSION

The Single Commissioner correctly found that the Claimant filed his claim properly within the statute of limitations and that he sustained compensable repetitive trauma injuries to his back, right hip, and right lower extremity. The Claimant respectfully requests that the Commission's Appellate Panel affirm the Decision and Order of the Single Commissioner in its entirety.

RESPECTFULLY SUBMITTED,



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Dated: May 10, 2010

RECEIVED

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No.: 0906212

SEP 08 2010

FRONT DESK
SC Workers' Comp Comm

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Ricky Rhame,)

Claimant,)

v.)

Charleston County School District)

Employer/Self-Insured.)

CLAIMANT'S
PETITION FOR REHEARING

TO: THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND LESLIE
M. WITTEN, ESQUIRE, ATTORNEY FOR THE DEFENDANT:

Ricky Rhame respectfully requests that the Commission rehear his workers' compensation case.

The authority for Mr. Rhame to file this petition for rehearing is found in S.C. Code Ann. § 1-23-380 (1) (Supp. 2009). This statute provides that a party may petition for judicial review of an administrative agency's final decision "within thirty days after the final decision of the agency or, *if rehearing is requested*, within thirty days after the decision is rendered." *Id.* (emphasis added). As for the timeliness of this petition, the Supreme Court of South Carolina's decision in *McCummings v. South Carolina Department of Corrections*, 319 S.C. 440, 443, 462 S.E.2d 271, 273 (1995) instructs that "in the absence of an agency rule specifying a time limit for petitions for rehearing, parties have thirty days to petition the agency or committee for rehearing [or to appeal]."¹

¹At the time of the Supreme Court's decision in *McCummings*, the provision of § 1-23-380 pertaining to rehearings, presently codified at 1-23-380 (1), was codified at § 1-23-380 (b). See S.C. Code Ann. § 1-23-380 (b) (1986).

The Commission denied Mr. Rhame's claim in an order which was dated and filed on August 6, 2010. Mr. Rhame received notice of the entry of the Commission's order on August 9, 2010.

Mr. Rhame brought this claim seeking compensation for an alleged repetitive trauma injury which arose out of his continually lifting air conditioning equipment over the course of his nearly twenty-year term of employment with the Charleston County School District. The Commission denied Mr. Rhame's claim, finding that Mr. Rhame first suffered this injury in 1994 or 1995. (Order of Aug. 6, 2010, p.13). The Commission then held that S.C. Code Ann. § 42-15-40 (Supp. 2009) barred Mr. Rhame's claim because that statute requires a repetitive trauma claim be filed within two years after an employee knew or should have known that his injury is compensable. (Order of Aug. 6, 2010, p.14).

In making this decision, the Commission may have overlooked the fact that this version of the statute of limitations does not apply to injuries that occurred before July 1, 2007. See Act. No. 111, Part IV, Section 2, 2007 S.C. Acts 599, 644 (providing that except as otherwise stated, Act 111 of 2007 applies to injuries that occur on or after July 1, 2007). A repetitive trauma injury is a somewhat unusual injury in that it does not result from a single accident or exposure to a single injurious event. Repetitive trauma is gradual in onset and is experienced repeatedly throughout someone's working life. A repetitive trauma injury is "caused by the cumulative effect of repetitive traumatic events or 'mini-accidents.'" *Schuriknight v. City of N. Charleston*, 352 S.C. 175, 178, 574 S.E.2d 194, 195 (2002)

If the Commission has determined that Mr. Rhame suffered a repetitive trauma injury which occurred prior to July 1, 2007, the Commission applied the wrong law to Mr. Rhame's claim. For a repetitive trauma injury occurring prior to July 1, 2007, the applicable statute of limitations

provides that a claim is barred unless it is filed "within two years after an accident." S.C. Code Ann. § 42-15-40 (Supp. 2001). This two-year limitations period begins to run on "the last day of exposure." *Schurlknight*, 352 S.C. at 178-79, 574 S.E.2d at 195-96.

The date of Mr. Rhame's injury is also critically important because it dictates where he must file an appeal of the Commission's decision. Among other changes, Act 111 of 2007 amended the statute governing which court – the circuit court or the court of appeals – hears an appeal in a workers' compensation case. Specifically, Act 111 amended S.C. Code Ann. § 42-17-60 to provide that workers' compensation cases are appealed to the South Carolina Court of Appeals. Like many of the other provisions of Act 111; however, this statute applies only to injuries that occur on or after July 1, 2007. See 2007 S.C. Acts at 644; see also *Pee Dee Reg'l Transp. v. S.C. Second Injury Fund*, S.C. Sup. Ct. Order dated August 24, 2007 (Shearouse Adv. Sh. No. 32 at 71). For injuries occurring prior to July 1, 2007, the former version of § 42-17-60 applies and jurisdiction over such an appeal resides "in the Court of Common Pleas of the county in which the alleged accident happened." S.C. Code Ann. § 42-17-60 (Supp. 2006).

Mr. Rhame initiated this case in September of 2009 by filing a Form 50 which listed a date of injury as May 4, 2009. (Form 50 dated Sept. 29, 2009). This was the date that Mr. Rhame alleged his back pain became so severe that he could no longer work. (Tr. of Hr'g dated Dec. 3, 2009, p.19, line 11 - p.20, line 10). On his Form 58, which he filed in advance of the hearing before the single hearing commissioner, Mr. Rhame specified that he was amending his Form 50 "[t]o reflect repetitive trauma for the nature of the injury." (Claimant's Form 58 dated Nov. 18, 2009).

This is raised to make the following point. Although Mr. Rhame's Form 50 lists a date of injury in May of 2009, it has been evident from the beginning that this case involved an allegation

of repetitive trauma occurring both before and after July 1, 2007 – the critical date for determining the applicable law. Repetitive trauma is treated as a separate type of injury because there is no definite time of injury. The Supreme Court said so in *Schurlknight*, 352 S.C. at 178, 574 S.E.2d at 195, which applied pre-7/1/07 law, and the new law, which applies to injuries occurring on or after 7/1/07 says the same. It defines a repetitive trauma injury as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.” S.C. Code Ann. § 42-1-172 (Supp. 2009). Again, the trigger for the application of Act 111 and the application of the new law related to repetitive trauma claims is a date of injury on or after July 1, 2007. If the Commission found that Mr. Rhame knew or should have known that he had a compensable claim for a repetitive trauma injury prior to July 1, 2007, the statutes contained in Act 111 of 2007 cannot apply to that injury.

As additional grounds for rehearing, there are two remaining aspects of this case that the Commission may have overlooked in its decision. First, the Commission’s order indicates that it relies on the cases *Young v. Sonoco Products*, 210 S.C. 146, 41 S.E.2d 860 (1947) and *Samuel v. Appleton Co.*, 214 S.C. 157, 51 S.E.2d 508 (1949). See (Order of Aug. 6, 2010, p.14). Among other things, these cases stand for the proposition that an employee’s ignorance as to the time limit for filing a workers’ compensation claim provides no legal excuse for the employee’s failure to file a claim. See *Young*, 210 S.C. at 156, 41 S.E.2d at 864; *Samuel*, 214 S.C. at 160-61, 51 S.E.2d at 509..

The Commission may have overlooked that these cases relied on a version of the statute of limitations that required a claim to be filed within one year of a work-related accident. See *Young*, 210 S.C. at 154, 41 S.E.2d 863 (citing Section 24(a) of the Workmen’s Compensation Act, Section 7035-27(1), Code of 1942). The post-7/1/07 statute of limitations which applies to repetitive trauma injuries does not contain a hard-and-fast clock which runs from the date of the accident. It instead

provides that an injured worker must file a claim "within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure." S.C. Code Ann. § 42-15-40 (Supp. 2009). *Young and Samuel* were dealing with a statute of limitations that had no room to take ignorance of the law into account. If the current version of the statute of limitations applies (Mr. Rhame again contends that it does not), this statute leaves room for considering the injured worker's particular circumstances in the equation.

Second, the Commission found that Mr. Rhame "was aware of the existence of a Workers' Compensation system by no later than 2006." (Order of Aug. 6, 2010, p.13). The Commission may have overlooked the fact that although the evidence tended to establish that Mr. Rhame suffered a work-related injury in 2006, when he investigated whether workers' compensation would provide him with benefits for that injury, his employer denied his claim. (Tr. of Hr'g dated Dec. 3, 2009, p.12, line 5 - p.13, line 25; p.36, line 19 - p.37, line 21). If this case calls for the Commission to determine at what point Mr. Rhame knew or should have known that his work-related back injury was compensable, notions of completeness and fairness should require that the Commission consider the full context of Mr. Rhame's experience when he attempted to make a workers' compensation claim in 2006.

The Commission may find a final observation instructive. Part of the employer's refrain to the Commission was that the purpose of the statute of limitations is to protect employers and their carriers against long delayed demands. (Def's Brief dated Apr. 19, 2010, p.6). The case *Wallace v. Campbell Limestone Co.*, 198 S.C. 196, 17 S.E.2d 309 (1941), stands for this proposition. *Wallace* involved an injured worker who received an award of workers' compensation benefits for which the last payment was made in June of 1937. In June of 1940, over three years later, the worker

attempted to make an additional claim for disfigurement. The then-applicable “change of conditions” or “modification of award” statute set a time limit of twelve months from the date of the last payment of compensation. 198 S.C. at 201, 17 S.E.2d at 311 (citing Section 46 of the South Carolina Workman’s Compensation Act, codified at § 7035-49, Code of 1942). The Supreme Court observed that “hard cases sometimes make bad law,” and that the case was a hard case because the injured worker “may well have been entitled to an award of some amount of disfigurement had timely application to the Commission been made.” *Id.* at 202, 17 S.E.2d at 311. The court instructed that despite the liberal construction of the Workers’ Compensation Act in favor of employees, the wisdom of statutes of limitations is evident “when reflection is had upon the difficulties which would be faced by employers and their insurance carriers in resisting long-delayed demands.” *Id.* at 202-03, 17 S.E.2d at 311.

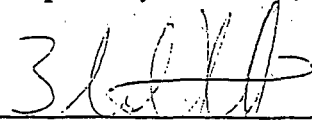
Mr. Rhame’s case is not like the worker in *Wallace* who slept on his rights. Mr. Rhame admits that he began experiencing intermittent back pain related to his job in 1994, and he alleged that he experienced these problems on an off-and-on basis until – according to him – his condition became disabling in May of 2009. Mr. Rhame alleges that his injury was a repetitive trauma injury – an injury gradual in onset and caused not by a distinct accident, but by a series of mini-accidents that culminated in a permanent disability. Mr. Rhame’s claim is not a “long delayed” claim like the injured worker presented in *Wallace*. Instead, Mr. Rhame’s employer is attempting to reach back in time and apply new law to Mr. Rhame’s old conduct. Prior to July 1, 2007, the law started Mr. Rhame’s clock for the statute of limitations on the date of his last exposure to the mini-accident causing his injury. For repetitive trauma injuries occurring after July 1, 2007, the law starts the limitations clock when the employee knew or should have known that his injury is compensable.

The law changed while Mr. Rhame's gradual injury was progressing. This change in the law counsels in favor of construing the terms of the Act in Mr. Rhame's benefit. By its terms, Act 111 does not apply to injuries that occurred before July 1, 2007.

The Commission's decision finds that Mr. Rhame had a "work injury start[ing] in 1994 and 1995," (Order of Aug. 6, 2010, p.7), and then applies the post-7/1/07 repetitive trauma statutes to that injury. (Order of Aug. 6, 2010, p.14). For this reason, and for the remaining reasons set forth in this petition, Ricky Rhame respectfully requests that the Commission grant this petition and rehear this case.

September 8, 2010

Respectfully Submitted,



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Attorneys for Claimant

Ricky Rhame,

Claimant,

vs.

Charleston County School District,
Employer/Self-Insured,
Defendant.

This matter was originally heard before Commissioner Wilkerson in North Charleston, South Carolina, on December 3, 2009 pursuant to the Claimant's Form 50 filed on September 29, 2009, asserting a date of injury of May 4, 2009. The claimant's pre-hearing brief dated November 18, 2009 also asserted a date of injury of May 4, 2009. At the hearing on December 3, 2009, the claimant argued that the date of injury was May 4, 2009 and argued under S.C. CODE ANN. §42-1-172 (Supp. 2009), which is the law applicable to repetitive trauma claims for dates of injury after July 1, 2007. (Transcript of the hearing, p. 4-5). Specifically, the claimant argued that when S.C. CODE ANN. §42-15-40 (Supp. 2009) requires the claimant to bring a claim within two years of the date he knew or should have known that his injury is compensable, it does not mean that the claimant had to know his injury was work related, but rather that the claimant had to understand what the word "compensable" means, along with some knowledge of the workers' compensation system. (Transcript of the hearing, p. 7). On February 26, 2010, the Single Commissioner issued a Decision and Order in which he found that the claimant sustained a compensable injury, which arose out of and occurred within the course and scope of his

employment, from a repetitive trauma on or about May 5, 2009. Furthermore, the Single Commissioner determined that the claim was not barred by the statute of limitations.

Charleston County School District then filed a Form 30, Request for Full Commission Review on March 1, 2010, and the Appeal Hearing in this matter was heard on May 17, 2010. In the claimant's Respondent's brief filed on May 10, 2010, he cited the Court of Appeals decision in Schurlnight v. City of North Charleston, 345 S.C. 45, 545 S.E.2d 833 (Ct. App. 2001)¹ for the proposition that knowledge of work related pain does not start the clock running for the statute of limitations, but only to support his primary argument under S.C. CODE ANN. §42-1-172. (Respondent's Brief to the Full Commission, p. 8-9). The claimant's argument was that the word "compensable" in S.C. CODE ANN. §42-1-172 means that a claimant is entitled to monetary compensation. (Respondent's Brief to the Full Commission, p. 6). At no time in the Respondent's Brief did the claimant argue that the date of injury previously alleged was incorrect or that the law set forth in S.C. CODE ANN. §42-1-172 was inapplicable.

At the hearing before the Full Commission on May 17, 2010, the claimant again argued based on the language in S.C. CODE ANN. §42-15-40 that the claimant did not know his claim was compensable and that the term "compensable" under S.C. CODE ANN. §42-1-172 refers to claims with "lost time." (Transcript of Full Commission hearing, p.11, 15). The claimant never raised an argument that the applicable law should be anything other than S.C. CODE ANN. §42-1-172 and §42-15-40. On August 6, 2010, the Full Commission issued a Decision and Order reversing the Single Commissioner's Order and finding that the claimant's repetitive trauma claim was barred under the statute of limitations. The claimant then filed a Petition for Rehearing with the Commission on September 8, 2010 and now asserts for the first time that the applicable law in this case should be the law in effect prior to July 1, 2007. In the alternative, the

¹ The claimant failed to note in his brief that the Court of Appeals decision in Schurlnight was reversed by the Supreme Court at 352 S.C. 175, 574 S.E.2d 194 (2002).

claimant argues that the Commission “overlooked” other legal and factual issues. Charleston County School District asserts that the Commission must deny the claimant’s motion because (1) there is no statute or regulation allowing the Workers’ Compensation Commission to rehear a Full Commission hearing, (2) the claimant has unquestionably raised an issue that was not previously raised, and (3) the Commission did not “overlook” the other issues raised. Charleston County School District submits this Reply in support of its position.

I. THE COMMISSION MUST DENY THE CLAIMANT’S PETITION FOR REHEARING BECAUSE THE WORKERS’ COMPENSATION STATUTE DOES NOT PROVIDE FOR REHEARINGS OF FULL COMMISSION HEARINGS.

The Commission must deny the claimant’s Petition for Rehearing because the Workers’ Compensation statute does not provide for the rehearing of matters already heard by the Full Commission. The Commission may not “extend its powers beyond the scope of expressly authorized actions.” James v. Anne’s Inc., 386 S.C. 326, 329, 688 S.E.2d 562, 563 (2010) (See also Callahan v. Beaufort County Sch. Dist., 375 S.C. 92, 96, 651 S.E.2d 311, 313 (2007)). There is nothing in the statute that expressly authorizes the Full Commission to rehear any matter, partly because the Full Commission hearing itself is essentially a rehearing of the case before the Single Commissioner.

S.C. CODE ANN. §42-17-50 (Supp. 2009) provides that a party may apply for “commission review” within fourteen days of notice of the award. At that point the commission will “review the award,” “reconsider the evidence,” and “rehear the parties.” § 42-17-50 (Emphasis added). This is, of course, the statute that provides for the Full Commission review.² A party’s option for review after the Full Commission review is to appeal to the Court of Appeals under S.C. CODE ANN. §42-17-60 (Supp. 2009). The claimant indicates that he filed his Petition for Rehearing rather than filing an appeal partly because he is uncertain whether to file

the appeal with the Circuit Court or the Court of Appeals because it is unclear whether the date of injury is before or after July 1, 2007, when the law changed on avenues for appeal. However, the claimant chose the date of injury in this matter as May 4, 2009 (also listed at times as May 5, 2009) and the date of accident has been consistently cited as May 4 or 5, 2009 by both the claimant and the commission. (See claimant's Form 50, claimant's Pre-Hearing Brief, the Single Commissioner's Order, the claimant's Respondent's Brief, both hearing transcripts, and the Full Commission Order). No one has ever argued or indicated that the date of injury in this matter is prior to July 1, 2007. The date of injury in this matter is well established as being after July 1, 2007.

The claimant cites S.C. CODE ANN. §1-23-380(1) (Supp. 2009) as authority to file the Petition for Rehearing. However, this reliance is misplaced. Title 1 applies to administrative agencies in general and not solely to the Workers' Compensation Commission. S.C. CODE ANN. §1-23-380 does not provide any authority for the full commission to rehear a case it has already heard. The section simply describes the procedure for filing a notice of appeal. Subsection 1 states that "[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, *if a rehearing is requested*, within thirty days after the decision is rendered." §1-23-380(1) (Emphasis added). The claimant cannot rely on this section to support his Petition for Rehearing (1) because it does not provide any particular agency authority to request a hearing, but simply advises of the procedure for administrative agencies that have rehearings, and (2) as discussed above, the Full Commission hearing was the rehearing as made plain in S.C. CODE ANN. §42-17-50.

² As an aside, S.C. CODE ANN. §42-17-50 requires that the request for review be made within fourteen days. The claimant's Petition for Review was filed thirty days after the Full Commission Order was filed.

Based on the preceding arguments, Charleston County School District respectfully requests that the claimant's petition for rehearing be denied because the Full Commission has no statutory authority to rehear cases it has already heard.

II. THE COMMISSION MUST DENY THE CLAIMANT'S PETITION FOR REHEARING BECAUSE THE CLAIMANT CANNOT NOW RAISE A NEW ARGUMENT REGARDING THE DATE OF INJURY AS IT WAS NOT PROPERLY PRESERVED FOR REVIEW.

The Commission must deny the claimant's Petition for Rehearing because the issue he raises now has not been preserved for review. It is axiomatic that an issue not raised and ruled upon is not properly reserved for appeal and cannot be heard by the appellate courts. Wilder Corp. v. Wilke, 300 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); see Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) ("an unchallenged ruling, 'right or wrong, is the law of [the] case and requires affirmance'" (quoting Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970))).

The Court of Appeals has gone even further to include this rule for appeals from the Single Commissioner to the Full Commission. The Court of Appeals held that "[t]he findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission. Only issues within the application for review under S.C. Code Ann. § 42-17-50 (1976) are preserved for appeal to the commission." Brunson v. Am. Koyo Bearings, 367 S.C. 161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005) (citations omitted).

The Single Commissioner's Order found the date of accident to be May 5, 2009. (See Decision and Order, Finding of Fact 4). The claimant did not appeal this order or the date of injury, and the only issue addressed by Charleston County School District in its Appellant's

Brief was the applicability of the statute of limitations. Neither party ever argued, appealed, or raised the issue of the date of the accident at any point prior to the Petition for Review filed on September 8, 2010. As a result, the unchallenged date of injury of May 5, 2009 is the law of the case and is not subject to review. Charleston Lumber Co., 338 S.C. at 175, 525 S.E.2d at 871. Similarly, the law applicable to this unchallenged date of injury has not been preserved for review.

III. THE COMMISSION MUST DENY THE CLAIMANT'S PETITION FOR REVIEW BECAUSE THE COMMISSION DID NOT OVERLOOK ANY FACTS OR LAW IN THIS MATTER.

The Commission must deny the claimant's Petition for Review because the commission did not overlook any facts or law in this matter. The claimant first argues that even if the post July 1, 2007 law applies because of date of injury he chose then the Full Commission erred in relying on Young v. Sonoco Products, 210 S.C. 146, 41 S.E.2d 860 (1947) and Samuel v. Appleton Co. et al., 214 S.C. 157, 51 S.E.2d 508 (1949) in its Order. The claimant's argument is that these cases applied a "hard-and-fast clock" from the date of injury whereas repetitive trauma statute of limitations claims are given more latitude. This issue was not overlooked by the Full Commission, as suggested by the claimant, but the cases above were in fact relied upon to address the very argument raised by the claimant. The Full Commission Order details the history of the "discovery rule" in South Carolina and the law on the statute of limitations leading up to the enactment of S.C. CODE ANN. §42-1-172 and the revision of S.C. CODE ANN. §42-15-40. (See the Full Commission Order, p. 9-13). The purpose of this history is to demonstrate that the rule the legislature chose to adopt overruled the more lenient law regarding the statute of limitations in repetitive trauma claims as set forth in Schurlock v. City of North Charleston, 352 S.C. 175, 574 S.E.2d, 195 (2002). This review of the history of the case law shows that the pre-Schurlock courts adopted the discovery rule, and then the court in Schurlock adopted a

new law because of the harsh results in repetitive trauma claims that would result from the discovery rule. The legislature then chose to return to the pre-Schurlknight law, even with the reasoning set forth by the court in Schurlknight. Whether the claimant agrees with the new law is irrelevant, and for the purposes of the claimant's Petition for Rehearing, it is also irrelevant whether the claimant agrees with the reasoning of the Full Commission. The claimant's argument is that the Full Commission needs to rehear this matter because it overlooked the harshness of the rule in Young and Samuel, when in fact the stringency of these cases is the very reason why they were reviewed in the Full Commission's Order.

The claimant next argues that the Commission may have overlooked that the claimant's neck claim in 2006 was denied, and therefore this in some way shows that the claimant was not in fact aware of the Workers' Compensation system at that time, as the Order holds. This argument is misplaced. The claimant previously argued, in part, that he did not bring a claim until 2009 because he was not aware that the Workers' Compensation system existed until that time. (See Transcript of hearing, p. 7 & 27). However, the Full Commission found that this was not true based on the claimant's own testimony. The claimant first testified in his deposition that he did not bring a claim earlier because he was afraid of being fired, and he made no mention of not understanding the Workers' Compensation system. (Transcript of claimant's deposition, p.27). Another basis for the Full Commission's conclusion was the claimant's testimony that he had had spoken to "Workman's Comp" in 2006 regarding the neck injury. (Transcript of hearing, p. 36). The point was that if the claimant was aware that he needed to talk with someone about his neck injury in 2006, then he should have also been aware that he needed to talk with someone about his lower back in the 15 years that he worked knowing that his job was causing him low back pain. There was no oversight in the Full Commission's finding. The finding was part of a larger set of facts that led to its ultimate factual conclusion.

Finally, the claimant argues that "Mr. Rhame's employer is attempting to reach back in time and apply new law to Mr. Rhame's old conduct." (Claimant's Petition for Rehearing, p. 6). There are two problems with this statement. The first problem is that claimant's employer had nothing to do with the law that was applied in this case. The claimant chose his date of injury, not the employer. (See claimant's Form 50, claimant's Pre-Hearing Brief, the claimant's Respondent's Brief, and both hearing transcripts). The claimant cannot now blame Charleston County School District for making an argument based on the date of injury he chose. If the claimant had wanted to argue that his date of injury arose prior to July 1, 2007, he should have raised the argument, and he should have alleged an earlier date in his Form 50, in his pre-hearing brief, at the hearing, or filed a Form 30 Request for Full Commission Review of the Single Commissioner's Order. He cannot do so now. As discussed in Section II, the May 5, 2009 date of injury is the law of the case.

The second problem with the statement "Mr. Rhame's employer is attempting to reach back in time and apply new law to Mr. Rhame's old conduct" is that Charleston County School District did not create the facts. The claimant testified that his low back pain started in 1994 or 1995. (Transcript of claimant's deposition, p. 11-12). In fact, he had physical therapy, injections, and pain medications throughout the 15 years before he brought a claim and testified openly that he knew the entire time that the back pain was caused by his job. (Transcript of claimant's deposition, p. 10-12). Charleston County School District did manufacture the claimant's "old conduct." The claimant freely admitted it. The fact that the claimant waited 15 years to bring a claim and then made a decision to file the claim with a 2009 date of injury was the claimant's choice. The employer is not "attempting" to do anything other than deal with the law under the date of injury chosen by the claimant in conjunction with the facts as provided by the claimant's own testimony.

CONCLUSION

As discussed herein, the Full Commission does not have statutory authority to rehear a case it has already heard, and as a result it must deny the claimant's Petition for Rehearing. In addition, the claimant's Petition should not be heard because it raises the issue of the applicable law/date of injury for the first time in this Petition, and that issue has not been preserved for review and therefore is the law of the case. Finally, the claimant alleges that the Commission "overlooked" various other arguments, but in fact each argument raised by the claimant was addressed in the Full Commission's Order. Based on the foregoing, the Full Commission must deny the claimant's Petition for Rehearing.

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Dated: 9/14/10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

RECEIVED

OCT 21 2010

SC Court of Appeals

WCC File No. 0906212

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent,

NOTICE OF APPEAL

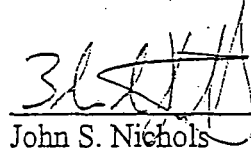
Ricky Rhame appeals the order of the Honorable T. Scott Beck, the Honorable Susan S. Barden, and the Honorable G. Bryan Lyndon dated August 6, 2010, and the order of the Honorable T. Scott Beck and the Honorable Avery Wilkerson dated September 20, 2010, which dismissed Appellant's petition for rehearing. Appellant received written notice of this order on September 22, 2010.

Pursuant to S.C. Code Ann. § 42-17-60 (Supp. 2009), Appellant states the following grounds for the appeal as well as the alleged errors of law:

1. The Commission erred when it found that Appellant suffered back injuries in 1994 and 1995, and it erred in applying the statute of limitations contained in S.C. Code Ann. § 42-15-40 (Supp. 2009).
2. The Commission erred in concluding that the reason Appellant did not previously bring a workers' compensation claim for his repetitive trauma injury was fear of losing his job. As a part of this error, the Commission did not consider that when Appellant initiated a workers' compensation claim in 2006, the Charleston County School District denied his claim.
3. The Commission erred in holding that the discovery rule in § 42-15-40 provides that the statute of limitations begins to run when a claimant knows that his or her work is causing his or her injury.
4. The Commission erred in concluding that Appellant did not file his workers' compensation claim within two years of when he knew or should have known that his claim was compensable.

October 21, 2010

Respectfully submitted,



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BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0906212

Ricky Rhame,

Claimant,

vs.

Charleston County School District,

Employer,

Charleston County School District,

Carrier,
Defendants.

COPY

DEPOSITION OF:
RICKY RHAME



DATE: Friday, November 13, 2009
TIME: 9:30 a.m.
REPORTER: Christy Lassiter
LOCATION: Joye Law Firm
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RICKY RHAME - 11/13/09

1 Q Have you ever filed for unemployment
2 benefits?

3 A No, ma'am.

4 Q Have you applied for Social Security or
5 Medicare?

6 A Yes, ma'am.

7 Q Okay. And what is the status of that?

8 A Just waiting to see.

9 Q Have they given you an initial decision
10 yet?

11 A No, ma'am.

12 Q Okay. When did you apply?

13 A I'm not sure of the date.

14 Q Was it in the past few months?

15 A Yes, ma'am.

16 Q Okay. Do you have health insurance?

17 A Yes, ma'am.

18 Q Who's that with?

19 A Blue Cross and Blue Shield.

20 Q And is that like a COBRA thing?

21 A No, ma'am, it's regular Blue Cross and
22 Blue Shield. I was able to keep my same insurance
23 because of the district.

24 Q Gotcha.

25 Okay. When did you first start working

1 for the school district?

2 A July the 1st, 1987.

3 Q Okay. What were you hired to do?

4 A Air-conditioning.

5 Q Okay. What was your job title?

6 A Heating and air-conditioning.

7 Q Okay. What did that involve?

8 A Repairing ACs, making sure that they're
9 working and up and running during the school year,
10 going on calls, whatever's wrong, fix them,
11 installing air-conditioning, replacing compressors,
12 fan motors.

13 Q Uh-huh.

14 Has your job changed at all over the
15 years?

16 A No, ma'am.

17 Q Okay. And in an average day, how much do
18 you have to lift?

19 A Well, that all depends on each job. You
20 know, each job is not the same. I would say 50,
21 60 pounds, somewhere along there.

22 Q Okay. What's the most you'd have to
23 lift?

24 A Oh, probably the most I've ever lift
25 probably would have been maybe between 90 and a

RICKY RHAME - 11/13/09

1 hundred pound.

2 Q And how often do you have to do that?

3 A That depends on the job. I mean, it all
4 depends on the jobs. Maybe three, four times a month
5 maybe.

6 Q Okay.

7 A And it could be more. It all depends on
8 the jobs.

9 Q Okay. And when you're lifting the 50 to
10 60 pounds, what are you doing generally?

11 A Putting in fan motors or compressors.

12 Q And is that something you'd have to do
13 pretty much every day?

14 A Yes, ma'am, everyday job.

15 Q And that's from the very beginning back in
16 the '80s?

17 A Ma'am?

18 Q That's been from the very beginning back
19 in the '80s when you started?

20 A Oh, yes, ma'am.

21 Q Okay. And the 90 to a hundred pounds,
22 what are you doing when you have to lift that much?

23 A I don't understand the question.

24 Q You had talked about that sometimes you
25 have to lift up to a hundred pounds. What do you do

RICKY RHAME - 11/13/09

1 when you have -- what's your job?

2 A You're putting in the compressors.

3 Q Okay. The compressors?

4 A Right.

5 Q Okay. Compressors also. So sometimes
6 they weigh 50, sometimes they weigh a hundred?

7 A Right.

8 Q Okay. Gotcha.

9 And what about those AC units, how much do
10 those weigh?

11 A Oh, you're probably talking a couple
12 hundred pounds.

13 Q Okay. And when you're doing that, does
14 somebody else help you?

15 A We have people to help us, or sometimes,
16 we do it by ourself.

17 Q Okay. Who was your supervisor?

18 A Stevie Watson.

19 Q Okay. And how long was he your
20 supervisor?

21 A I would say year, year and a half.

22 Q Okay. This is the last year and a half
23 you were there?

24 A Yes, ma'am.

25 Q Okay. And what about like back in the

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1 '90s, like the mid-'90s, who was your supervisor?

2 A Buddy Parson.

3 Q And how long was he your supervisor?

4 A Maybe five, six years.

5 Q Do you remember what years?

6 A I know '94, somewhere along there, '93,
7 '94, '95, somewhere along there.

8 Q Okay. All right. And so was it Buddy and
9 then Stevie or was there somebody in between?

10 A No, ma'am, there's been Buddy and then --
11 you have to give me a second on this one.

12 Q Sure.

13 A Buddy, Jim Grimsley, Stevie Watson.

14 Q Okay. Do you know where Jim and Buddy are
15 right now?

16 A Jim Grimsley is retired and he's probably
17 in Columbia.

18 Q Okay.

19 A Buddy Parson, I have no idea. Last I
20 heard was Florida.

21 Q Okay. Now, if you had to call in sick or
22 something like that, are these the people that you
23 would call?

24 A Yes, ma'am.

25 Q Okay. How much money were you making

RICKY RHAME - 11/13/09

1 Q Would that be right with the overtime
2 included?

3 A I don't want to say yes because I don't
4 know to be one hundred percent sure and --

5 Q What typically -- I'm sorry. Go ahead.

6 A I'm sorry. This is the first time I've
7 seen this right here.

8 Q I understand. You can only tell me what
9 you know.

10 Can you tell me kind of what your paycheck
11 would be, what you would take home?

12 A After taxes or before.

13 Q Either one, whatever you can remember.

14 A Before taxes, I think my check was
15 eight -- 16 or 1700 -- I'm not sure -- maybe 18.

16 Q Okay. So anywhere from 16- to \$1800 --

17 A Right.

18 Q -- and that would be every two weeks?

19 A Yes, ma'am, every other Friday.

20 Q Okay. Did you work anywhere at the same
21 time that you worked for the school district?

22 A No, ma'am.

23 Q When's the last day that you worked
24 there?

25 A May the 5th, I believe it is.

RICKY RHAME - 11/13/09

1 Q Okay. And that's of this year?

2 A Yes, ma'am.

3 Q Okay. Did anything particular happen on
4 that day?

5 A I'm going to say May 4th on that, ma'am.

6 Q Okay. Why was that the last day that you
7 worked?

8 A Did anything particular happen that day.

9 Q I guess what I'm getting at is, why was
10 that the last day that you worked there.

11 A Well, that's when I went and talked to
12 them about my back hurting me bad like it was and
13 they wanted me to go see a doctor, Doctors Care.

14 Q And who is "they," who did you talk to?

15 A Debbie Gunn.

16 Q And is she somebody with HR or who is
17 that.

18 A I want to say yes, but I'm not sure.

19 Q Okay. Now, were you kind of in all the
20 Charleston County schools working?

21 A No, ma'am, I initially started working --
22 I was given seven or eight schools on James Island
23 and one of our employees were fired and I was given
24 his area as well which that was another seven or
25 eight schools.

RICKY RHAME - 11/13/09

1 Q I see. Okay.

2 A And then the workload really increased.

3 Q Okay. All right. Let's talk about your
4 back. When did that -- is it your back and your neck
5 that's bothering you?

6 A Yeah, I've had an issue with both.

7 Q Okay. And when did that start?

8 A It initially started in 2006 in around
9 about June, I think it was.

10 Q Okay. So did you have back problems prior
11 to June 2006?

12 A Yes, ma'am.

13 Q Okay. When did the back problems start
14 altogether?

15 A Well, I've had it off and on for a while
16 back. I can't put a specific time on it because the
17 type of work that I've done, it's nothing but
18 strenuous work all the time, but I have been to
19 doctors before and they would give me medicine for
20 pulled muscles or whatever and give me a chance to
21 heal and I'd go back to work so it's been a
22 continuous thing.

23 Q Okay. Did you tell Glen Martin it was
24 like '94, '95? Does that sound right?

25 A Yes, ma'am, I believe I did.

RICKY RHAME - 11/13/09

1 Q Okay. And do you still agree with that,
2 that that's about when it started?

3 A I'm not a hundred percent sure on that,
4 but that's along when I was working with Buddy and we
5 were pulling out a lot of units. I don't want to go
6 into a lot of details, but it started probably back
7 then, yeah, off and on, and it's gradually worked its
8 way up to now.

9 Q Okay. And since '94, have you known it
10 has been related to what your job is or when did you
11 first realize that this was because of your job.

12 A Because I started having problems doing
13 the type of work that they had me doing.

14 Q Okay. So, I mean, did you know back in
15 '94 that it was related to your job?

16 A Not necessarily because I just felt like
17 maybe it might be a pulled muscle because, you know,
18 lifting, you going to pull a muscle every now and
19 again.

20 Q Okay. At what point did you say, My back
21 is hurting and my job is causing it, at what point
22 did you know that.

23 A My final destination on that point was
24 probably May the 4th.

25 Q Of this year?

RICKY RHAME - 11/13/09

1 A Right. I just said, I can't do it
2 anymore.

3 Q Yeah, I think we're talking about two
4 different things. I'm not asking you when you said,
5 I can't do the job anymore because of my back, I'm
6 asking, at what point did you know, My back is
7 hurting and my job is causing it.

8 A Probably back when I worked for Buddy.

9 Q Okay.

10 A Because I was out at one time when I was
11 working with Buddy because my back had given me so
12 much problems, I had to seek medical attention.

13 Q Okay. And who did you go to back then?

14 A Dr. Pappas.

15 Q Okay. And when you were having these
16 issues, were you talking to Buddy about it?

17 A Yes, ma'am.

18 Q What did you tell Buddy?

19 A I told him that my back was burning me
20 like fire because pulling -- doing the work I was
21 doing, it was a two-man job and I was the only one
22 that was doing it.

23 Q Okay. And did he ever have you fill out
24 any documents or anything about it?

25 A No, ma'am. His exact words were, We need

1 to get the job done.

2 Q Okay. But you told him what you just told
3 me, that it was because of the pulling?

4 A Yes, ma'am.

5 Q Okay. All right. Did you ever ask Buddy
6 to send you to a doctor or anything like that?

7 A No, ma'am, I told him that I was going to
8 have to see a doctor because I couldn't take the pain
9 anymore.

10 Q Okay. What about Jim and Stevie, had you
11 talked to both of them about the back hurting because
12 of work?

13 A Yes, ma'am, I've talked to Jim before, and
14 Stevie, I've talked to him as of May -- I know I
15 talked to him in May and told him that -- and before
16 May that I was having back problems.

17 Q Okay. Anybody else with the school
18 district that you've been talking to about your
19 injury?

20 A Yes, ma'am, I've been talking to a lady
21 that -- Ms. Diane Woodward.

22 Q Okay.

23 A She's retired, but she knew about the
24 problem as well.

25 Q Okay. When was that, when did you first

RICKY RHAME - 11/13/09

1 start talking to Diane?

2 A 2006, when I had the first injury on my
3 neck.

4 Q Okay. Now, you said first injury on your
5 neck, was your neck not bothering you before '06 or
6 did something specific happen in '06?

7 A No, ma'am, I was -- I didn't have any neck
8 problems. I had back problems but no neck. What
9 happened there is carrying a tool bag with one hand
10 and going -- the school district, they don't have
11 ladders like this in a lot of the schools, they're
12 like this, so you have to hold a lot of stuff, tools
13 and parts a lot of times in one hand, and you have to
14 catch the ladder -- pull yourself up and catch the
15 ladder like this to keep from falling, and when I got
16 to the top, I had a burning sensation. Something
17 popped in the back of my neck really.

18 Q Okay. And this was in 2006?

19 A Yes, ma'am.

20 Q Did you go to Dr. Pappas after that?

21 A Yes, ma'am, I did go see Dr. Pappas, but I
22 also had to go to the emergency room.

23 Q Okay. What emergency room did you go to?

24 A Trident.

25 Q I'm looking at a record from Dr. --

RICKY RHAME - 11/13/09

1 A No, ma'am, but I don't think they have but
2 one over there.

3 Q Okay. East Cooper Medical Center or
4 something like that?

5 A I think so.

6 Q Okay. So you've had a surgery to your
7 neck, what have you had for your low back.

8 A A bunch of shots from the hospital at
9 Trident. I had to go two times in one day.

10 Q Okay. And when were the shots.

11 A Where?

12 Q When. I'm sorry. About -- I know more
13 than once, but --

14 A I think it was in June of '06.

15 Q Okay. Is that the first time you'd ever
16 had injections in your back?

17 A Yes, ma'am. Let's see. I want to say
18 Dr. Pappas give me some injections in my back. I
19 know he did, but I don't know if it was before or
20 after.

21 Q Okay. Are you on any medications for the
22 back or the neck?

23 A Yes, ma'am.

24 Q What are you taking?

25 A I don't have that with me.

1 Q Okay. And the surgery that you've had on
2 your neck, the injections that you've had, who's paid
3 for all of that?

4 A Me.

5 Q Okay. I mean, has Blue Cross been
6 paying --

7 A What they didn't pay, I have been paying.

8 Q Okay. So, basically, your health
9 insurance has paid and you've had co-pays; is that
10 right?

11 A Right.

12 Q Is there anything that they have just
13 refused to pay altogether?

14 A No, ma'am.

15 Q Have they sent you a letter saying, If you
16 get paid from workers' comp, we want our money back?

17 A Yes, ma'am.

18 Q They did? Okay.

19 A They didn't quite word it like that,
20 but...

21 Q Sure. Okay. Why have you waited until
22 2009 to bring a claim?

23 A Two thousand -- because I couldn't take it
24 anymore. I mean, I've tried to work and keep my job
25 too because I was worried about being laid off and I

RICKY RHAME - 11/13/09

1 tried to keep a low profile, as low as I could, and
2 that's why I paid for a lot of this out of my
3 pocket.

4 Q Did somebody tell you you were going to
5 get laid off if you filed a workers' comp claim?

6 A No, ma'am.

7 Q I mean, back in 2006 when you had the
8 surgery on your neck, why didn't you ask for workers'
9 comp for that back then?

10 A I did.

11 Q Okay. Who did you talk to?

12 A Briefly. I don't know who I talked to,
13 but within the next day, I was told it was denied, so
14 then I said, look, I was in so much pain, I could not
15 wait. I had no other choice but to go and pay for --
16 what the insurance wouldn't pay, I paid for it out of
17 my pocket.

18 Q Okay. Did anybody ever tell you, Workers'
19 compensation is going to cover this, don't worry
20 about it?

21 A No. They told me it was not going to
22 cover it.

23 Q Okay. And who is "they," who did you talk
24 to?

25 A Ma'am, I don't know. That's been three,

RICKY RHAME - 11/13/09

1 four years ago.

2 Q Okay. Was it somebody with the school
3 district or somebody with the insurance company?

4 A I would have to say somebody with the
5 insurance company.

6 Q Okay. All right. Any doctors that you've
7 seen that we haven't talked about for your low back
8 or your neck?

9 A I've seen Dr. Pelzer.

10 Q Okay. Can you spell that?

11 I may actually have those records, but --

12 A Leslie Pelzer I believe is her name.

13 Q Do you know what practice she's with?

14 A Yeah. This is where she -- her name might
15 be on there. I can't see anything close up.

16 Q Thank you.

17 Dr. Buncher's office?

18 A Yes, ma'am, that's who she's -- she works
19 in his practice.

20 Q Gotcha. And what has she done for you?

21 A Well, I had to go to her because my back
22 was hurting me so bad that -- my private area, my
23 testicles, was hurting me so bad, I couldn't stand
24 it.

25 Q Okay.

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1 Q And what about like inflammation kind of,
2 are you on something for that, kind of to get the
3 swelling down?

4 A I've got some more medications home from
5 Doctors Care, but I don't really remember what they
6 were.

7 Q Okay.

8 A I was given those I think in May.

9 Q Okay. Do they help?

10 A Some, yeah.

11 Q Have you had any physical therapy?

12 A Yes, ma'am.

13 Q Okay. For your back and your neck?

14 A Yes, ma'am.

15 Q Has that helped?

16 A It helps for awhile, but -- yeah, I would
17 say it has helped, but it always comes back when I
18 stop.

19 Q Okay. Dr. Pappas, over the years, has he
20 had you on pain medications the whole time? I think
21 I asked you that before, but --

22 A Yes, ma'am, I think he did.

23 Q Okay. Do you have any health issues like
24 high blood pressure, diabetes, anything like that?

25 A Oh, yes, ma'am.

RICKY RHAME - 11/13/09

1 Q Is it the throbbing all the time or is it
2 different than that?

3 A No, ma'am, it's throbbing. It's like a
4 toothache all the time. I just had a shot Thursday,
5 and when I got home, it was feeling better.

6 I said, Man, this thing might ease off,
7 because I had some of the shots before and it helped
8 ease off, but it always comes back, but this time, it
9 never really went away. It's continuously
10 throbbing.

11 Q Okay. And how long has it been like that,
12 how long has it been that bad.

13 A I don't know. It's been actually
14 bothering me ever since I started going to
15 Dr. Johnson.

16 Q Okay. So that's the reason you started
17 going to Dr. Johnson?

18 A That's the reason I had to go to him. I
19 couldn't put it off no longer.

20 Q Okay. Was it hurting you before then and
21 it just got worse and that's why you went to
22 Johnson?

23 A It was hurting me off and on, on and off,
24 and sometimes it would be severe, that's why I'd go
25 see Dr. Pappas and he would give me something for

RICKY RHAME - 11/13/09

1 pain and tell me to go home and take a few days and
2 rest, and I would do that, and because I'd be off my
3 back, I guess, it would ease off, then I'd go right
4 back to work.

5 Q Okay. As far as lifting, are you
6 having -- I assume there's a certain amount that you
7 can't lift right now?

8 A Well, yes, ma'am, but I don't know exactly
9 what it is.

10 Q What about just like going grocery
11 shopping and lifting milk and stuff like that, can
12 you do that?

13 A Yes, ma'am.

14 Q Okay. Like bending over to tie your
15 shoes, is that a problem?

16 A Very much a problem.

17 Q Okay. Generally, just like getting ready
18 in the morning, showering, getting dressed, all that,
19 is that an issue for you?

20 A The hardest thing it is, once I pass that,
21 I'm good to go, and that's putting my pants on and my
22 shoes because it's a lot of bending.

23 Q Okay. What about like twisting side to
24 side, does that hurt?

25 A It hurts but not as bad as bending.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0906212

RICKY RHAME	)	
	)	
CLAIMANT,	)	SC WORKERS' COMPENSATION COMMISSION
	)	
VS.	)	HEARING OF
	)	
CHARLESTON CTY SCH	)	RICKY RHAME
EMPLOYER,	)	
	)	
AND	)	VS
	)	
CORVEL, TPA	)	CHARLESTON COUNTY SCHOOL DISTRICT
<u>CARRIER.</u>	)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Ricky Rhame versus Charleston County School District, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:15 P.M., Thursday, December 3, 2009, at North Charleston City Hall, 2500 City Hall Lane, North Charleston, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

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ALSO PRESENT:

Ms. Tracy Kessler

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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Certificate

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STIPULATIONS

Commissioner Wilkerson: Today's date is the 3rd day of December, 2009. We're here in reference to Workers' Comp File Number 0906212. The Claimant is Ricky Rhame; his Attorney is Patrick Jennings. This is -- he was an employee of Charleston County, they're self-insured and covered through Corvel as their third party administrator; their Attorney is Leslie Whitten. The average weekly wage in this case is eight hundred and ninety-nine dollars and sixty-three cents (\$899.63), thus the comp rate is five ninety-nine, seventy-eight (\$599.78). The date of accident is 5/4 of '09.

Mr. -- okay. Mr. Jennings?

Mr. Jennings: Commissioner, we're here seeking compensability for a repetitive motion trauma to the Claimant's back, right hip and right leg. We're also seeking additional medical treatment for the body parts of which I just stated, payment for causally related medical and temporary total disability benefits from 8/5th, 2009 to the present and continuing. It's our position that the Claimant has not yet reached maximum medical improvement. The issues presented today, I refer to 40 -- Section 42-1-172 repetitive motion

1 trauma. We feel that those requirements have been
2 met by Dr. John -- John Johnson on my APA, page 9.
3 The second issue is notice, whether or not the
4 Claimant had given notice to his employer of his
5 work related injury. It's our position that he
6 did not know that he had a compensable claim. The
7 Claimant is a fifty-three (53) year old man, has
8 an education of a ninth (9th) grader and has no
9 idea that he had a claim for repetitive motion,
10 let alone what a repetitive motion claim was.
11 Similarly, in our argument the Statute of
12 Limitations, the Claimant did not know nor should
13 he have known through any type of reasonable
14 diligence that his claim was compensable. We rely
15 on the case of White versus the Medical University
16 of South Carolina and very similar facts.

17 Commissioner Wilkerson: Okay. Thank you. Ms.
18 Whitten?

19 Ms. Whitten: Commissioner, this would not be
20 compensable as a repetitive trauma claim for a
21 couple of reasons. The first one is under the
22 Capers and Havird Cases, which I have briefed and
23 handed up to you. This would not be an accident
24 as is required under the law as the Claimant was
25 aware that his injuries -- this -- this work

1 exposure was causing his injury and continued to
2 work in that environment. Secondly, this is under
3 the new law, and as such -- and for notice and
4 Statute of Limitations, the Claimant would need to
5 bring a case or at least file it within two (2)
6 years when he knew or should have known that it
7 was compensable; that means two (2) -- two (2)
8 years after he knew or should have known that he
9 could get Workers' Compensation benefits from
10 this. The Claimant will testify that he knew
11 about this since 1994, and that he knew that it
12 was related to work but chose, knowingly, to go
13 under his health insurance because -- for various
14 reasons but did know that it was related to his
15 job. And as such this is also barred based on the
16 Statute of Limitations and notice.

17 Commissioner Wilkerson: Let me ask you a question
18 and I should have asked earlier. If he doesn't
19 know what Workers' Comp is how does he know how to
20 file a claim?

21 Ms. Whitten: Our position is that he does know
22 what Workers' Comp is --

23 Commissioner Wilkerson: Okay.

24 Ms. Whitten: -- because he said he chose not go
25 into Workers' Comp.

1 Commissioner Wilkerson: Okay. That's fine.

2 Mr. Jennings: Briefly, I would just note that our
3 position is that the law to give notice and the
4 Statute of Limitations states that when the
5 Claimant didn't claim it was compensable or not,
6 when he knew that the accident or thought --
7 thought that his injury was because of work.

8 Ms. Whitten: And if it would please the court, I'd
9 like to present a case --

10 Commissioner Wilkerson: Sure.

11 Ms. Whitten: -- that said that. I'll go find it.

12 Commissioner Wilkerson: Go what -- do what now?

13 Ms. Whitten: If -- if it's okay with you, if you
14 could leave the record open for --

15 Commissioner Wilkerson: I don't -- I don't --

16 Ms. Whitten: -- well, I --

17 Commissioner Wilkerson: -- I don't leave anything
18 open.

19 Ms. Whitten: -- I -- I just want to send you a
20 case today or tomorrow that just says exactly what

21 Mr. Jennings is talking about. That
22 compensability does not mean he has no other
23 course of compensable means but that he has to
24 know that his job -- his injury is work related.

25 Mr. Jennings: And I don't want to leave the record

1 open. I'm not sure what case Ms. Whitten is
2 talking about.

3 Commissioner Wilkerson: Well, just send it to him
4 first and then you all let me know.

5 Ms. Whitten: Okay.

6 Commissioner Wilkerson: Because that won't be
7 decided in the next day or two.

8 Ms. Whitten: Okay.

9 Commissioner Wilkerson: Okay. I don't think, so.
10 I might be in here for the next day or two (2).

11 All right, Mr. Rhame, if you'd raise your right
12 hand we're going to swear you in and get you to
13 testify here this afternoon.

14 WHEREUPON;

15 RICKY RAMON RHAME, being duly sworn and cautioned
16 to speak the truth, the whole truth, and nothing but
17 the truth, testified as follows:

18 Court Reporter: Would you, please, state your full
19 name for the record?

20 Witness: Ricky Ramon Rhame.

21 Court Reporter: Thank you, sir.

22 Witness: 11/21/56.

23 DIRECT EXAMINATION

24 By Mr. Jennings:

25 Q. Okay. Mr. Rhame, how old are you today?

1 A. Fifty-three (53).

2 Q. Okay. Now, before May of 2009, what was the general
3 state of your health?

4 A. Well, in some degree it was pretty good. I had back
5 problems but I was working through that.

6 Q. Okay. Did you have any other health problems?

7 A. Well, yes, I also did -- I had blood pressure problems.
8 I had diabetes and I had a lot of anxiety and panic
9 attacks.

10 Q. Okay. Now, had you had those for a while or when did
11 you have those anxiety and panic attacks?

12 A. I've had them for a while.

13 Q. Okay. A month, a year, two (2) years?

14 A. Probably a couple of years.

15 Q. Okay. All right. Now, we're here for body parts, your
16 lower back, your right hip, and right leg. Have you
17 ever had any problems with those body parts -- any
18 accidents to those body parts in the years past before
19 May of '09?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. What accidents have you had?

24 A. About -- about 1994, '95, somewhere along there, I'm
25 not sure exactly of the date, but I was working for

1 Buddy Parson and we were doing a lot of pulling out
2 units and cleaning them throughout the schools. And,
3 well, after so long of doing that my back begin to burn
4 like fire. And I told him that I couldn't continue to
5 doing this by myself because of the pain that it was
6 causing me. He said, well, the job has got to get
7 done. And at that time nobody wanted to get laid off
8 or worried about their job. So, I continued doing the
9 best I can for another day or so and I couldn't do it
10 no more after that.

11 Q. Okay.

12 A. Then I had to go and -- to my doctor to seek medical
13 attention --

14 Q. All right.

15 A. -- which I told him that.

16 Q. Okay. So, this was back, you said, in '94 or '95?

17 A. Who was my doctor?

18 Q. No, no. This time period you're talking about was
19 around '94 or '95?

20 A. Yes, sir.

21 Q. Okay. And the job -- the work you were doing at that
22 time was -- go ahead and explain. Who is Buddy?

23 A. Buddy Parson was my boss --

24 Q. Okay.

25 A. -- my foreman.

1 Q. We'll -- we'll get back to that in a second.

2 A. Okay. I'm sorry.

3 Q. But were you doing anything different; did you have any
4 type of accident on that day or was this just normal
5 activity from your work?

6 A. Just normal activities.

7 Q. Okay. And we'll get back to that. What type of -- of
8 treatment have you had for those body parts I just
9 mentioned, over the --

10 A. Oh --

11 Q. -- before May of '09?

12 A. -- I've had -- I don't know the proper name for them --
13 shots in my back.

14 Q. Okay.

15 A. I've had four (4) recently from Dr. Johnson. I did a
16 lot of therapy, physical therapy. I've taken a lot of
17 pain medication, and I think that's about it.

18 Q. Okay. Now, have you ever had a Workers' Compensation
19 claim prior to this?

20 A. No, sir.

21 Q. Okay. Have you ever filed or spoken to anybody about a
22 workers' compensation claim with any other body part?

23 A. I'm not sure I understand the question. Other than my
24 back?

25 Q. Yes. Other than your back?

1 A. No. No.

2 Q. Okay.

3 A. Well, I'm -- I'm going to rephrase that. I'm sorry.

4 Q. Okay.

5 A. Back in '06, I had a problem with my neck.

6 Q. Okay. What happened then?

7 A. I had a fuse -- I -- I guess that's what they call a
8 fusion.

9 Q. A cervical fusion?

10 A. Right.

11 Q. Okay.

12 A. I had that in my neck back in '06. And I called and
13 talked to -- I can't -- I don't know who it was --
14 somebody from the District and they told me that it was
15 -- that -- that they were not going to take care of it.
16 And they sent me a -- a letter within a day or two (2)
17 saying that it was denied.

18 Q. Okay. So, how did you get -- how did your neck get
19 hurt?

20 A. I had to go up through a roof hatch -- see the School
21 District doesn't have a lot of the -- the -- the
22 schools, especially the older ones, the ladders are
23 straight up and down, they don't have a slant; they're
24 straight up and down. And you have to carry tools and
25 parts or whatever in one (1) hand. You'd have to hold

1 the ladder like this (demonstrating) and as you go up
2 you have to hurry up and snatch the other and carry up
3 at the same time.

4 Q. Okay. And -- and the Court Reporter can't take down
5 what you're doing. What you're doing is you're --
6 you're simulating, you're holding the ladder with one
7 (1) hand and then letting go, releasing, and then
8 catching the top rung; is that right?

9 A. Right.

10 Q. Okay. Now, was that one (1) -- there was one (1)
11 single accident and that's how you hurt your neck on
12 that ladder?

13 A. Right.

14 Q. Okay. Now, did workers' Comp pay for any of your
15 cervical fusion?

16 A. Not one (1) bit.

17 Q. Okay. And you were on the job when that happened?

18 A. Yes, sir.

19 Q. Okay. And after you got that letter of denial did you
20 speak with anybody else about going forward with
21 workers' Comp?

22 A. No, sir. I don't think so.

23 Q. Okay. Were you ever paid by workers' Comp for any of
24 your time out of work after your cervical fusion?

25 A. No, sir.

1 Q. Okay. Now, you stated you started having back problems
2 in your lower back in '94 or '95, somewhere around that
3 area. Why didn't you ever report it to work?

4 A. Well, because at that particular time my wife was
5 fighting cancer and I did not want to take the chance
6 of getting laid off or having some excuse for the
7 District to say, well, he's not performing his duties.
8 And her insurance -- me -- me keeping my job, meaning
9 that she had insurance to go to the hospital with
10 breast cancer, meant more to me than, you know, that
11 was my primary concern.

12 Q. Okay. Any -- you stated about your duties. Were you
13 able to continue with those same duties you had?

14 A. Yes sir, I did.

15 Q. Okay. And were you ever on light duty after that
16 time?

17 A. No, sir.

18 Q. Okay. Have you ever had any type of personal injury
19 claims of any sort, car accidents?

20 A. Never.

21 Q. Lawsuits?

22 A. No, sir.

23 Q. Okay. Have you ever filed for unemployment?

24 A. No, sir.

25 Q. Okay. Have you ever, before this happened, had long

1 term or short term disability of any kind?

2 A. No, sir.

3 Q. All right. Mr. Rhame, what's the last grade of
4 education you completed?

5 A. The ninth (9th).

6 Q. Okay. Did you ever get your GED after that?

7 A. No, sir.

8 Q. Did you even take the test after that?

9 A. No, sir.

10 Q. Okay. How is your reading and writing ability?

11 A. I'd say fair.

12 Q. Okay. And since you left school in the ninth (9th)
13 grade or after the ninth (9th) grade, I guess, what --
14 briefly, tell us what types of jobs that you've had;
15 where have you worked?

16 A. I worked for the City Housing Authority and -- for
17 eleven (11) years --

18 Q. Okay.

19 A. -- doing refrigeration and installing refrigeration and
20 repairing refrigerators in --

21 Q. Okay.

22 A. -- in the city from house to house.

23 Q. In what city?

24 A. I'm sorry?

25 Q. You said in the city. What city?

1 A. North Charleston.

2 Q. Okay.

3 A. I'm sorry. The city, downtown.

4 Q. Okay. And then what after that did you do?

5 A. I left there and went to work for the Charleston County
6 School District.

7 Q. Okay. And what year was that?

8 A. '87.

9 Q. Okay. And then how long have you worked for the school
10 district?

11 A. Twenty-two (22) years.

12 Q. Okay. Now, you stated both of those jobs since you
13 left school. Have you had any other type of job which
14 was not physical?

15 A. No, sir.

16 Q. Okay. Have you ever had a sit down job?

17 A. No, sir.

18 Q. Have you ever been a supervisor?

19 A. No, sir.

20 Q. Have you ever been in charge of anyone else?

21 A. No, sir.

22 Q. Okay. Now, you said you work for Charleston County
23 School System, correct?

24 A. Yes, sir.

25 Q. Okay. Tell me about what your job is with the school

1 system?

2 A. Going out and -- from school to school repairing AC
3 units up on the roof and helping out occasionally with
4 -- with some refrigeration.

5 Q. Okay. What types of things do you do in your
6 day-to-day work?

7 A. Like for example, if you got a call to go out and you'd
8 go out on a call and get up on the roof, find out what
9 the problem is. And say, for example, it was the
10 compressor, you'd have to go ahead and un-wire it, come
11 down, go get another compressor, come back and go back
12 up the ladder carrying all the tools back up there, go
13 to that unit, remove that compressor, bring that
14 compressor right back down along with all the tools.
15 Going back and forth up and down the ladder until you
16 got the job done.

17 Q. Okay. And I'm not sure you told us. What's your job
18 title there with the School District?

19 A. AC Tech.

20 Q. Okay. And you discussed a -- a bunch of things you
21 would do. What type of things would you be lifting on
22 the job?

23 A. Compressors, ladders, fan motors, condenser motors,
24 coils.

25 Q. Now, how much would those things weigh; any of those --

1 what -- what would --

2 A. well, you cannot put a -- you cannot put a specific
3 weight it on because there's different size --
4 different size units at -- at schools.

5 Q. -- okay. On an average day what types of things -- I
6 know you stated those things that you would be lifting
7 but, I mean, do they weigh two (2) pounds; would they
8 weigh a hundred (100) pounds?

9 A. well, no. I've lifted things anywhere from twenty (20)
10 pounds to a hundred (100) pounds.

11 Q. Okay. Now, are you walking or standing most of the day
12 on your job?

13 A. Yes, sir.

14 Q. Okay. Any continued sitting at all?

15 A. No.

16 Q. Any bending, stooping or squatting?

17 A. Yes, sir. All the time.

18 Q. How about climbing?

19 A. All the time.

20 Q. Pushing and pulling?

21 A. All the time.

22 Q. Any overhead lifting?

23 A. Over -- all the time.

24 Q. Okay. Now, and this next question, this isn't in
25 dispute, but how much money were you making at the

1 time?

2 A. Twenty-two dollars (\$22.00) an hour.

3 Q. Okay. And how many hours a week were you working?

4 A. Forty (40).

5 Q. Okay. Mr. Rhame, I probably don't even need to ask you
6 this because you were there for so long but did you
7 like your job with Charles -- Charleston County School
8 District?

9 A. The Charleston School District is the best place I ever
10 worked in my life.

11 Q. Okay. Now, we have your date of injury as May 4th of
12 2009. Why is that date significant?

13 A. Because it's the last day I worked.

14 Q. Okay. Why is that the last day that you worked?

15 A. Because, matter of fact, I didn't even work a full day
16 that day. I -- I was trying to finish up a job at St.
17 Johns High and then I had to take this big blower -- I
18 mean, it was really too much to handle but I did the
19 best I could with it. I had to get it out the ceiling.
20 And when I got finished and loaded it up on the truck
21 -- I -- I had an appointment to go see a chiropractor
22 that afternoon but I couldn't wait. My back -- I -- I
23 couldn't -- I couldn't even stand up straight. That's
24 how bad my back was.

25 Q. At that point did you feel that you could do your job

1 to the same ability that you did before that day?

2 A. Now?

3 Q. No, no. On that day when you decided your back was in
4 so much pain?

5 A. Well, no, I can't say that because, I mean, as the
6 years went by with -- with all the lifting and stuff
7 I'm beginning to get -- I'm beginning to get wore out.

8 Q. Did you know at that point you wouldn't be able to do
9 your job any longer?

10 A. Yes, sir.

11 Q. Okay. Now -- now -- and I know you just told us some
12 stuff a second ago -- a second ago but can you tell me
13 about, in your opinion, how you were injured, how your
14 back had been injured?

15 A. On pulling units and stuff out of the walls and which
16 -- which, I guess, one (1) of those units probably
17 weighed -- I don't know -- I'd say at least eighty (80)
18 pounds.

19 Q. Okay. Now, you talked about the type of things you had
20 been doing. Have you had the same job title and the
21 same duties for the last twenty-two (22)/twenty-three
22 (23) years since you started with Charleston County?

23 A. Yes, but it increased in the last half -- the last half
24 year.

25 Q. Okay. Now, after you realized that you wouldn't be

1 able to do the job like you could anymore, who was the
2 first person you told about your accident?

3 A. I believe that would Debbie Gunter.

4 Q. Okay. And who is Debbie Gunter --

5 A. I --

6 Q. -- do you know what her position is?

7 A. -- I don't know her position. I know her real well but
8 I don't know her position.

9 Q. Okay. Is she a supervisor? She works for the School
10 System?

11 A. Yeah, she works for the School District.

12 Q. Okay. And what day did you tell her about your
13 problems?

14 A. May -- May 5th of '09.

15 Q. Okay. And what happened after you told Debbie Gunter?

16 A. Me and her had a conversation about what we were going
17 to do about it. And her supervisor, which is Eric
18 Cook, came in and said -- and his exact words were,
19 that he wanted to know what was going on, and we told
20 him. And I told him about last time my neck got messed
21 up but -- and this time it's my back. And he said,
22 well this time -- his exact words were, I quote, "This
23 time we're going to do it the right way".

24 Q. Okay.

25 A. "We want you to go to our doctor".

1 Q. And when he said this time, do you think he was
2 referring to your neck, your cervical fusion?

3 A. Right. Because I told him last -- about last time, you
4 know.

5 Q. Okay. Now, did your employer send you to the doctor at
6 that point?

7 A. Yes sir, they did.

8 Q. Where did they send you?

9 A. They sent me to Doctor's Care.

10 Q. Okay. Now, what did Doctor's Care do for you?

11 A. They give me some muscle relaxers and recommended that
12 I see -- go see a spine specialist.

13 Q. Okay. When you went to Doctor's Care what was
14 bothering you; what -- what body parts were hurting?

15 A. My mid and lower back.

16 Q. Okay. And then you -- eventually, you also saw Dr.
17 Johnson at Southeastern Spine, correct?

18 A. Yes, sir.

19 Q. Okay. Then what did Dr. Johnson do for you?

20 A. He has given me four (4) to five (5) injections in my
21 back.

22 Q. Where in your back?

23 A. In my lower back.

24 Q. Okay. Did he do an MRI?

25 A. He also did a MRI. We -- he wanted to do some -- he

1 said before we was going to work our way down because
2 -- we talked a little bit about surgery and that's
3 something that I did not want to do because I'm -- I'm
4 actually afraid of it.

5 Q. Okay.

6 A. So, we started to work along with the shots and seeing
7 if we could get it to -- maybe that would -- we
8 wouldn't -- we might not have to even go any further.

9 Q. Okay. Now, is surgery something you'd like to get done
10 now?

11 A. Well, I'm about at the end of the rope with the -- all
12 the shots and we -- we -- we are discussing surgery.

13 Q. Okay. Now, Mr. Rhame, have you been back to work
14 anywhere since May 5th of 2009?

15 A. No, sir.

16 Q. Okay. And have you been paid for any of your time out
17 of work since that time?

18 A. No, sir.

19 Q. All right. Are you still working for Charleston
20 County?

21 A. Well, I don't know that because they've never sent me a
22 letter saying I was terminated or what -- I don't
23 know.

24 Q. Okay. Do you think you could go back to doing your old
25 job right now?

1 A. No. No, there ain't no way.

2 Q. Why do you say that?

3 A. Because I can't lift and I --and -- and I don't think
4 they have -- to the best of my remembrance, I don't
5 know if they have a -- what is it called -- light duty.
6 You have to be one hundred percent (100%) if you -- if
7 you want to stay there.

8 Q. Okay. But -- but your old job, doing everything you
9 could, let's say on May 2nd, those duties that you did,
10 could you do those now?

11 A. No.

12 Q. Okay. Now, let's talk about the body parts and -- and
13 the pain you're actually having. First, where are you
14 having problems?

15 A. My lower back and my -- my right leg and my left -- my
16 left hand.

17 Q. Okay. Well, let's first talk about your lower back.
18 Tell me about the pain and problems you have with your
19 left -- your lower back?

20 A. My lower back? There's a constant pain in my lower
21 back. And when he gives me these injections it does
22 ease it off some but not completely. I stay in
23 constant pain all the time.

24 Q. What's the pain feel like?

25 A. It's a sharp -- I'd say it's -- it's a sharp, kind of

1 like a -- a throbbing pain.

2 Q. Okay.

3 A. It goes all the way down from my lower down to about
4 mid way to my legs.

5 Q. Okay. Down the front of your leg, the back of your
6 leg?

7 A. No, my thigh.

8 Q. Your thigh?

9 A. And down my leg.

10 Q. And when you say your leg you're motioning to your --

11 A. My right leg.

12 Q. -- right leg? How about your physical abilities? Are
13 you able to get around like you used to?

14 A. No, sir.

15 Q. Okay. Can you walk?

16 A. Not long distance, no.

17 Q. Okay. And, what -- what's long distance; what do you
18 mean?

19 A. I -- I probably could -- I probably could walk maybe a
20 block.

21 Q. Okay. Before the pain you go ahead and sit down or
22 what?

23 A. I'm sorry?

24 Q. Before you started feeling pain?

25 A. Oh, no. I sit down -- I said my back -- if that -- I

1 have to stop.

2 Q. Okay. Now, what about, let's say, standing upright?

3 A. I can't stand upright. If I do stand up for a long
4 time I have to be switching legs because, you know, my
5 leg gives me -- it -- it wears out on me.

6 Q. Okay. What other types of things aggravate your pain?

7 A. Cleaning up the house. I get very, very upset with
8 myself because I know good and well I should be able to
9 do more than what I'm doing. But I get up in the
10 mornings and I try to vacuum or wash a load of clothes
11 and I can't -- I can't finish it all. I have to stop
12 and sit down and rest until my back eases off. And
13 sometimes if it don't ease off I'll have to go take a
14 shower and something and lay down.

15 Q. Okay. Do you have any pain with bending or -- or --

16 A. Yes, sir. Putting my pants on is -- is the hardest
17 thing I have to do in the morning as far as getting
18 ready and tying my shoes. Anything that -- any time
19 I've got to bend over, especially to get clothes out of
20 a dryer; God, have mercy, it kills me.

21 Q. -- okay. Now, you -- you've talked about the pain.
22 what do you do to try to ease the pain?

23 Ms. Whitten: Commissioner, can I just state, I
24 don't have a singular objection to this line of
25 questioning but I don't know that it's

1 particularly relevant because I'm not arguing --

2 Mr. Jennings: Yes, that's fine.

3 Commissioner Wilkerson: That's -- yes, that's
4 fine.

5 Q. All right. Mr. Rhame, did you ever know that you had a
6 work -- a Worker's Compensation claim?

7 A. No, sir.

8 Q. Why not?

9 A. Well, the first place is, I don't really know what that
10 is.

11 Q. Okay. When did you first become aware that you might
12 have a Workers' Compensation claim?

13 A. When I came to see you all, a lawyer.

14 Q. Okay. Have you ever had or discussed a repetitive
15 trauma claim with anyone?

16 A. No, because I don't -- I don't really -- to be honest
17 with you, as much I'm embarrassed to say this, I don't
18 know what that means.

19 Q. Okay. And when did you first come to see -- you said
20 come to see me. When was the first time you went to
21 see a lawyer?

22 A. Probably May -- it was probably about a week maybe, not
23 -- not quite a week after -- after my last day at The
24 District.

25 Q. Okay.

1 A. It'd been about a couple of days.

2 Q. Did anybody at work ever discuss repetitive motion
3 trauma with you?

4 A. No, sir.

5 Q. Did anybody at work ever discuss compensability of a
6 workers' Comp claim with you?

7 A. No, sir.

8 Q. Okay. Did anybody ever suggest that you file a
9 workers' Compensation claim for repetitive motion?

10 A. Well, that's hard to answer and the reason I'm going to
11 say that is because I did talk to Debbie Gunter and she
12 told me, if I'm not mistaken, that I needed to go over
13 and see somebody across the street over there, which
14 would be this lady I think I spoke to, and -- about
15 that. Now, I don't remember what we talked about
16 because I've only seen her one (1) time and we -- we
17 didn't really talk a long -- a lot long.

18 Q. And you're motioning to the lady in the courtroom
19 sitting next to Ms. Whitten?

20 A. Right.

21 Q. Okay. And when was that?

22 A. That was probably -- I -- I don't know the specific
23 date on it. I'm going to probably say May the -- May
24 the 5th.

25 Q. Of what year?

1 A. of this year.

2 Q. 2009?

3 A. Yes, sir.

4 Q. Okay. Are you familiar with any of the sections of
5 workers' comp law; are you familiar with section
6 42-1-172?

7 A. No, sir.

8 Q. All right. 42-15-20?

9 A. No, sir.

10 Q. 42-15-40?

11 A. No, sir.

12 Q. That's are all the questions I have, Mr. Rhame. Please
13 answer any Ms. Whitten has for you.

14 A. Okay.

15 CROSS-EXAMINATION

16 By Ms. Whitten:

17 Q. Just a few questions for you, Mr. Rhame. Now, you were
18 hired to do heating and air conditioning in 1987, I
19 think you said?

20 A. Yes, ma'am.

21 Q. And your job as far as having to lift fifty (50) to
22 sixty (60) pounds every single day, having to lift
23 ninety (90) up to a hundred (100) pounds a few times a
24 month, that didn't change since 1987, until the time
25 you stopped working did it?

1 A. Repeat that one (1) more time, please.

2 Q. Sure. That was a long question. Your job, which --
3 well, let me break it up. Did your job involve lifting
4 fifty (50) to sixty (60) pounds every single day and
5 ninety (90) to a hundred (100) pounds a few times a
6 month?

7 A. Now -- now, you're going from every day to a month.

8 Q. The fifty (50) to sixty (60) pounds would be every day;
9 the ninety (90) to a hundred (100) pounds would be a
10 few times a month?

11 A. Well, I can't say that, ma'am. And the reason I can't
12 say that is because every job is not the same.

13 Q. Do you remember when I took your deposition?

14 A. You want me to read what -- read what I've got?

15 Q. Let me show it to you. If you could turn to page 11
16 for me.

17 A. I don't really have to do this because I feel like you
18 -- whatever you say is the truth, you know but I'll go
19 along with it.

20 Q. Thank you.

21 Commissioner Wilkerson: Remember, I tried -- I
22 tried to warn you before we started but go ahead.
23 And I don't have his deposition, so.

24 A. Was that page 11?

25 Q. Yes, sir.

1 A. Okay. On line 14?

2 Q. Page 11 on 14. Okay. I said, "Has your jobs changed
3 at all over the years"? And what did you say?

4 A. "No, ma'am".

5 Q. And then I said, "Okay. And each day how much do you
6 have to lift"? And what did you say? Could you read
7 what you said on line 19?

8 A. "Well, that -- that all depends". I said, "That all
9 depends -- that all depends, you know, each job is not
10 the same. I would say fifty (50) to sixty (60) pounds,
11 somewhere along there".

12 Q. And then I said, "Okay. What's the most you have to
13 lift"? And what did you say?

14 A. "I have to lift as much as a hundred (100) pounds".

15 Q. Can you read that word for word, please?

16 A. Let me find it. It says, "Probably --

17 Q. Line 12.

18 A. Probably the most I've -- I've ever lifted would have
19 been maybe between ninety (90) and a hundred (100)
20 pounds".

21 Q. And then I said, "And how often do you have do that"?
22 And what did you say?

23 A. Let's see what did I say. I said, "That depends on the
24 job. I mean, it all depends on the job, maybe three
25 (3), four (4) times a month, maybe".

1 Q. And I said, "Okay". What did you say? We're just
2 going to read to the bottom of the page.

3 A. I said, "Okay" -- I said oh -- you said -- the question
4 was, "Okay". And you said -- "And it -- and it could
5 be" -- I said, "And it could be more. It all depends
6 on the job".

7 Q. And then I said, "Okay. And when you're lifting this
8 fifty (50) to sixty (60) pounds what are you generally
9 doing"? And what did you say?

10 A. "Putting in fan motors or compressors".

11 Q. And then I said, "And is that something you do pretty
12 much every day"? And what did you say?

13 A. "And it -- and" --

14 Q. On line 14?

15 A. -- Line 14? "Yes. Yes, ma'am, every -- every job".

16 Q. Okay. And then I said on line --

17 A. "Every day job".

18 Q. -- and then on line 15 I said, "And that's from the
19 beginning back in the '80's"? And what did you say?

20 A. I said, "Yes, ma'am".

21 Q. And then I said -- and then what did you -- just scoot
22 down to line 21. What did you say on there?

23 A. On 21?

24 Q. I'm sorry. You know what, forget that. Let's just
25 stop there.

1 Commissioner Wilkerson: Yes.

2 Ms. Whitten: Okay.

3 Commissioner Wilkerson: Because we are being
4 repetitive now.

5 Ms. Whitten: Yes.

6 A. Well, I -- can I -- I'd like to say just one (1) little
7 thing, if I could?

8 Ms. Whitten: It's up to you, Commissioner.

9 Commissioner Wilkerson: Yes, let him go ahead.

10 Ms. Whitten: Okay.

11 A. Now, I mean, you've got to understand when I say --
12 when I say -- like, when you asked me about do -- do I
13 lift this every day. On our jobs you don't know what
14 you're going to be doing every day. What I'm saying is
15 that you may be going to do a -- a smaller job but all
16 of a sudden you get a call on the radio and say, look,
17 you need to go such and such a place, and it turns into
18 a major job then.

19 Q. Well, you told me you had to put in fifty (50) to sixty
20 (60) pound fans or compressors every day; is that not
21 true?

22 A. Yes, ma'am.

23 Q. It is true?

24 A. No, you said do I -- do I put them in every day?

25 Q. Yes.

- 1 A. No, not every day.
- 2 Q. So, what you told me in your deposition was not true?
- 3 A. If I said I put them in every day, I might have made a
- 4 mistake on that; I might have.
- 5 Q. All right. Now, you knew -- your -- your back
- 6 initially started hurting in '94; I think you already
- 7 testified about that?
- 8 A. No, I'm going to say '94, '95.
- 9 Q. Okay. And that -- and -- and you told Buddy Parsons
- 10 that these problems were because of your job; is that
- 11 right?
- 12 A. Right.
- 13 Q. And he's the one who was your supervisor at that time?
- 14 A. Right.
- 15 Q. Okay. And you actually even went out of work for your
- 16 back in the mid '90s; is that right?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And over the years -- over this entire time
- 19 nothing -- there was never a specific injury. It was
- 20 always your back just gradually got worse; is that
- 21 right?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And you did see Dr. Pappas over the years,
- 24 right?
- 25 A. Yes, ma'am.

1 Q. Pappas. And when you went to see Dr. Pappas sometimes
2 you would take a few a days off work and then you'd go
3 -- you would feel better but then you would have to go
4 back to work; is that right?

5 A. Yes, ma'am.

6 Q. Okay. And you went to a chiropractor in 2001, for your
7 lower back?

8 A. Yes, ma'am.

9 Q. And did you tell him that you were hurting because you
10 had been lifting AC units at work?

11 A. Yes, ma'am.

12 Q. Okay. And then in Trident in 2002, did you say you
13 hurt your back on the job in January of 1999?

14 A. Trident? Now, okay, that's -- I had to go there for
15 injections.

16 Q. Okay.

17 A. No, I don't think I told them what my job -- what --
18 what -- I don't -- I -- I didn't feel that it was a
19 point to tell him that to the best of memories.

20 Q. Let me ask you this. Did you go to Trident in 2002,
21 for physical therapy?

22 A. To Trident in 2002? Ma'am, I'm going to have to say,
23 no.

24 Q. Okay.

25 Ms. Whitten: Commissioner, I'll just refer you to

1 APA 8, page 57 of the APA.

2 Commissioner Wilkerson: Okay.

3 Q. Let's see. Now, the reason you didn't bring a claim
4 earlier was because -- I know you talked about the --
5 the issues with your wife but that didn't last the
6 whole fifteen (15) years, right? That only lasted --

7 A. No, ma'am.

8 Q. -- okay.

9 A. That lasted -- that lasted a good five (5) years.

10 Q. Okay. Okay. So, when did your wife pass away?

11 A. My wife passed away in 1999.

12 Q. Okay. And after that, the reason you didn't bring a --
13 a claim or ask to go under something under your health
14 insurance was because you just to be laid off; isn't it
15 right?

16 A. That's primarily the reason, right.

17 Q. Okay. And your wife did live for a while.

18 A. Exactly.

19 Q. Okay. And -- let's see. And you talked about the neck
20 injury. So, when you -- when you had the neck injury
21 in 2006, you had to go through workers' Comp system at
22 that point, right?

23 A. I talked to workman's Comp just briefly on the phone to
24 somebody.

25 Q. So, you were aware in 2006, that there's an entity

1 called workers' Comp that paid for work injuries; is
2 that right?

3 A. Well, no, because I -- I never -- I never dealt with
4 anybody concerning that. I went and talked -- I went
5 and talked over to the office over there, to Ms. -- Ms.
6 Diane. And to the best of my remembrance -- I -- I
7 don't know because it's been so long and it's --

8 Q. Well, you knew that you were going to get money that
9 wasn't health insurance, right?

10 A. -- no, ma'am. No, ma'am. No money or nothing was ever
11 explained. I meant -- matter of fact, if -- if Debbie
12 Gunter was here I do believe -- and I know Ms. Diane
13 Woodworth would say that I offer -- I did not offer --
14 and I told them rather bluntly I did want any money. I
15 just wanted my neck -- to help me with my medical
16 bills; that's what I told them.

17 Q. Right. So, you -- you chose not to request anything
18 other than going through your health insurance,
19 correct?

20 A. Because I didn't have no choice because they -- they
21 turned me down.

22 Q. Okay. What if it was your low back? You -- you said
23 -- you just testified that you didn't -- you would --
24 you decided to go under your health insurance because
25 you didn't want to get laid off, right?

1 A. Right.

2 Q. Okay. You talked about that you hadn't gotten any
3 income from working since this but you are getting
4 retirement and your -- how much are you getting every
5 month?

6 A. I get eighteen hundred and fifty dollars (\$1,850.00).

7 Q. And then from Standard, how much are you getting?

8 A. Eight hundred dollars (\$800.00).

9 Q. Okay. All right.

10 Ms. Whitten: That's all I have.

11 REDIRECT EXAMINATION

12 By Mr. Jennings:

13 Q. Okay. First off, when Ms. Whitten was having you to
14 read from page 12 and -- and she was saying that the --
15 that the lifting was not something you do every day --

16 Mr. Jennings: -- just for the record, I just want
17 to note that on page 11 the question she's
18 speaking of says, "And is that something you have
19 to do pretty much every day"?

20 Commissioner Wilkerson: I understand.

21 Mr. Jennings: Okay.

22 Ms. Whitten: And then, of course, you can see what
23 his answer is.

24 Mr. Jennings: Okay. Yes.

25 Commissioner Wilkerson: I understand. I

1 understood this before we started but keep going.

2 Q. Mr. Rhame, you said -- was -- was the issue with your
3 wife the only reason you didn't bring a work comp claim
4 for your back?

5 A. I have never filed a Work Comp in my life. And I have
6 never talked -- the only person I've ever talked to in
7 my life concerning any kind of health would be this
8 lady right here (indicating). And we only talked
9 briefly, as far as I can remember. She's probably got
10 a lot better memory than I do on it. She was -- she's
11 one (1) of the nicest people up there and she was
12 willing to help me fill out some paperwork. And I
13 don't know exactly what she put down. She probably put
14 down what I told her, I'm sure. And I trusted --
15 whatever she says I trust her word.

16 Q. Okay.

17 A. She was nice and she -- she was -- she went out of --
18 just as good as she could be to help me.

19 Q. Okay. Now, are you talking about your lower back or
20 your neck?

21 A. Lower back.

22 Q. Okay. And when was this?

23 A. Let's see. This -- I think was May -- I think it was
24 May the 5th, I think, is when Debbie and them told me
25 to go over there and see these -- see these people

1 right here.

2 Q. Okay.

3 A. And -- I don't --

4 Q. You're talking to -- you're talking about the lady
5 sitting next to Ms. Whitten there?

6 A. -- right. I'm sorry.

7 Q. That's no problem.

8 Commissioner Wilkerson: That's okay.

9 A. This is just the first time I've ever been like this
10 and I'm kind of nervous a little bit.

11 Commissioner Wilkerson: That's okay. You're doing
12 all right.

13 Q. And at that time or any time before then did you know
14 you had a compensable workers' Comp claim?

15 A. No.

16 Q. Did you ever think -- did anyone ever give you a reason
17 to think that you did?

18 A. No. And I'd like to say one (1) more thing, if I
19 could?

20 Q. Okay.

21 A. You've got to understand, and I'm trying to get people
22 to understand, and I know this lady over here does but
23 she's -- she's limited on what she can say, too. But
24 you've got to understand, The District, if you don't
25 perform over there you don't -- you -- you might not

1 stay there long. And I -- you've got to have a job and
2 with a ninth (9th) grade education, you know, you do
3 pretty much what you're told to do, when you're told to
4 do it.

5 Q. And you seem to be concerned about losing your job, did
6 you ever slow down or have any type of -- outside of
7 missing a day or two (2) here and there for pulled
8 muscles, did you ever miss an extended period of time
9 or where you have light duty restrictions for your low
10 back?

11 A. No.

12 Q. All right.

13 Mr. Jennings: That's all the questions I have.

14 Ms. Whitten: Just briefly.

15 RECROSS-EXAMINATION

16 By Ms. Whitten:

17 Q. When you went to see this lady did you tell her that
18 you had known for several years that your back was
19 hurting you and you knew it was related to work?

20 A. No, ma'am. I can't say I told her that. And I'm not
21 saying I didn't or did because I don't remember that.

22 Q. Okay.

23 A. Like I said, we had a brief, very brief, conversation.

24 Q. As we're sitting here now, are you -- well, can you
25 tell me that you had -- you've had low back pain for

1 several years and that you've known all along it was
2 related to work?

3 A. Well, to be totally honest with you, I can't say it was
4 related to work because the reason I'm saying that now
5 -- okay, wait a minute before you go to something else,
6 because I know you're fixing to get me here.

7 Commissioner Wilkerson: I told you.

8 A. I went -- when I started having back troubles with my
9 back I went to doctors and they started giving me
10 muscle relaxers and giving me time off so my back could
11 heal. So, yes, ma'am, I did go back to work.

12 Q. Yes. But you knew -- you -- whether you were out of
13 work or not out of work that your back pain was related
14 to work, right?

15 A. I would have to say yeah.

16 Q. Okay.

17 Ms. Whitten: That's all I have.

18 A. I'm not going to lie. I'm going to say yeah, I did
19 know it but I had to have a job.

20 Ms. Whitten: I understand.

21 Commissioner Wilkerson: You did a good job. You
22 may step down.

23 Witness: Well, I'd like to say one (1) more thing
24 if I could.

25 Commissioner Wilkerson: Okay. Go ahead.

1 Mr. Jennings: No.

2 Witness: No?

3 Mr. Jennings: All right.

4 Witness: I just wanted to say that The School
5 District was good enough to give me a job for the
6 time they have.

7 Commissioner wilkerson: Right.

8 Witness: And I have been internally grateful for
9 the time that I've been there. Either way the
10 case goes, I'm very grateful for the time that I
11 have -- I have been there.

12 Commissioner wilkerson: Well, it's nice of you to
13 say that.

14 Witness: Well.

15 Commissioner wilkerson: Thank you for saying that.

16 Mr. Jennings: That concludes the Claimant's case.

17 Ms. Whitten: Thank you.

18 Commissioner wilkerson: That concludes the
19 Claimant's case?

20 Mr. Jennings: Yes, Commissioner.

21 Ms. Whitten: And, actually, I don't think I'm
22 going to call my witness.

23 Commissioner wilkerson: I don't think so. This
24 concludes the case.

25 (THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT

26 2:52 P. M.)

RICKY RHAME, Employee,

YS.

CHARLESTON COUNTY SCHOOL
DISTRICT,

Employer,

and

CHARLESTON COUNTY SCHOOL
DISTRICT,

Carrier,

Defendants,

TRANSCRIPT OF
RECORD

WCC NO. 0906212

COPY

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1 AND THAT'S WHY THEY OVERTURNED IT BECAUSE WHAT THEY ARE
2 SAYING IS, AN EMPLOYEE WHO DISCOVERS SYMPTOMS OF A REPETITIVE
3 TRAUMA INJURY SO THEY DIDN'T LIKE THE DISCOVERY RULE, THEY
4 OVERTURNED IT AND THE LEGISLATURE DID LIKE THE DISCOVERY RULE
5 AND BROUGHT IT BACK AND THAT IS WHAT WE ARE UNDER RIGHT NOW.

6 THE RESPONDENT'S BRIEF TALKS ABOUT WHITE V. MUSC AND THIS A
7 - YOU ALL KNOW, THIS A REPETITIVE TRAUMA BACK CLAIM. NOW,
8 WHAT'S INTERESTING ABOUT WHITE IS THAT THE COMMISSION DENIED
9 THE CLAIM BASED ON THE STATUTE OF LIMITATIONS BECAUSE THEY WERE
10 STILL OPERATING UNDER THE DISCOVERY RULE BECAUSE SHURLKNIGHT
11 HADN'T COME OUT YET SO SHURLKNIGHT COMES OUT AND THEY HAVE TO
12 FOLLOW SHURLKNIGHT AND SO YES, THEY BASED IT ON THAT, BUT THE
13 CLAIMANT HAS A BACK INJURY IN 1997, EDGAR WHITE, HE GOES TO THE
14 DOCTOR THEN HE FILES A CLAIM IN DECEMBER OF 2000. UNDER
15 SHURLKNIGHT, THEY FOUND THAT THE STATUTE OF LIMITATIONS DIDN'T
16 APPLY. WHAT'S INTERESTING IS WHY THE COMMISSION, UNDER THE
17 DISCOVERY RULE, WHICH WE HAVE NOW HAD FOUND THE CASE WAS NOT
18 COMPENSABLE BECAUSE OF THE STATUTE OF LIMITATIONS. THEY SAID
19 THE CLAIMANT EITHER KNEW OR SHOULD HAVE KNOWN THAT REPETITIVE
20 LIFTING OF A PATIENTS AND GURNEYS WAS CAUSING INJURY TO HIS BACK
21 AS FAR BACK AS '97. THIS IS THROUGHOUT ALL OF THESE CASES, EVERY
22 SINGLE CASE THAT DEALS WITH THE DISCOVERY RULE USES INJURY,
23 WORK INJURY AND COMPENSABLE INTERCHANGEABLY. NO CASE - THERE
24 IS ABSOLUTELY NOTHING TO BASE THIS AWARD ON. ALL OF THE CASES
25 TALK ABOUT KNOWING SOMETHING IS COMPENSABLE MEANS KNOWING.

1 YOU HAVE A WORK INJURY, THERE IS NOTHING AT ALL THAT SAYS AN
2 EXCUSE OF NOT UNDERSTANDING WHAT THE LAW IS OR NOT BEING ABLE
3 TO BRING A CASE BECAUSE YOU DON'T KNOW WHAT THE TERM
4 REPETITIVE TRAUMA MEANS, IS AN EXCUSE, IT IS JUST NOT THERE.

5 THE BOTTOM LINE IS HE KNEW COMPENSABLE, FOR PURPOSES OF
6 THE DISCOVERY RULE, IS THAT YOU KNEW THE WORK WAS CAUSING THE
7 INJURY AND THERE IS ABSOLUTELY NO QUESTION ON THAT. THERE IS NOT
8 ANY FACTUAL DISPUTE THAT THE CLAIMANT KNEW THAT THIS STARTED
9 IN 1994 OR 1995, THAT HIS JOB NEVER CHANGED HE SAID IT GRADUALLY
10 GOT WORSE OVER THE YEARS THAT THERE WAS NEVER A SPECIFIC INJURY.
11 THOSE ARE UNDISPUTED FACTS. THERE IS NO WAY UNDER THOSE FACTS
12 THAT THE CLAIMANT HAS A REPETITIVE TRAUMA CLAIM UNDER THE
13 STATUTE OF LIMITATIONS.

14 I JUST WANT TO READ MY CONCLUSION, IF THAT'S OKAY. THERE'S
15 NOTHING WHATSOEVER IN ANY CASES TO SUPPORT THE ASSERTION THAT
16 KNOWING AN INJURY IS COMPENSABLE UNDER THE DISCOVERY RULE
17 MEANS UNDERSTANDING THE WORKERS' COMPENSATION SYSTEM. THIS
18 WOULD LEAD TO UP SURD RESULTS LIKE THIS ONE. THE RESPONDENT'S
19 ARGUMENT IN HIS BRIEF THAT A CASE DOES NOT BECOME COMPENSABLE
20 UNTIL TTD IS OWED IS ALSO COMPLETELY UNSUPPORTED AND IS
21 ACTUALLY CONTRADICTED BY THE CASE LAW. THAT WOULD TAKE US
22 RIGHT BACK TO THE SHURLKNIGHT LAW AND IF THE LEGISLATURE HAD
23 INTENDED ON KEEPING THAT LAW, THEY WOULDN'T USE THAT LANGUAGE
24 "THE LAST DATE OF EXPOSURE" LANGUAGE. OUR REPETITIVE TRAUMA
25 LAW IS IN PLACE TO PREVENT SCENARIOS LIKE THIS ONE. THE SINGLE

1 COMMISSIONER UNQUESTIONABLY MISAPPLIED THIS LAW AND THE ORDER
2 MUST BE OVERTURNED.

3 COMMISSIONER: LYNDON: THANK YOU.

4 MR. JENNINGS.

5 MR. JENNINGS: MAY IT PLEASE THE COMMISSION? IN
6 RESPONSE, THE CLAIMANT REQUESTS THE FULL COMMISSION PANEL
7 AFFIRM THE DECISION AND ORDER OF THE SINGLE COMMISSIONER IN ITS
8 ENTIRETY. ALTHOUGH APPELLANTS RAISED MULTIPLE ISSUES IN THEIR
9 FORM 30, I CHOSE TO JUST ADDRESS ONE, THE STATUTE OF LIMITATIONS
10 ARGUMENT.

11 AS STATED BY THE APPELLANTS, THE CLAIMANT IS 53 YEARS OLD,
12 BARELY FINISHED THE NINTH GRADE, WORKED FOR THE CHARLESTON
13 COUNTY SCHOOL DISTRICT FOR 22 YEARS IN THE SAME JOB AS AN AIR
14 CONDITIONING TECHNICIAN. HIS DUTIES INCLUDE REMOVING, REPLACING
15 AND REPAIRING AIR CONDITIONERS ACROSS THE COUNTY AT EVERY
16 SCHOOL. WHILE THE CLAIMANT ADMITS HE DID HAVE BACK PAIN PRIOR
17 TO MAY OF 2009, WHICH WE HAVE AS THE DATE OF THIS ACCIDENT IN THIS
18 CLAIM, AT NO TIME WAS IT DISABLING. HE BEGAN WORKING WITH THIS
19 COMPANY IN 1987 AS AN AIR CONDITIONING TECHNICIAN, WORKS FULL
20 DUTY ALL THE WAY THROUGH THIS TIME MAY 5TH, 2009. NO TIME WAS HE
21 ON LIGHT DUTY. HE DID NOT MISS WORK BECAUSE OF THIS ACCIDENT FOR
22 ANY EXTENDED PERIOD OF TIME. HE DID NOT ADDRESS THE ISSUES AT
23 ALL UNDER THE WORKERS' COMPENSATION CLAIM PRIOR TO THIS DATE.
24 HE FELT SUCH A STRONG PAIN AT THIS TIME AND NOT ONLY COULD HE
25 NOT FINISH THE JOB THAT HE WAS WORKING ON WITH AN AIR

1 CONDITIONER, HE COULDN'T EVEN STAND UP, HE COULDN'T GO BACK TO
2 WORK, HE WORKED FOR THIS PLACE FOR 22 YEARS AND HE COULDN'T
3 FINISH HIS JOB. SECTION 42-15-40 CLEARLY STATES THAT COMPENSATION
4 IS BARRED ONCE A CLAIM IS FILED WITHIN TWO YEARS AFTER THE
5 EMPLOYEE KNEW OR SHOULD HAVE KNOWN HIS CLAIM WAS
6 COMPENSABLE. THERE IS NO WAY THAT PRIOR TO THIS THE CLAIMANT
7 KNEW HIS CLAIM WAS COMPENSABLE. THE ACT DOES NOT TALK ABOUT
8 WORK RELATED, IT TALKS ABOUT COMPENSABLE AND THAT'S WHY THIS
9 WORD IS USED SPECIFICALLY OVER AND OVER AGAIN. LESLIE TOUCHED
10 ON WHITE V. MUSC, IT CLEARLY DOES ADDRESS THE SITUATION ON LOW
11 BACKS. IN WHITE, THE CLAIMANT COMPLAINED OF WORK RELATED LOWER
12 BACK PAIN NUMEROUS TIMES OVER A THREE-YEAR PERIOD, PRIOR TO HIS
13 FILING A FORM 50 HEARING REQUEST IN THE YEAR 2000. THE COURT OF
14 APPEALS RULED THAT ALTHOUGH HE COMPLAINED OF BACK PAIN, THE
15 COMPENSABLE INJURY WAS A RESULT OF THE REPETITIVE MOTION
16 TRAUMA CULMINATING IN DISABILITY IN THE YEAR 2000 RATHER THAN
17 THE NON-DISABLING BACK PAIN HE HAD THREE YEARS PRIOR WHEN HE
18 ORIGINALLY HURT THE BACK. THEREFORE THE STATUTE DID NOT RUN, HE
19 DIDN'T KNOW HE WAS OVER THE TWO YEAR LIMIT. BECAUSE RHAME,
20 "CLEARLY KNEW FOR 15 YEARS"... THAT HE HAD HURT ON THE JOB AND
21 THEREFORE SHOULD BE BARRED BY THE STATUTE OF LIMITATIONS, THAT
22 HE JUST "CHOSE NOT TO FILE A SUIT", THIS IS NOT THE CASE. AT NO TIME
23 WAS THE CLAIMANT AWARE THAT HE HAD A COMPENSABLE LOWER BACK
24 INJURY, AT NO TIME---

1 COMMISSIONER LYNDON: WHEN HE SAID -- I THOUGHT
2 COUNSEL STATED THAT HE SAID, "THE REASON I DIDN'T FILE A CLAIM IS I
3 THOUGHT I WOULD LOSE MY JOB".

4 MR. JENNINGS: "WELL, THERE WAS MULTIPLE REASONS HE
5 DIDN'T FILE A CLAIM, BUT AT THAT TIME, HE WASN'T AWARE OF HIS
6 ACTUAL INJURY. THE CLAIMANT KNEW HE HAD BACK PAIN, THE
7 CLAIMANT WASN'T AWARE OF ANY INJURY AT THAT TIME. THE FIRST
8 TIME IN WHICH HE KNEW ABOUT AN INJURY WAS JANUARY 29TH, 2009,
9 WHEN HE FINALLY WAS ABLE TO SEE A SPECIALIST. THAT WAS THE FIRST
10 TIME HE HAD AN MRI, IT WAS THE FIRST TIME ANYBODY ADDRESSED THIS
11 AND SAID THAT THESE INJURIES ARE BECAUSE OF YOUR LOWER BACK.

12 COMMISSIONER BECK: HOW DO YOU DISTINGUISH BETWEEN
13 AN INJURY AND KNOWING YOU HAVE BACK PAIN EVERY TIME YOU DO
14 SOMETHING ON THE JOB?

15 MR. JENNINGS: WELL, IT WASN'T EVERY TIME HE DID
16 SOMETHING AND HE NEVER TOOK TIME OUT OF WORK, HE WAS STILL ABLE
17 TO DO THOSE DUTIES IN FULL.

18 COMMISSIONER BECK: IF I UNDERSTOOD MS. WHITTEN'S
19 ARGUMENT A MINUTE AGO, THIS DATED BACK SOME NUMBER OF YEARS?

20 MR. JENNINGS: YES, HE HAD BACK---

21 COMMISSIONER BECK: AND THESE COMPLAINTS HAD BEEN
22 ONGOING?

23 MR. JENNINGS: THAT'S NOT -- HE HAD AN ISSUE IN 1994 WITH
24 THE SAME EMPLOYER WHERE HE SPOKE TO HIS EMPLOYER AND SAID HE
25 HAD PAIN FROM A NORMAL DAY'S WORK IN 1994. HE WAS TREATED VERY

1 BRIEFLY, DID NOT MISS TIME, DID NOT GET ANY TREATMENT BEYOND JUST
2 GETTING EVALUATED BY A DOCTOR, HE GOES RIGHT BACK TO DOING HIS
3 JOB. THIS ISN'T SOMETHING THAT HE COMPLAINED ABOUT REGULARLY,
4 THIS ISN'T SOMETHING HE WENT TO HIS EMPLOYER ABOUT AND
5 COMPLAINED ABOUT ALL THE TIME.

6 COMMISSIONER BECK: WAS HE TREATED AFTER THAT
7 AGAIN?

8 MR. JENNINGS: YES, NOT FOR ANOTHER TEN YEARS.

9 COMMISSIONER BECK: OKAY.

10 MR. JENNINGS: THE CLAIMANT SUFFERED AN ACUTE WORK
11 RELATED INJURY BACK IN 2006 TO HIS NECK. IT WAS AN ACUTE INJURY,
12 HAPPENED ON THE JOB. AT THAT TIME, THE CLAIMANT DID NOT FILE A
13 WORKERS' COMPENSATION CLAIM BECAUSE AS HE STATED HE DIDN'T
14 KNOW HE COULD. IT WAS A DENIED ACUTE INJURY, THIS ENDED UP BEING
15 A CERVICAL FUSION CASE, ONCE AGAIN RIGHT BACK ON THE JOB DOING
16 ALL OF HIS JOB DUTIES. IF HE DIDN'T THINK HE HAD A COMPENSABLE
17 CLAIM WITH AN ACUTE INJURY, HOW IS HE SUPPOSED TO KNOW ABOUT
18 THE REPETITIVE MOTION TRAUMA WHEN HE IS ABLE TO CONTINUOUSLY
19 DO HIS JOB? THE MERE FACT THAT HE KNOWS HE HAD WORK RELATED
20 PAIN IS NOT ENOUGH FOR AN EMPLOYEE TO HAVE A COMPENSABLE
21 CLAIM, LET ALONE KNOWLEDGE OF A COMPENSABLE CLAIM. HE HAD NO
22 GROUNDS TO FILE A WORKERS' COMPENSATION CLAIM BASED ON WHAT
23 THE EMPLOYER TOLD HIM. TWO DAYS AFTER HE SPOKE TO HIS EMPLOYER
24 ON MAY 5TH, 2009, THE EMPLOYER IMMEDIATELY SAID, "YOU DON'T HAVE
25 A CLAIM, WE ARE DENYING THIS".

1 COMMISSIONER BECK: IS THERE ANY TESTIMONY IN THE
2 HEARING RECORD IN WHICH YOUR CLAIMANT INDICATES SOME
3 RELATIONSHIP BETWEEN HIS WORK DUTIES AND HIS BACK PAIN AND IF SO,
4 WHEN DID THAT OCCUR?

5 MR. JENNINGS: ON MAY 5TH, 2009, CLAIMANT WENT TO HIS
6 EMPLOYER ON THE DATE THAT WE HAVE AS HIS DATE OF INJURY.

7 COMMISSIONER BECK: NO, I THINK YOU MISSED MY
8 QUESTION. AT ANY POINT IN TIME PRIOR TO THAT, DURING HIS
9 TESTIMONY DOES HE EVER DRAW ANY RELATIONSHIP BETWEEN BACK
10 PAIN AND HIS JOB DUTIES?

11 MR. JENNINGS: THE ONLY TIME WAS WHEN HE WENT TO HIS
12 EMPLOYER IN 1994 AND 1995.

13 COMMISSIONER LYNDON: THE ORDER SAYS THAT HE MISSED
14 TIME AND WHEN HE MISSED TIME, HE GOT BETTER AND CAME BACK TO
15 WORK, I BELIEVE THAT WAS IN THERE. THE INFERENCE BEING THAT WORK
16 WAS BOTHERING HIS BACK AND HE LAID OFF A FEW DAYS, I DON'T KNOW
17 HOW OFTEN HE DID, AND STAYED OUT AND CAME BACK AND IT WAS
18 OKAY.

19 MR. JENNINGS: UH-HUH.

20 COMMISSIONER LYNDON: THAT STANDS FOR NOTHING IN
21 YOUR MIND AS FAR AS HIS KNOWLEDGE?

22 MR. JENNINGS: TAKING OFF A FEW SICK DAYS ON HIS OWN
23 TO---

24 COMMISSIONER LYNDON: FOR HIS BACK TO GET BETTER,
25 THAT'S WHAT THE ORDER SAYS.

1 MR. JENNINGS: AND OUR POSITION IS THAT HE WAS ABLE -- IT
2 WAS NOT A DISABLING BACK PAIN AND AS ADDRESSED IN CASES LAID
3 OUT, ESPECIALLY IN MAULDIN, THERE IS A DIFFERENCE BETWEEN A
4 MEDICAL ONLY CLAIM AND A COMPENSABLE CLAIM. THESE ARE NOT THE
5 SAME THING. THE CLAIMANT HAD NO DISABLING QUALITIES AT THAT
6 TIME, HE WAS ABLE TO GO AND DO HIS JOB COMPLETELY AND EVEN AS I
7 STATED, ON JANUARY 29TH, 2009, HE FINALLY HAD AN MRI DONE AND
8 FINALLY SAW THAT THERE WAS INJURIES THERE TO HIS BACK. ONCE
9 AGAIN, RETURNED TO FULL DUTY STILL. IT WASN'T UNTIL THAT TIME ON
10 MAY 5TH THAT HE COULDN'T DO HIS JOB. HE HAD BEEN AT THE SAME JOB
11 FOR 22 YEARS, OVER AND OVER AGAIN, A PHYSICALLY STRENUOUS JOB.

12 LESLIE TALKED ABOUT THE MAUDLIN CASE. IT GOES THROUGH A
13 WORKER INJURED HIS LEFT KNEE IN 1985 AND REPORTED IT, SHE WASN'T
14 RATED. SHE WAS TREATED AND RELEASED ON THAT SAME DAY. YEARS
15 AND YEARS LATER, SHE BROUGHT THE CLAIM BACK ON HER CASE AFTER
16 THE STATUTE OF LIMITATIONS BY DEFINITION SHOULD HAVE RUN, BUT
17 MAUDLIN WAS FOUND COMPENSABLE ON ALL THREE LEVELS THAT SHE
18 HAD SEEN. THE SUPREME COURT SHOWED THE DIFFERENCE BETWEEN A
19 MEDICAL ONLY CLAIM AND A COMPENSABLE CLAIM. INJURIES WITH LOST
20 TIME OR PERMANENCY ARE COMPENSABLE CLAIMS, THAT'S WHAT THE
21 COURT STATED IN MAUDLIN. MAUDLIN WAS ONLY COMPENSABLE WHEN
22 SHE WAS DIAGNOSED WITH A MENISCUCAL TEAR THREE YEARS AFTER THE
23 ORIGINAL INJURY IN WHICH SHE WAS SEEN AND RELEASED BY THE
24 EMERGENCY ROOM ON THAT DAY. IT WASN'T EVER SHE DIDN'T KNOW SHE
25 HAD A COMPENSABLE CLAIM, BUT SHE DIDN'T HAVE A COMPENSABLE

1 CLAIM. THE CLAIM WOULD HAVE BEEN DENIED JUST LIKE IT IS IN OUR
2 FACTS, IF THE CLAIM ONLY ACCRUED UPON THE DIAGNOSIS, AS I SAID, A
3 MEDIAL MENISCUS TEAR. THE PUBLIC POLICY OF THE ACT CERTAINLY
4 FAVORS A LIBERAL CONSTRUCTION OF THE STATUTE OF LIMITATIONS,
5 THERE'S NO DOUBT ABOUT IT AND BY DEFINITION, REPETITIVE TRAUMA
6 INJURIES HAVE ADDITIONAL COMPLICATIONS OR ELSE WE WOULDN'T
7 HAVE THAT SECTION AT ALL IN THE ACT. IT IS OBVIOUS THAT EVEN
8 GRADUAL ONSET CAUSES ALL KINDS OF PROBLEMS BECAUSE IT IS
9 CUMULATIVE IN NATURE, IT IS VERY DIFFICULT TO SEE THE REPETITIVE
10 TRAUMATIC EFFECTS, THAT'S WHY WE NEED TO LOOK AT 42-1-172 BY THE
11 DIAGNOSIS OF THE DOCTORS AS DR. JOHN JOHNSON STATED THIS WAS A
12 REPETITIVE TRAUMA CLAIM WHICH MET ALL THE DEFINITIONS.

13 IF THE STATUTE OF LIMITATIONS HAD RUN ON THE FIRST DAY THAT
14 AN INJURED WORKER EXPERIENCES PAIN THEY WOULD ALMOST ALL BE
15 BARRED, THERE'S NO WAY. THE CLAIMANT IN THIS INJURY, IF HE WAS NOT
16 ALLOWED TO RECEIVE BENEFITS WOULD BE PUNISHED BECAUSE OF HIS
17 LOYALTY TO HIS COMPANY, PUNISHED BECAUSE HE WAS A HARD
18 WORKER, PUNISHED BECAUSE HE WANTED TO FINISH THE JOB, SOMETHING
19 THAT HE HAD BEEN LOYAL TO FOR 22 YEARS. THAT'S JUST INACCURATE.
20 AS FORMER CHIEF JUSTICE HOWARD STATED IN SHURLKNIGHT, WHICH IS A
21 VERY SIMILAR CASE TO OUR CLAIM, "THE EMPLOYEE IS PUNISHED FOR
22 CONTINUING TO PERFORM THE JOB DURING THE EARLY STAGES OF THE
23 INJURY BY DENIAL OF THE RIGHT TO MAKE A LEGITIMATE CLAIM FOR
24 BENEFITS WHEN THE INJURY FINALLY RENDERS THE CLAIMANT UNABLE
25 TO PERFORM THEIR JOB. FURTHERMORE, IT IS LIKELY TO UNDERMINE THE

1 EMPLOYEE/EMPLOYER RELATIONSHIP BY REQUIRING THE EMPLOYEE TO
2 FILE AN EARLY CLAIM EVEN THOUGH HE OR SHE IS READY AND ABLE TO
3 WORK". JUST AS IN THIS CASE, AFTER THE NECK CLAIM, THE EMPLOYER
4 SAID, "WE ARE DENYING BENEFITS".

5 THE SINGLE COMMISSIONER CORRECTLY FOUND THE CLAIMANT
6 FILED HIS WORKERS' COMPENSATION CLAIM WITHIN THE APPROPRIATE
7 STATUTE OF LIMITATIONS. HE SUSTAINED COMPENSABLE REPETITIVE
8 TRAUMA INJURIES TO HIS BACK, TO HIS RIGHT HIP AND TO HIS RIGHT
9 LOWER EXTREMITY. THE RESPONDENT RESPECTFULLY REQUESTS THE
10 COMMISSION'S APPELLATE PANEL AFFIRM THE SINGLE COMMISSIONER'S
11 DECISION IN ITS ENTIRETY.

12 COMMISSIONER LYNDON: THANK YOU, SIR.

13 MS. WHITTEN.

14 MS. WHITTEN: THANK YOU, COMMISSIONERS. I JUST WANT
15 TO -- YOU KNOW, I DON'T WANT TO GO THROUGH TOO MUCH, BUT
16 CLAIMANT'S DEPOSITION ON PAGE 37, LINE 16, QUESTION "OKAY. SO
17 THAT'S THE REASON YOU STARTED GOING TO SEE DR. JOHNSON?"
18 ANSWER, "THAT'S THE REASON I HAD TO GO TO HIM. I COULDN'T PUT IT
19 OFF ANY LONGER." QUESTION, "OKAY. WAS IT HURTING BEFORE THEN
20 AND IT JUST GOT WORSE AND THAT'S WHY YOU WENT TO DR. JOHNSON?"
21 ANSWER, "IT WAS HURTING ME OFF AND ON, ON AND OFF, AND SOMETIMES
22 IT WOULD BE SEVERE, AND THAT'S WHY I'D GO SEE DR. PAPPAS AND HE
23 WOULD GIVE ME SOMETHING FOR PAIN AND TELL ME TO GO HOME AND
24 TAKE A FEW DAYS REST AND I WOULD DO THAT, AND BECAUSE I'D BE OFF
25 MY BACK, I GUESS, IT WOULD EASE OFF, THEN I'D GO RIGHT BACK TO

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0906212

Ricky Rhame, vs. Charleston County School District, and Charleston County School District,	Employee, Claimant, Employer, Carrier, Defendants.

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

TO: THE HONORABLE AVERY B. WILKERSON, JR., COMMISSIONER, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND LESLIE M. WHITTEN, ESQ., ATTORNEY FOR THE DEFENDANTS:

PLEASE TAKE NOTICE THAT the undersigned attorney pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330, Code of Laws of South Carolina, 1976, as amended, herewith submit(s) the following written medical reports, copies of which are attached hereto, as direct evidence on behalf of the Claimant:

APA MEDICAL SUBMISSIONS

APA #	PROVIDER	DATED	NO. PAGES	PAGE NOS.
1	Southeastern Spine Institute	01/29/2009 to 09/10/2009	13 Pages	Pages 1-13
2	Jeffrey W. Buncher, MD	09/02/2008 to 05/12/2009	7 Pages	Pages 14-20
3	John Goeldi, M.D.	05/01/2009 to 05/04/2009	6 Pages	Pages 21-26
4	Doctor's Care-West Ashley	05/05/2009	3 Pages	Pages 27-29

APA EXHIBIT SUBMISSIONS

EXH	EXHIBIT	DATED	NO. PAGES	PAGE NOS.
A	Letter to Mr. Rhame from Glenn Martin	05/06/2009	1 Page	Page 30
B	Standard Insurance Long Term Disability Benefits	05/13/2009	7 Pages	Pages 31-37

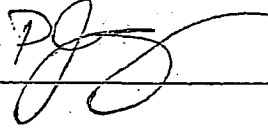
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be provided to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Claimant, Ricky Rhame

JOYE LAW FIRM, LLP

BY:  _____

PATRICK L. JENNINGS, ESQUIRE
5861 Rivers Avenue, Suite 101
N. Charleston, SC 29406-6096
ATTORNEYS FOR CLAIMANT

Charleston, SC
November 18, 2009

SOUTHEASTERN SPINE INSTITUTE

RHAME, RICKY

Patient #216840

January 29, 2009

Mr. Rhame is seen for the first time today at Southeastern Spine Institute. He is a 52-year-old male from North Charleston. He works in a very physical job with heating and air for Charleston School District. He has done this for 22 years and has six more years until he is able to retire. He has a history of cervical problems due to a work injury and feels he hurt his back at the same time, but since his cervical symptoms were more severe, this is what was first looked into. He ultimately had surgery for a large herniation. He had no other workup or treatment of his lumbar spine and has continued having progressively worsening symptoms to the point of being constant. The pain is in the right lower thoracic paraspinal region and left lower lumbar region. It is worse with physical activity. He has lost 80 lbs. in an effort to reduce the symptoms and this has helped somewhat. He is sleeping okay. He denies any lower extremity pain, weakness or numbness. He has no bladder or bowel problems. He has tried Ibuprofen, but this does not give him much relief.

Family History: Noncontributory.

Review of Systems: Positive for pain.

Social History: The patient lives in North Charleston alone. He works in heating and air for the school for 22 years. He enjoys hunting and fishing.

Past Medical History: Significant for hypertension and non-insulin-dependent diabetes mellitus.

Medications: He is taking medicine for these, but feels that his doctor will take him off as they have been controlled since he has lost weight.

Allergies: He has no known drug allergies.

Physical Examination: The patient is a cooperative, middle-aged male, 5'11" tall and 215 lbs. He is alert and oriented x3. Cranial nerves II-XII are grossly intact. He has a normal-appearing spine on gross inspection. He has tenderness to palpation over the lower thoracic and lumbar regions. He has palpable muscle spasms. His range of motion is good. There are no myelopathic findings. He has a negative Patrick's sign. Deep tendon reflexes are symmetrical. Straight leg raise causes worsening low back pain.

Assessment: Rule out facetogenic versus discogenic pain.

Plan: At this point, given the length of time the patient has been symptomatic, the progressive worsening, the affect on his lifestyle and lack of response from his own

(Continued)

SOUTHEASTERN SPINE INSTITUTE**RHAME, RICKY**

Patient #216840

January 29, 2009

Page 2

treatment, I think further diagnostic studies are indicated, particularly a lumbar MRI scan. I have given him some Darvocet for analgesia. He is in agreement with the treatment strategy. I will plan on seeing him back in the clinic after we have the scan to discuss findings and treatment options.

John F. Johnson, M.D.

JFJ/js

Dictated but not read

SOUTHEASTERN SPINE INSTITUTE

RHAME, RICKY

Patient #216840

May 12, 2009:

Mr. Rhame returns, having called in for an appointment.

He had difficulty returning to work because of pain with virtually any activity.

His symptoms are now severe and constant in both cervical and lumbar spine.

He has an attorney helping him.

He was seen at Doctor's Care and was referred back here. He is having pain in his testicles as well as in his back and legs now.

Exam is essentially unchanged. He is thought to suffer from discogenic pain in his lumbar spine.

I have recommended a 4-5 LESL. I have given him Percocet for analgesia and we will see him back in clinic in a couple of weeks.

John F. Johnson, M. D.

JFJ/hcs

Dictated but not read.

SOUTHEASTERN SPINE INSTITUTE

Southeastern Spine Institute ASC

Mt. Pleasant – Chuck Dawley

Patient: Ricky Rhame
ID#: 216840

Date: 05/12/09

Surgeon: Leonard E. Forrest, M.D.

Preoperative Diagnosis: Disc Disruption

Postoperative Diagnosis: Disc Disruption

Operation: 1. L4-5 Lumbar Epidural Steroid Injection

Procedure Note:

After informed consent was obtained from the patient, and IV placed, the patient was taken to the Block Suite and placed prone on the fluoroscopy table. Conscious sedation was obtained using IV Versed. Under fluoroscopy, the appropriate sites of injection were identified and the overlying skin marked. The area was then prepped and draped in the usual sterile fashion. The skin and subcutaneous tissues were anesthetized with 1% Lidocaine. A 3 ½ inch 17 gauge Tuohy needle was advanced to the appropriate interspace. The epidural space was reached utilizing loss of resistance technique. Correct positioning was confirmed under fluoroscopy with 1 cc Isovue contrast dye (200 mg/mL Iodine) with good epidural flow. Aspiration was negative for blood and CSF. Then a solution of 2 cc 1% Lidocaine and 80 mg of Methylprednisolone was injected.

Vital signs were monitored including blood pressure, pulse, and O₂ saturation prior to, during, and after the procedure. The patient tolerated the procedure well without complications and was discharged without incident.

Leonard E. Forrest, M.D.

LEF/js
T - 5/20/09



SPINAL SURG.
Donald R. Johnson, II, MD
Steven C. Polard, MD
Thomas F. Routh, MD
Danny Butler, PA-C
Justin Swain, PA-C

CONSERVATIVE SPINE CARE
Leonard E. Forrest, MD
John F. Johnson, MD
G. Robert Richardson III, MD

PAIN MANAGEMENT
Mark D. Netherton, MD
Virginia Blaise, PA-C

MAIN OFFICE
1106 Chuck Dawley Blvd
Mt. Pleasant, SC 29464
(843) 849-1551
Fax 884-0629
1-800-432-0274

1941 SAVAGE RD., STE 100E
CHARLESTON, SC 29407
(843) 763-2720

PATIENT STATUS REPORT

Date: 5/12/09

Name: Kelly Krame

Diagnosis: Lumbar Disc Disorder.

Work Limitations

None

Cannot Work

May Work with Restrictions

✓

Patient is unable
to work due to
spinal condition.
We will re-evaluate
@ next appointment

Restrictions

Lifting 0 to 5 lbs.

Lifting 0 to 20 lbs.

Lifting 50 and more lbs.

Pushing

Bending

Pulling

Twisting

Alternate sitting and standing

No sweeping or vacuuming

Treatment Plan

Signature: [Signature]

Follow-Up Appointment: 6/02/09

SOUTHEASTERN SPINE INSTITUTE

Southeastern Spine Institute ASC

Mt. Pleasant - Chuck Dawley

Patient: Ricky Rhame
ID#: 216840

Date: 06/03/09

Surgeon: John F. Johnson, M.D.

Preoperative Diagnosis: Lumbar Radiculitis

Postoperative Diagnosis: Lumbar Radiculitis

Operation: 1. L4/5 Lumbar Epidural Steroid Injection

Procedure Note:

After informed consent was obtained from the patient, and IV placed, the patient was taken to the Block Suite and placed prone on the fluoroscopy table. Conscious sedation was obtained using IV Versed. Under fluoroscopy, the appropriate sites of injection were identified and the overlying skin marked. The area was then prepped and draped in the usual sterile fashion. The skin and subcutaneous tissues were anesthetized with 1% Lidocaine. A 3 ½ inch 17 gauge Tuohy needle was advanced to the appropriate interspace. The epidural space was reached utilizing loss of resistance technique. Correct positioning was confirmed under fluoroscopy with 1 cc. Isovue contrast dye (200 mg/mL Iodine) with good epidural flow. Aspiration was negative for blood and CSF. Then a solution of 2 cc. normal saline and 80 mg. of Methylprednisolone was injected.

Vital signs were monitored including blood pressure, pulse, and O₂ saturation prior to, during, and after the procedure. The patient tolerated the procedure well without complications and was discharged without incident.

John F. Johnson, M.D.

JFJ/js
T - 6/15/09

SOUTHEASTERN SPINE INSTITUTE**RHAME, RICKY**

Patient #216840

June 24 2009

Mr. Rhame returns following his second injection. Unfortunately, he did not get the same significant improvement that he previously had. If anything, he may be worse with burning pain in his back and in his lumbar spine and his lower thoracic spine. He is still very limited in his activities, having more sitting intolerance as well as insomnia. He is rarely taking any pain medicines saying that he doesn't like the side effects from these and doesn't want to be dependent on narcotics use. He is quite distressed about his situation saying that he loves his job and wants to work, but again physically he doesn't feel like he's capable of doing this type of work. He is thought to suffer from discogenic pain.

I've had a long discussion with him today about his situation. I believe he needs a third and final injection; and we discussed ramifications if this failed to get sustained improvement, which would likely be discography. I also want him to continue his therapy, take medicines as needed. He needs to remain out of work, and now he's applying for Social Security disability. I've told him I would support him in any way I could as I feel he has a legitimate claim.

John F. Johnson, M.D.

JFJ/dmp

Dictated but not read

Charleston Pain and Rehabilitation

Patient: Ricky Rhame Age: 52 Date: APR 14 2009

Organisms: NKID Meds: Clonaz 15mg BID, Taztia XT 240mg BID, Coreg 12.5 BID Problem list reviewed

Dry: PT requests 6 mo rx pills
some WPain - from muscle 3 d. ago. DCLWS
@ 3 x / week.
has always doing well. gives as needed
consistently with. Not good.
Plans to go to dr. again. wanted to notify them of dx.

Metformin 1000mg BID
pravastatin 40mg TQHS
Cymbalta 60mg TQHS
Doxazosin 4mg TQHS

Location *Duration *Quality *Context *Severity *Modifying factors *Timing *Signs/Sx

Notes no change from previous visit
 V/H: 122/98 120/83
 Surg: 2nd read
 Pulse: 756
 Resp: 12
 Temp: 36.6
 Weight: 175

Denotes system WNL
Denotes system complaint
General: fever, chills, wt change
Head/Hair/Nails: rash, pigment or texture change
Head/Neck: headaches, loss of consciousness, dizziness
Eyes: blurring, pain, change in vision
Nose/Throat: epistaxis, hoarseness, sore throat
Lungs: cough, dyspnea, pain with respiration
Heart: chest pain, palpitations, orthopnea, claudication
GI: dysphagia, abd pain, n, v, const, diarrhea; rectal bleed
GU: dysuria, hematuria, incont, pen/vag d/c. ↓ sex fxn
Endo: polyuria, polydipsia, head/cold intolerance
Hema: weakness, fatigue, bruising/bleeding tendency
Lymph: enlargement of lymph, tenderness, supination
Neuro: loss/↓ in sensation, syncope, tremor, memory loss
MS: jt pain/stiffness/erythema, bone deformity, ↓ ROM
Psych: depression, nervousness, tension, ↓ concentration

Pertinent Positives:

Physical Exam: ☐ = As typed (Normal), abnormalities otherwise stated

General Appearance: Alert, cooperative in NAD
 Skin: No rashes or other changes
 ENT: NC/AT, PERRI, EOMI, normal sclera, fundus, tm's, oropharynx, and dentition
 Neck: Supple and nontender without mass or thyromegaly, normal carotids. No JVD
 Lymph Nodes: No cervical, supraclavicular, axillary, epirochlear or inguinal lymphadenopathy
 Cardiovascular: PMI in 5th intercostals space, RRR without mrg, S1-S2 normal, Pulses 4+ bilaterally incl. dorsalis pedis
 Abdomen: No masses, discharge, or skin changes
 Respiratory: Normal chest configuration. Lungs clear to auscultation and percussion
 Extremities: Soft, NT, normal b.s. No mass or HSM
 Genital: Normal external genitalia. Females: □ Vaginal vault with clear mucosa. □ Cervix surgically absent. □ Cervix without CMT. □ No adnexal masses or tenderness. □ PAP taken □ Males: Testicles and scrotum without mass bilaterally
 Rectal: No vertebral or CVA tenderness
 Stool: Normal tone, no masses. Brown, hemoccult negative stool. □ Males: Prostate without nodules
 Neuromuscular: No clubbing, cyanosis or edema
 Musculoskeletal: No joint deformities. Normal range of motion in hands, wrist, elbows, shoulders, spine, hips, knees, ankles
 Neuro: Alert and oriented x 3, CN's II-XII intact. Normal muscle tone and bulk, 5+/5 strength throughout. Sensation to light touch and vibration, DTR's 2+ symmetrically with normal Babinski, normal gait
 Psych: Normal and appropriate affect

Assessment/Plan:

Health Care Maintenance: pelvic, rectal, breast exam done. Mammo ordered. Self-breast exam discussed, calcium supplements recommended.
of cards given □ Flex sig ordered □ PSA/DRE performed. □ Immunizations given. □ Tetanus □ Flu □ Pneumovax
 Follow-up: 5 mo.
 M.D. Signature: [Signature] Nurse: NS

1. DM.
Will ✓ Hgb A1c.
Cont. diet, meds.
2. HTN.
Good control.
Cont. meds.
3. Hip pain
Relax.
4. Anxiety
Cont. meds.
5. LBP, OTC meds.
Offwork 3 d.

Charleston Pain and Rehabilitation

MAY 12 2009

atient: Ricky Rhame

Age: 52 Date: _____

llergies: NKDA Meds: Careg 12.5mg, Pravachol 40mg, Doxazosin 4mg, ☐ Problem list reviewed

c: DM, HTN

Testicular pain "all the time". He wonders if it is 2°
DDP L5-S1. (Lawrence John Johnson at spine institute
to abnormal MRI).

Diltiazem 20mg
Tramadol 15mg
Motrin 1000mg
Cymbalta 60mg

No prior drainage, hematuria, dysuria, similar
pain many times before, always resolved on own. Pain worse walking.
"Sivener's" pain. Not severe

Location: _____ Duration: years Quality: _____ Context: _____ Severity: _____ Modifying factors: _____ Timing: _____ Signs/Sx: _____

Denotes no change from previous visit

PMH: _____

PHSurg: _____

FH: _____

Tobacco: _____

ETOH: _____

•BP

2nd read

•Pulse

•Resp

•Temp

•Weight

120/90

Pertinent Positives:

OS ☒ Denotes system WNL

/ * Denotes system complaint

General: fever, chills, wt change

Skin/Hair/Nails: rash, pigment or texture change

Head/Neck: headaches, loss of consciousness, dizziness

Eyes: blurring, pain, change in vision

Nose/Throat: epistaxis, hoarseness, sore throat

Lungs: cough, dyspnea, pain with respiration

Heart: chest pain, palpitations, orthopnea, claudication

☒ GI: dysphagia, abd pain, n, v, const, diarrhea, rectal bleed

☒ GU: dysuria, hematuria, incont, pen/vag d/c, ↓ sex fxn

☒ Endo: polyuria, polydipsia, head/cold intolerance

☐ Hema: weakness, fatigue, bruising/bleeding tendency

☐ Lymph: enlargement of lymph, tenderness, supination

☐ Neuro: loss/↓ in sensation, syncope, tremor, memory loss

☐ MS: jt pain/stiffness/erythema, bone deformity, ↓ ROM

☐ Psyh: depression, nervousness, tension, ↓ concentration

Physical Exam: ☐ = As typed (Normal), abnormalities otherwise stated)

General Appearance: Alert, cooperative in NAD

Skin: No rashes or other changes

HEENT: NC/AT, PERRI, EOMI, normal sclera, fundus, tm's, oropharynx, and dentition

Neck: Supple and nontender without mass or thyromegaly, normal carotids. No JVD

Lymph Nodes: No cervical, supraclavicular, axillary, epitrochlear or inguinal lymphadenopathy

Cardiovascular: PMI in 5th intercostals space, RRR without mrg, S1-S2 normal, Pulses 4+ bilaterally incl. dorsalis pedis

Breast: No masses, discharge, or skin changes

Respiratory: Normal chest configuration. Lungs clear to auscultation and percussion

Abdomen: Soft, NT, normal b.s. No mass or HSM

GU: Normal external genitalia. Females: UVaginal vault with clear mucosa. ☐ Cervix surgically absent. ☐ Cervix without

sion or CMT. ☐ No adnexal masses or tenderness. ☐ PAP taken. Males: Testicles and scrotum without mass bilaterally

Back: No vertebral or CVA tenderness

Rectal: Normal tone, no masses. Brown, hemoccult negative stool. ☐ Males: Prostate without nodules

Extremities: No clubbing, cyanosis or edema

Musculoskeletal: No joint deformities. Normal range of motion in hands, wrist, elbows, shoulders, spine, hips, knees,

and ankles

Neuro: Alert and oriented x 3, CN's II-XII intact. Normal muscle tone and bulk, 5+/5 strength throughout. Sensation

intact to light touch and vibration, DTR's 2+ symmetrically with normal Babinski, normal gait

Psych: Normal and appropriate affect

Assessment/Plan:

Testicular pain:

Uncertain etiol.

might be

related to

straining

No hernias

detected

relaxance

2. IOP - flur

spine institute

Health Care Maintenance:

Pap, pelvic, rectal, breast exam done. Mammogram ordered. Self-breast exam discussed, calcium supplements recommended.

Stool cards given ☐ Flex sig ordered ☐ PSA/DRE performed. ☐ Immunizations given. ☐ Tetanus ☐ Flu ☐ Pneumovax

FOLLOW-UP:

as scheduled

Signed: _____ M.D. Signature

Nurse

161

267/9

unedited

Rickv Rhame

Friday, May 01, 2009 DX Lumbar segmental dysfunction Lumbosacral root lesion Pelvic segmental dysfunction and myalgia

CERVICAL AP OPEN MOUTH AND LATERAL X-RAYS TAKEN Monday, May 04, 2009 # 2583 S 14 100 3/20 70 40SID L 12 200 3/20 70 72 SID NO

FULL SPINE AP & LATERAL X-RAYS TAKEN Friday, May 01, 2009 # 2583 A 36 200 1 1/2 90 L 38 200 2 110 NO

T3 PRI-T

T6 PLI-T

T12 PLI-T

L5 PLI-M

60-69 RIGHT SASIN

RIGHT SI AS 4 IN 7

SURGICAL FUSION C5-C6

PATIENT ENCOUNTER WITH JOHN J. GOELDI, DC Monday, May 04, 2009 4:12 PM

Patient presents with increasing lower back pain and right lower anterior pelvic pain.

He also states he has had moderate upper back pain that he describes as a burning feeling for some time. This is increased with random activities this weekend. He has been more passive this weekend he to his lower back pain.

There's point tenderness and edema the right SI joint, L1 and T7. There is hypermobility of the segments and C7. There is asymmetry of the thoracic and lumbar spine. There is aberrant thoracic and pelvic joint motion. There's lumbar and thoracic paraspinal muscle spasms. There's restricted movement of the middle and lower back.

Patient was treated with chiropractic adjustments to right sacrum, pelvis, L1, T7, C7 on manual therapy. Cervical x-rays are taken.

PATIENT ENCOUNTER WITH JOHN J. GOELDI, DC Tuesday, May 05, 2009 3:46 PM

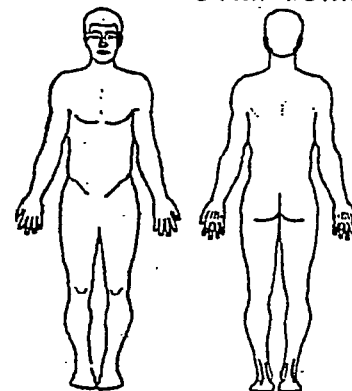
Patient presents for consultation regarding treatment management. He states his filing a worker's comp injury claim with the school district and they have referred him for treatment management to doctor's care.

Patient Name: Ricky Rhame Birthdate: 11-21-56 Sex: (M) F
 Address: Charleston State: SC Zip: 29420
 Telephone: 843- Social Security # _____ Driver Lic. #: _____
 Occupation: A/C Employer: Chas County School Work Phone: _____
 Address: 2100 Leeds Ave City: Chas. State: SC Zip: _____
 Subscriber Name: _____ Health Plan: _____
 Subscriber ID #: _____ Group #: _____ Spouse Name: _____
 Spouse Employer: _____ City: _____ State: _____ Zip: _____

MARK AN X ON THE PICTURE WHERE YOU HAVE PAIN OR OTHER SYMPTOMS.

DESCRIBE YOUR CURRENT PROBLEM AND HOW IT BEGAN:

Lower Back pain



Is this? ☐ Work Related ☐ Auto Related ☐ N/A

DATE PROBLEM BEGAN: _____

Current complaint (how you feel today):

0 1 2 3 4 5 6 7 8 9 10
 No Pain Unbearable Pain

How often are your symptoms present? ☐ 0 - 25% ☐ 26 - 50% ☐ 51 - 75% ☒ 76 - 100%

Can you perform your daily activities? ☒ Yes ☐ No (Describe) _____

HAVE YOU HAD SPINAL X-RAYS, MRI, CT SCAN? ☐ No ☒ Yes Date(s) taken: 6-12-07

WHAT AREAS WERE TAKEN? BACIL

Please check all of the following that apply to you:

Past Present Condition

☐	☐	History of Recent Infection
☐	☐	Fever
☐	☐	HIV/AIDS
☐	☒	Diabetes
☐	☐	Corticosteroid Use
☐	☐	Birth Control Pills
☐	☒	High Blood Pressure
☐	☐	Stroke (date) _____
☐	☐	Dizziness/Fainting
☐	☐	Numbness in Groin/Buttocks
☐	☐	Urinary Retention
☐	☐	Aortic Aneurysm
☐	☐	Cancer/Tumor
☐	☐	Osteoporosis
☐	☐	Trauma

Past Present Condition

☐	☐	Prostate Problems
☐	☐	Frequent Urination
☐	☐	Pregnancy, # of births _____
☐	☐	Abnormal Weight ☐ Gain ☐ Loss
☐	☐	Epilepsy/Seizures
☐	☒	Visual Disturbances
☐	☒	Low/Mid Back Pain
☐	☐	Neck Pain
☐	☐	Arthritis
☐	☐	Alcohol Use
☐	☐	Tobacco Use
☐	☐	Surgeries/Medications: _____

Family History: ☐ Cancer ☐ Diabetes ☐ High Blood Pressure ☐ Cardiovascular Problems/Stroke

I certify that the above information is complete and accurate. If the health plan information is not accurate, or if I am not eligible to receive a health care benefit through this provider, I understand that I am liable for all charges for services rendered and I agree to notify this doctor immediately whenever I have changes in my health condition or health plan coverage in the future.

Patient Signature: Ricky Rhame

Date: 5-1-09

ADULTS

INITIAL CONSULTATION	PATIENT	DATE:
Trauma – Auto accident: 1	Rickey Rhame	5/1/09
Auto accident: 2		
Falls:		
Work:		
Sports/recreational activities:		
Sports injuries:		
Home or elsewhere:		
Other:	OT – C Auger	
Present complaint #1:	LBP – sitting → 11	
Started when:	6 months A.F.	
How often:	~~every~~ daily	
Describe pain:	constant sharp.	
Radiate:	no	
Ever before:	75 over 5 yrs	
Better/worse/same:	laying down → 7. not helpful	
Other treatment:	Dr. Plummer – injections – surgery	
Notes:	moving 9, walking 7 1/2 sitting 7 1/2	
Complaint #2:	stomach pain	
Started when:	months	
How often:	daily	
Describe pain:	dull or cramping	
Radiate:		
Ever before:	random	
Better/worse/same:	activity → 7 1/2, long periods of rest 7 1/2	
Other treatment:		
Notes:		
Other complaints/notes:		

**LOWCOUNTRY
CHIROPRACTIC**



DR. JOHN J. GOELDI

8988 University Blvd., Suite 104
North Charleston, SC 29406

Telephone: (843) 764-3200
Fax: (843) 764-0220

May 4, 2009

To Whom It May Concern:

This is to certify that Ricky Rhame is a patient at our office. Due to the nature of his condition, he is unable to work through May 8, 2009.

If you need any further information, please do not hesitate to call my office.

Sincerely,

John J. Goeldi, D.C.

JJG/anf

DOCTORS CARE

CHECKOUT TIME

TICKET NO

ACCOUNT NUMBER	DATE	TIME	WEST ASHLEY,	7B1101
208527	05/05/09	01:23pm		
NAME & ADDRESS			INSURANCE BALANCE \$0.00	
RNAME: RICKY			ACCOUNT BALANCE \$0.00	
DOB: 11/21/1956 (52 years)			CURRENT CHARGES	
GENDER: M			AMOUNT PAID	
IBG:			NEW BALANCE	
FCL: 6			CASH	
CELL:			CHECK	
RELATION: OTHER			MLO	
COPAY: WC			CC	

TORY: (- or +, or details)			ROS (I or O)	PREVENTIVE (year of last)	Allergies:
sonal Hx	Family Hx	Social Hx	Fever/Chills	Circle recommendations	
DM	HTN	Alcohol	N, V, D Constip.	Tetanus	
MI <50	HTN	Tobacco	SOB, CP	Cholesterol	
CVA	MI <50	Drugs	Headache, Fatigue	Colonoscopy	
CA	CVA	Reg. Exer.	UTI Ex. & Compl.	Flu Shot	
	CA	Occup.		Pneumovax	
v. chart rev., no sig chg				Women	
Above Hx reviewed				LMP	
				PAP	
				Mamm	
				BVD DEXA	
				Men	
				PSA	
				Rectal	

AT	BP	Pulse	Resp	Temp	Chief Complaint:
52.4	130/80	76	16	98.2	Lower back pain
PHYSICAL: (see reverse) Omit if N/A					HPI (4 items):
if nml., O if abnml. & give details					07-carrying tool on roof per yrs.
General					radiation pain
HEENT					spasms
Neck					intermittent
Nodes					saddle anesthesia
Lungs					
CV					
Abd					
Back					
Ext					
GU					
Neuro					
Skin/Breasts					
sts/Labs: (In-house)					
CBC					
Strep					
Mono					
U/A					

ASSESSMENT / DIAGNOSIS/ES:

Patient Care Instructions Discussed:

Lifestyle Modification

Return to Return:

If worse: RHP

If not better:

For Follow-Up: RHP

to ER if:

Work / School

Restrictions:

If outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctor's Care.

I consent to the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/our patient, treatment and health care operations consistent with the Doctor's Care Network Practices.

I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

Patient Authorized Person's Signature:

Date:

Workers Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical record.

Patient Authorized Person's Signature:

Date:

166

5.5.09

CORVEL

May 6, 2009

Mr. Ricky Rhame
4636 Quarter Horse Rd.
Charleston, SC 29420

RE: Our File: 07-09-000298
Insured: Charleston County School District
Claimant: Ricky Rhame
D/A: 05-04-2009

Dear Mr. Rhame:

Please be advised that this office is the Claims Representative for Charleston County School District assigned to handle the above-referenced caption.

We have received a report of injury from Charleston County School District stating you are claiming low back pain due to heavy lifting on the job over your years of work. Per our conversation on 05/05/2009, you stated the same-that you have had low back pain since 1994/1995 and have had on/off treatment for low back pain since.

Based on what I have, we cannot accept this claim under Worker's Compensation benefits.

I have enclosed a Medical Consent form for you to fill out, sign and return to me by mail or fax, listing the physicians you have treated with for your low back pain. We will need to review your medical records to see if there are any changes.

Again, at this point, we must respectfully deny your claim for Worker's Compensation benefits.

Sincerely,



Glenn Martin
Senior Claims Specialist

Charleston Pain and Rehabilitation

APR 14 2009

Patient: Ricky Rhame Age: 52 Date: _____

Allergies: None Meds: Clonaz. 15mg BID, Taztia XT 240mg BID, Coreg 12.5 BID Problem list reviewed

CC: Dry PT requests pain relief Metformin 1000mg BID
some WPain - from muscle 3 d. ago, OTC pravastatin 40mg Tds
@ 3 x /week. has always doing well. gives and Cymbalta 60mg Tds
constantly with. Not good. Doxazosin 4mg Tds
glaucoma as to not change. wanted to notify them of dx.

*Location *Duration *Quality *Context *Severity *Modifying factors. *Timing *Signs/Sx

✓ Denotes no change from previous visit

□ PMH

□ PHSurg:

□ FH:

□ Tobacco:

□ ETOH:

• BP

2nd read

• Pulse

• Resp

• Temp

• Weight

122/98 120/93

Pertinent Positives:

ROS ✓ Denotes system WNL

* Denotes system complaint

□ General: fever, chills, wt change

□ Skin/Hair/Nails: rash, pigment or texture change

□ Head/Neck: headaches, loss of consciousness, dizziness

□ Eyes: blurring, pain, change in vision

□ Nose/Throat: epistaxis, hoarseness, sore throat

□ Lungs: cough, dyspnea, pain with respiration

□ Heart: chest pain, palpitations, orthopnea, claudication

□ GI: dysphagia, abd pain, n, v, const, diarrhea, rectal bleed

□ GU: dysuria, hematuria, incont, pen/vag d/c, ↓ sex fxn

□ Endo: polyuria, polydipsia, head/cold intolerance

□ Hema: weakness, fatigue, bruising/bleeding tendency

□ Lymph: enlargement of lymph, tenderness, suppuration

□ Neuro: loss of sensation, syncope, tremor, memory loss

□ MS: jt pain/stiffness/erythema, bone deformity, ↓ ROM

□ Psych: depression, nervousness, tension, ↓ concentration

Physical Exam: □ = As typed (Normal), abnormals otherwise stated)

✓ General Appearance: Alert, cooperative in NAD

□ Skin: No rashes or other changes

✓ HEENT: NC/AT, PERRI, EOMI, normal sclera, fundus, tm's, oropharynx, and dentition

□ Neck: Supple and nontender without mass or thyromegaly, normal carotids. No JVD

✓ Lymph Nodes: No cervical, supraclavicular, axillary, epitrochlear or inguinal lymphadenopathy

✓ Cardiovascular: PMI in 5th intercostals space, RRR without mrg, S1-S2 normal, Pulses 4+ bilaterally incl. dorsalis pedis

□ Breast: No masses, discharge, or skin changes

✓ Respiratory: Normal chest configuration. Lungs clear to auscultation and percussion

□ Abdomen: Soft, NT, normal b.s. No mass or HSM

□ GU: Normal external genitalia. Females: □ Vaginal vault with clear mucosa. □ Cervix surgically absent. □ Cervix without lesion or CMT. □ No adnexal masses or tenderness. □ PAP taken □ Males: Testicles and scrotum without mass bilaterally

✓ Back: No vertebral or CVA tenderness

□ Rectal: Normal tone, no masses. Brown, hemoccult negative stool. □ Males: Prostate without nodules

✓ Extremities: No clubbing, cyanosis or edema

□ Musculoskeletal: No joint deformities. Normal range of motion in hands, wrist, elbows, shoulders, spine, hips, knees, and ankles

□ Neuro: Alert and oriented x3, CN's II-XII intact. Normal muscle tone and bulk; 5+/5 strength throughout. Sensation intact to light touch and vibration, DTR's 2+ symmetrically with normal Babinski, normal gait

✓ Psych: Normal and appropriate affect

Health Care Maintenance:

□ Pap, pelvic, rectal, breast exam done. Mammogram ordered. Self-breast exam discussed, calcium supplements recommended.

□ Stool cards given □ Flex sig ordered □ PSA/DRE performed. □ Immunizations given: □ Tetanus □ Flu □ Pneumovax

FOLLOW-UP:

Signed: [Signature] M.D. Signature

Nurse

Assessment/Plan:

1. Pain.

With H/B Ac.

Cont. diet, meds.

2. HIV.

Good control.

Cont. meds.

3. Hip pain

Relax

4. Anxiety

Cont. meds.

5. LBP - OTC meds.

Continue 3 d.

8988 University Blvd, Suite 104
North Charleston, SC 29406
Phone (843) 764-3200
Fax (843) 764-0220

**LOWCOUNTRY
CHIROPRACTIC**

**JOHN J. GOELDI, D.C.
ROBERT SALAMON, D.C.**

Fax

To: Authorization Request From: TAX ID # 57-0831569
John J. Goeldi, D.C. / Robert Salamon, D.C.
Fax: (843) 884-6067 Pages: _____
Phone: _____ Date: 8/24/01
Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Ricky Rhame

ID # 118400-01

DOB 11/21/56

LOWER BACK PAIN HAS AN APT MONDAY

AUG 27, 2001

WE Request Authorization for 6 visits chiropractic
care.

THANKS FOR YOUR HELP

2583

WELCOME TO THE OFFICE OF DR. JOHN J. GOELDI

PLEASE PRINT

DATE: 8-27-01

NAME: Ricky Rhame

HOME PHONE: _____

RESIDENTIAL ADDRESS: _____

N. Chas. S.C.ZIP CODE: 29420

BILLING ADDRESS: _____

ZIP CODE: _____

AGE: 44 SEX: (M) F BIRTH DATE: 11-21-56 MARITAL: M S (W) DOCCUPATION: A/C EMPLOYER: Chas County School Dist

OFFICE PHONE: _____

NAME OF SPOUSE OR PARENT: _____

OCCUPATION: _____

OFFICE PHONE: _____

YOUR MAJOR COMPLAINTS TODAY: BACK PAINOTHER DOCTORS SEEN FOR THIS CONDITION: Dr. PappasDOCTOR'S NAME: Dr. Pappas

TYPE OF DR.: _____

DIAGNOSIS: _____

TREATMENT: _____

LENGTH OF CARE: _____

RESULTS: _____

HAVE YOU BEEN TREATED FOR ANY OTHER HEALTH CONDITION BY A MEDICAL PHYSICIAN OR CHIROPRACTOR IN THE LAST YEAR? yesTO ENABLE US TO PROVIDE EFFECTIVE HEALTH SERVICES WE REQUEST THAT YOU COMPLETE THE FOLLOWING **HEALTH HISTORY**FRACTURES OR BREAKS: (WHICH BONE AND DATE) NONESURGERY: (TYPE AND DATE) NONEMAJOR ACCIDENTS OR INJURIES: (WHAT HAPPENED AND WHEN) NONE

CURRENT DRUGS OR MEDICATION: (TYPE) _____

UNUSUAL DISEASES: (NAME OF DISEASE AND WHEN DIAGNOSED) NONE

DO YOU PRESENTLY HAVE ANY HEALTH CONDITION THAT WE SHOULD BE AWARE OF, SUCH

AS: PREGNANCY

YES

NO

DIABETES

YES

NO

EPILEPSY

YES

NO

HEART PROBLEMS

YES

NO

OTHER: _____

FAMILY: HEREDITY AND CONGENITAL FACTORS PLAY AN IMPORTANT ROLE IN YOUR HEALTH. HAVE ANY OF YOUR BLOOD RELATIVES (PARENTS/BROTHER/SISTERS) HAVE ANY OF THE FOLLOWING: DIABETES MELLITUS, HIGH BLOOD PRESSURE, ARTERIOSCLEROSIS, GOUT, HEART DISEASE, CANCER, DEGENERATIVE DISC DISEASE, ARTHRITIS, ABNORMALITIES AND DEFORMITIES OF THE SPINE, CURVATURE OR SCOLIOSIS OF THE SPINE.

PLEASE READ CAREFULLY

IT IS CUSTOMARY FOR PAYMENT TO BE MADE AT THE TIME OF VISIT, UNLESS OTHER ARRANGEMENTS HAVE BEEN MADE IN ADVANCE.

ARE YOU INSURED? YES NO COMPANY HEALTH Source POLICY

I UNDERSTAND AND AGREE THAT HEALTH AND ACCIDENT INSURANCE POLICIES ARE AN AGREEMENT BETWEEN AN INSURANCE COMPANY OR CARRIER AND MYSELF. ALSO, ANY AMOUNT AUTHORIZED TO BE PAID BY THE INSURANCE COMPANY, CARRIER OR LEGAL REPRESENTATIVE SHALL BE PAID DIRECTLY TO DR. JOHN J. GOELDI, AND WILL BE CREDITED TO MY ACCOUNT UPON RECEIPT. HOWEVER, I CLEARLY UNDERSTAND AND AGREE THAT ALL SERVICES RENDERED TO ME, WHETHER I HAVE HEALTH OR ACCIDENT INSURANCE COVERAGE OR NOT, ARE CHARGED DIRECTLY TO ME, AND THAT I AM PERSONALLY RESPONSIBLE FOR PAYMENT. I ALSO UNDERSTAND THAT IF I SUSPEND OR TERMINATE MY CARE AND TREATMENT, ANY FEES FOR PROFESSIONAL SERVICES RENDERED TO ME WILL BE IMMEDIATELY DUE AND PAYABLE.

PATIENT'S SIGNATURE Ricky Rhame SS# 251-11-1410 DATE 8/27/01

PHYSICAL, ORTHOPEDIC, AND NEUROLOGICAL EXAMINATION

LAST NAME Rhame FIRST Ricky MI M SEX F DATE 8/27/01
 HEIGHT _____ WEIGHT _____ BLOOD PRESSURE _____ PULSE RATE _____

PHASE I

CERVICAL FLEXION 90: _____ EXTENSION 45 _____
 CERVICAL ROTATION 60: RIGHT _____ LEFT _____
 CERVICAL LATERAL FLEXION 45: RIGHT _____ LEFT _____
 FORAMINA COMPRESSION: (POS) R M L (NEG)
 SHOULDER DEPRESSION: (POS) R L (NEG)

PALPATION: CERVICAL _____
 THORACIC _____
 LUMBAR L5 S1 R L4 S2

BICEP REFLEX:	RIGHT	INCREASED	NORMAL	DECREASED	ABSENT
	LEFT	INCREASED	NORMAL	DECREASED	ABSENT
TRICEP REFLEXES:	RIGHT	INCREASED	NORMAL	DECREASED	ABSENT
	LEFT	INCREASED	NORMAL	DECREASED	ABSENT
RADIAL REFLEXES:	RIGHT	INCREASED	NORMAL	DECREASED	ABSENT
	LEFT	INCREASED	NORMAL	DECREASED	ABSENT
KNEE REFLEXES:	RIGHT	INCREASED	NORMAL	DECREASED	ABSENT
	LEFT	INCREASED	NORMAL	DECREASED	ABSENT
ANKLE REFLEXES:	RIGHT	INCREASED	NORMAL	DECREASED	ABSENT
	LEFT	INCREASED	NORMAL	DECREASED	ABSENT

DYNAMOMETER: RIGHT _____ / _____ / _____ LEFT _____ / _____ / _____
 PATIENT IS (RIGHT) (LEFT) HANDED

ADSONS: _____

CRANIAL NERVES

2. OPTIC _____
3. EYE MS _____
4. EYE MS _____
5. TRIGEMINAL _____
6. EYE MS _____
7. FACIAL _____
8. ACOUSTIC WEBER R M L _____
9. GAGITASTE _____
10. SWALLOW _____
11. SHRUG _____
12. TONGUE _____

MEASUREMENTS

BICEP RIGHT _____
 LEFT _____
 FOREARM RIGHT _____
 LEFT _____
 THIGH RIGHT _____
 LEFT _____
 CALVE RIGHT _____
 LEFT _____

Ricky Rhame

Neck - Shoulder Pain

2/15/2006

ID# 1295-1 DOB: 11/21/1956

S: Pt. developed pain in left neck - shoulders . It is moderate. It started 3 months ago .It was intermittent but now has become more constant No hx of Trauma. No hx of over exertion. No c/o paresthesias, weakness or numbness in arms or hands. The pain is worse in certain positions.

O: Sys 142 Dia 92 T 98.4 P 84 Wgt 244.

- the patient ambulates normally and is in no severe distress• Cervical neck full range of motion in flexion, extension, and rotation. There is some mild pain noted with active rotation • DTR's +2/4 upper ext. • Sensation to light touch intact. • Equal hand grasp bilat. • Noted mild paravertebral tenderness and fullness upper thoracic and cervical segment.

There may be a triggerpoint left upper trapezius area

Procedure: the area over the triggerpoint was cleansed with alcohol and then a mixture of dexamethasone, plain xylocaine and marcain was injected. The patient tolerated this well and was given routine instructions.

A: Neck strain 723.9

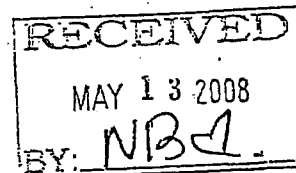
D: 27 min spent with pt discussing the problem examining and injecting

P: Instructions given for rehab.Heat in arm prior to stretching, ice after work or exercise. ROM exercises after settling down. Antiinflammatory meds.

Prescriptions provided:

Percocet: 7.5/325 mg. Dispense # 30. Sig: 1 prn pain PO qid.No Refills.

Skelaxin: 400 mg. Dispense # 60. Sig: 2 prn muscle spasm PO tid No refills.



Ricky Rhame

ID# 1295-1 DOB: 11/21/1956

S: Sunday went to ER for severe pain in neck -- got flexeril and lortab- had to go back for shot.

Had similar episode in Feb or March.

Had w/u at MUSC for HTN

O: Sys 156 Dia 101 T 97.2 P 86 Wgt 246

• VSS • pt in no distress • neck is supple • Chest is clear • heart RRR • there is a pain to palpation near the left trapezius

Procedure: the area over the triggerpoint was cleansed with alcohol and then a mixture of dexamethasone, plain xylocaine and marcain was injected. The patient tolerated this well and was given routine instructions.

A: SPASM OF MUSCLE 728.85

P: Prescriptions were given and the patient is instructed to phone back if not improving.

We need to get MRI if no better

Prescriptions provided:

Percocet: 7.5/325 mg. Dispense # 40. Sig: 1 pm pain PO qid No refills.

toradol: 10 mg. Dispense # 30. Sig: pm pain PO qid No refills.

6/28/2006

by: TP

T. Pappas, MD

printed: 7/27/2009

Ricky Rhame

ID# 1295-1 DOB: 11/21/1956

S: Patient called regarding

please refill the following: toradol: 10 mg. Dispense # 30. Sig: prn pain PO qid No refills.

pharmacy: Walgreen 207-1578
552-7073

1) A Phone Call from Pt:

7/11/2006

by: PH

T. Pappas, MD

printed: 7/27/2009

pt: phone number:

Prescriptions provided:

toradol: 10 mg. Dispense # 30. Sig: pm pain PO qid No refills.

lortab: 7.5/500. Dispense # 30. Sig: 1 pm pain PO qid No Refills.

Ricky Rhame

BP f/u c exam (benign HTN)

7/12/2006

ID# 1295-1 DOB: 11/21/1956

S: He came in today for f/u of the left neck and shoulder pain. He had a pain in left shoulder after climbing a ladder at work while carrying his tools. He took some muscle relaxers. Then had a severe flare up over weekend and was seen in ER.

by: TP
T. Pappas, MD
printed: 7/27/2009

Then he was seen at Doctors Care (because of workers comp) and an xray was done. An MRI was ordered because of severe pain.

He continues to have pain that is severe at times located near the left posterior shoulder but also with a sensation of discomfort radiating down to his fourth and fifth finger.

O: Sys 151 Dia 102 T 99.3 P 94 Wgt 242

- Pt. alert, oriented x 3 in NAD
- Gen: Well nourished and developed.
- neuro- no muscle wasting or weakness
- Cardiac: HRRR without murmurs, gallops or rub.
- Lungs: Clear to auscultation.
- peripheral pulses intact. • There is no cyanosis or edema

A: DISC DEGENERATION NOS 722.6

P: The symptoms seem to the suggestion of cervical radiculopathy with occasionally severe pain. We're going to order the results of the MRI and ask for neuro surgery consult.

Prescriptions provided:

mepergan fortis: Dispense # thirty.. Sig: 1 pm pain PO qid No refills.

Ricky Rhame

Fax Rx request

7/20/2006

ID# 1295-1 DOB: 11/21/1956

S: walgreens dorchester rd faxed rx for Trabxene done lk 7/20/2006 745pm

by: LK
T. Pappas, MD
printed: 7/27/2009

Prescriptions provided:

Tranxene: 7.5mg. Dispense # 60. Sig: 1 PO bid pm anxiety. Refills: 6

Ricky Rhame

Back Pain- Lower

3/19/2007

ID# 1295-1 DOB: 11/21/1956

S: Pt. complains of moderate low back pain for a couple of weeks.
No associated weakness, numbness or paresthesias. There is no history of loss of bladder or bowel continence. There is no history of recent trauma.

by: TP

T. Pappas, MD

printed: 7/27/2009

patient is also experiencing frequent urination and he has small little clots that look like sperm coming out.

O: Sys 150 Dia 95 T 97.1 P 85 Hgt 71.1 Wgt 222 BMI 30.9

• VSS • the patient is in mild distress and ambulates normally • there is some pain going from sitting to standing position • there is mild pain on palpation in the paralumbar area • extremity strength and reflexes are within normal limits • with straight leg elevation some of the back pain is reproduced but it is not worse with dorsiflexion of the foot • distal pulses and cap refill are normal • normal genital exam, maybe slightly atrophic testicular exam • no evidence of hernia • normal uncircumcised penis • rectal exam reveal normal anal tone • stool is heme negative • prostate is slightly enlarged

A: LUMBAGO 724.2

HYPERPLASIA OF PROSTATE 600

P: In addition to pain medications the patient was given a referral for MRI of the lower back. He has had severe cervical disc problems requiring surgery. He may be at risk because of his job to get lumbar problems also.

He requested meds for urinary hesitancy and frequency.

He will get set up for colonoscopy for screening. He seems to have some benign symptoms of sperm in the urine.

Prescriptions provided:

Ultracet: 37.5/325. Dispense # 60. Sig: 1 or 2 prn pain PO qid No Refills.

Flomax: 0.4 mg. Dispense # 30. Sig: 1 PO qd No refills.

Ordered today:

CBC with diff with platelets PSA TSH CMP Lipids w/ratios Hb A1C UA

Ricky Rhame

RECALL

3/23/2007

ID# 1295-1 DOB: 11/21/1956

by: LK

T. Pappas, MD

printed: 7/27/2009

Ricky Rhame

Neck - Shoulder Pain

2/15/2006

ID# 1295-1 DOB: 11/21/1956

S: Pt. developed pain in left neck - shoulders . It is moderate. It started 3 months ago .It was intermittent but now has become more constant No hx of Trauma. No hx of over exertion. No c/o paresthesias, weakness or numbness in arms or hands. The pain is worse in certain positions.

O: Sys 142 Dia 92 T 98.4 P 84 Wgt 244

• the patient ambulates normally and is in no severe distress • Cervical neck full range of motion in flexion, extension, and rotation. There is some mild pain noted with active rotation • DTR's +2/4 upper ext. • Sensation to light touch intact. • Equal hand grasp bilat. • Noted mild paravertebral tenderness and fullness upper thoracic and cervical segment.

There may be a triggerpoint left upper trapezius area

Procedure: the area over the triggerpoint was cleansed with alcohol and then a mixture of dexamethasone, plain xylocaine and marcain was injected. The patient tolerated this well and was given routine instructions.

A: Neck strain 723.9

D: 27 min spent with pt discussing the problem examing and injecting

P: Instructions given for rehab.Heat in am prior to stretching, ice after work or exercise. ROM exercises after settling down. Antiinflammatory meds.

Prescriptions provided:

Percocet: 7.5/325 mg. Dispense # 30. Sig: 1 prn pain PO qid No Refills.

Skelaxin: 400 mg. Dispense # 60. Sig: 2 prn muscle spasm PO tid No refills.

by: TP

T. Pappas, MD

printed: 7/27/2009

Ricky Rhame

1) A Phone Call from Pt:

2/20/2006

ID# 1295-1 DOB: 11/21/1956

S: Patient called regarding

request: His pain med (skelaxin) is not working and would like something different.

pharmacy:Walgreens 207-1578

pt: phone number:

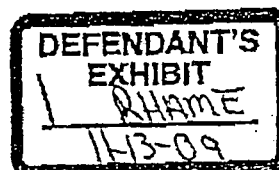
by: PH

T. Pappas, MD

printed: 7/27/2009

Prescriptions provided:

Soma: 350 mg. Dispense # 90. Sig: 1 po tid prn muscle spasmNo Refills.



CLAIM FORM

1. Employee's Statement

Name (Print): First: <u>Ricky</u> Middle: Last: <u>Rhame</u>	Social Security Number	Claim for: ☒ Self ☐ Spouse ☐ Dependent
Present Address: Street: <u>SC</u> Apartment: <u>29420</u>	Employment Status: ☐ Active ☐ COB	
City: <u>N. Chas</u> State: <u>SC</u> Zip Code: <u>29420</u>	Date of Birth: Mo: <u>11</u> Day: <u>12</u> Year: <u>1956</u>	Marital Status: Single ☐ Married ☐ Divorced ☐

2. Patient Information - Must complete this section if claim is for a dependent and / or other coverage is in effect.

A. Patient Name: First: Middle: Last:		Social Security Number	Are any benefits or service provided under another group insurance plan or any prepayment plan (including an HMO), or pursuant to any law (Federal, State or Local) on account of the treatment reported on this claim?
Date of Birth: Mo: Day: Year:	Relationship to Employee: ☐ Spouse ☐ Male ☐ Female ☐ Student ☐ Disabled		If yes, complete Section 2-B. ☐ Yes ☐ No
Is spouse currently employed or has spouse been employed in the past 12 months? ☐ Yes ☐ No If no, last date employed		Spouse's Name: First: Middle: Last:	
Social Security Number	Date of Birth: Mo: Day: Year:	Employer's Name (Print):	
Employer's Address: Street: City: State: Zip Code:		Employer's Phone No. Area Code ()	

B. Give name of other company or organization providing benefits or services.	Please indicate Plan Identification No. or Blue Cross / Blue Shield Group No.

3. Accident Information - Complete this section if claim is result of accidental injury or occupational illness

IS CONDITION RELATED TO: EMPLOYMENT? ☒ Y ☐ N ACCIDENT? ☐ Y ☐ N	TYPE OF ACCIDENT: MOTOR VEHICLE ☐ OTHER: _____
ACCIDENT DATE: <u>1-1-99</u> ACCIDENT LOCATION: <u>BACK</u>	PARTY AT FAULT: SELF ☐ OTHER ☒
ACCIDENT / INJURY DETAILS: <u>HURT Back on Job</u>	
ACCIDENT INSURANCE INVOLVED? YES ☐ NO ☒ CARRIER: ADDRESS, PHONE #	INSURED: POLICY #: POLICE DEPT:
REPRESENTED BY ATTORNEY? YES ☐ NO ☒ NAME: ADDRESS, PHONE #	

INSURANCE SUBROGATION INFORMATION: IN THE EVENT THAT I RECEIVE PAYMENT FOR MEDICAL BILLS ASSOCIATED WITH THIS ACCIDENT / INJURY FROM A THIRD PARTY LIABILITY PAYOR. I WILL REIMBURSE MY HEALTH INSURANCE CARRIER ANY PAYMENTS THEY HAVE MADE FOR THOSE SAME MEDICAL BILLS.

Ricky Rhame
SIGNATURE

4-19-02
DATE

4. Authorization

I authorize any insurance company, organization, employer, hospital, physician, dentist or pharmacist to release any information requested with regard to this claim and the expenses reported.	Signed: <u>Ricky Rhame</u> Date: <u>4-19-02</u>
I certify that the information I furnish in support of this claim is true and correct. It is unlawful to	Signed (dependent patient, age 18 and over): Date:

Patient RHAME, RICKY R	Unit # 1125111410	Adm Date 09/19/02	Service/Lo on TRIDENT SPORTS MEDIC	Status REG RCR	Account # D00012510706
PATIENT DOB Age Sex MS Race Religion 11/21/56 45 M W BL UNKNOWN Address: CHARLESTON SC 29420 Home Ph: (843) County: CHARLESTON GUARANTOR RHAME, RICKY R SS: Address: CHARLESTON SC 29420 Home Ph: (843) County: CHARLESTON Relationship to Patient: PATIENT OTHER GUARANTOR SS: -- Address: Home Ph: County: Relationship to Patient: PERSON TO BE NOTIFIED RHAME, ALMA Home Phone: (843) Work Phone: Relationship to Patient: MOTHER			PATIENT EMPLOYER CHARLESTON CO SCHOOLS 11115 AVENUE CHAS HEIGHTS, SC 29405 Work Phone: (843) 406-4082 Occupation: GUARANTOR EMPLOYER CHARLESTON CO SCHOOLS 11115 AVENUE CHAS HEIGHTS, SC 29405 Work Phone: (843) 406-4082 Occupation: OTHER GUARANTOR EMPLOYER Work Phone: Occupation: Account Number:		
INSURANCE #1 400 BC SC STATE PO BOX 100605 COLUMBIA, SC 29260 Phone (800) 444-4311 Contact			Policy # ZCS25111410 Coverage # Subscriber RHAME, RICKY R Rel to Pt FAULTY Eff. 01/01/02 to Rel Y Assign Y Group STAFSC - CHARLESTON CO SCHOOLS		
INSURANCE #2 Phone Contact			Policy # Coverage # Subscriber Rel to Pt Eff. to Rel Assign Group		
INSURANCE #3 Phone Contact			Policy # Coverage # Subscriber Rel to Pt Eff. to Rel Assign Group		
OCURRENCES Code Type Date Time 11 ONSET OF SYMPTOMS/ILLNESS 01/01/99 05 OTHER ACCIDENT 01/01/99			CONDITIONS Code Type 81 BLACK RACE Adm DX: Client: Special Program		
Last Hospitalization Attending Physician HCIS PAPPAS, THEODORE M 0360 Prim Care Physician HCIS			Admission Comment LLE HCIS Admitting Physician HCIS Family Physician HCIS Emergency Room Physician HCIS Other Physician		
Date Time Source Rm/Bed Arrival Mode 09/19/02 1407 PHYSICIAN/SELF RFFER /			Chief Complaint/Reason for Visit LUMBAGO/PT/MJCHIE Admitted By ADM.LLI		

REGISTRATION FORM IN PROCESS

Trident Medical Center

Printed 09/19/02 1414

9330 Medical Plaza Drive Charleston SC 29406 843-797-7000

Name: _____ Date: _____

PATIENT HISTORY/OUTCOMES ASSESSMENT

In your present condition, please rate your ability to perform the following by circling the response:

	VERY DIFFICULT					DIFFICULT					EASY	
	10	9	8	7	6	5	4	3	2	1	0	
Range of Motion		<u>9</u>								<u>1</u>		0
Strength		<u>9</u>								<u>1</u>		0
Bathing/Self Care/Dressing		<u>9</u>								<u>1</u>		0
Coordination/Balance	10	9	8	7	6	5	4	3	2	<u>1</u>		0
Walking/Mobility	10	9	8	7	6	5	4	3	2	<u>1</u>		0
Work Tasks	10	9	8	7	6	5	4	3	<u>2</u>	<u>1</u>		0
Recreational Activities	10	9	8	7	6	5	4	3	2	<u>1</u>		0

In your present condition, please rate the following by circling the response:

	A LOT					SOME					NONE	
	10	9	8	7	6	5	4	3	2	1	0	
Swelling											<u>0</u>	
Pain	10	9	8	7	6	<u>5</u>	4	3	2	1		0
Your need for therapy	10	9	8	7	6	<u>5</u>	4	3	2	1		0

If pain is a problem, how long have you had your pain?

3 weeks

How exactly does your pain feel? (sharp, dull, ache,
burn, stabbing, etc)

What relieves/aggravates your pain?

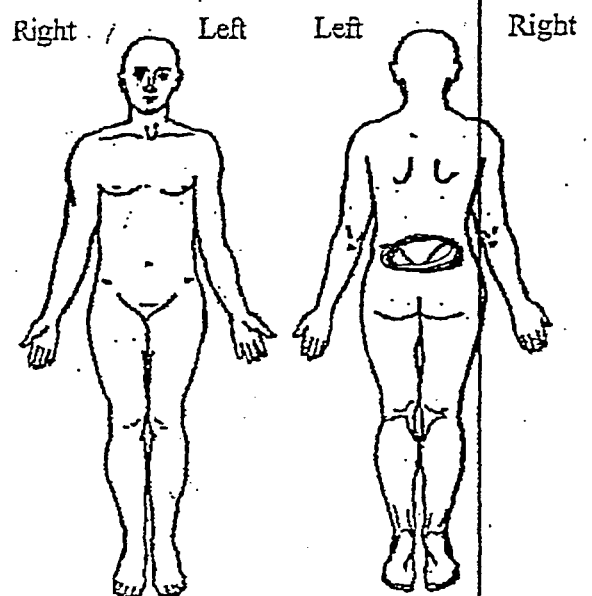
How does your pain affect your daily activities?

not able to pick up things

What do you hope to achieve with therapy?

help

Please identify on the drawing below your problem or painful area:



St. Luke's Family Practice

Theodore M. Pappas, M.D.

1435 Stuart Engals Blvd.
Mt. Pleasant, SC 29464
Telephone: 843-884-9796
Fax: 843-856-5207

Facsimile Transmittal Sheet

Company Name:

From:

Attention: PT.

Date:

9/13/02

Fax Number:

Total Pages, Including Cover: 1

Reply ASAP

For your info

Notes/C

AN ARTIFICIAL WATERMARK IS ON THE BACK - HOLD AT AN ANGLE TO VIEW THIS MARK

THEODORE M. PAPPAS, MD
1435 STUART ENGALS BLVD
MT. PLEASANT, SC 29464
PH 843-884-9796 FX 843-856-5207

PARENT'S FULL NAME

Ricky Rhame

PHONE NUMBER

AGE

SEX

M

ADDRESS

9/13/02

Rx

PT 2x week X 4 weeks

dx: Lumbago

Appt. 9/19 @ 2:00

Refills 1 2 3 4

No Refill Void After

DEA #:

VALID FOR CONTROLLED SUBSTANCES

The document belonging to you is the property of St. Luke's Family Practice. The use of this document for any purpose other than the one intended is prohibited. If you have received this document in error, please notify the sender immediately to arrange for return of these documents.

Theodore M. Pappas

Dr.

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

"RX" ON BACK IS PRINTED IN DISAPPEARING INK - RUB BRISKLY TO ACTIVATE

information for the physician is required by the law.

LUMBAR A INT

Trident

HEALTH SYSTEM
Sports Medicine
& Rehabilitation

AT TRIDENT MEDICAL CENTER

9330 Medical Plaza Drive • Charleston, SC 29406

843-797-8887 • Fax 843-797-4814

Patient Name Ricky RhamePhysician Dr. Theodore PappasDiagnosis lumbago.Date of onset 4-5 yrs Date of surgery _____ Next MD Appt _____Age 45 yrs Occupation HVAC worker

Subjective complaints/functional limitations: Taking MHP is no relief - previous therapy 3 yrs ago -
has gone to chiropractor in past - c/o pressure & sharp pain in some areas -
constant "throb"

PMH HTN - controlledPain rating today (0-10) Today 5/10 Over last 7 days: Best _____ Worst 6/10 Pain limiting function? (Yes) NoPatient's Goal(s) To decrease pain

Objective Signs Posture: Normal _____ Abnormal did lumbar lordosis find hyper
 ARD/HT: (° = painful) FB SDI or finger-to-floor distance _____ cm. ROT R 75° ROT L 75° SB R 75° SBL 75° BB _____
 Motor: WNL except the following: Hip Flex (L1-2) 5/5 Knee Ext (L3-4) 5/5 Ankle DF (L4) _____
 Great Toe Ext (L5) _____ Ankle PF (S1) _____
 LTR's: Patella (L3-4): R _____ L _____ Achilles (S1): R _____ L _____

Sensation Testing: ref to 14 touch throughoutPalpation: TTP along lumbar paraspinalsSpecial Tests: slump test (+)Comments: PT will benefit from some body mechanics training & functional mobility

Today's treatment Eval - MHP & strain in prone to lumbar paraspinals (TF, scan, pain) x 15'
stretchers - SKL, LTR, supine HSP, abd bracing

Assessment Clinical Impression PT presents w/ pain, did ROM, & did functional mobility consult
& lumbar strain

Learning Barriers No Yes _____ Exercise Skill Performance Good Fair / Poor _____ HEP and Back Care Comprehension Good Fair / Poor _____

TREATMENT / PLAN

- ☒ AIAA/PROM
- ☐ Mobilization
- ☒ Strengthening
- ☒ Education
- ☒ Stretching/Flexibility
- ☐ Aquatic Exercise
- ☐ Edema Reduction
- ☒ Home Exercise Program
- ☐ Traction
- ☒ Modalities MHP / strain / us
- ☐ Other _____

PROBLEMS

1. did ROM lumbar
2. pain
3. tender near lumbar paraspinals
4. poor body mechanics
5. _____
6. _____

HEP See above

REHABILITATION GOAL(S)

1. Skill - Will be able to perform prescribed rehabilitation exercises with good technique
2. Comprehension - Will be able to verbally recite HEP, back care instructions, and follow up care

3. STG - 2 pain 2/104. STG 7 lumbar ROM to WFL5. LTG Return to activities & correct body mechanicsRecommended frequency/duration: 2 times a week for 4 week(s)

I certify that my patient requires outpatient rehabilitation services that are reasonable and necessary for the above plan of treatment.

Michelle Schuyler MSPT 7/19/02
 Clinician's signature Date

Pappas
 Physician's signature

PROGRESS NOTE: GENERAL

PATIENT'S NAME: _____
PHYSICIAN: _____

TRIDENT SPORTS MEDICINE & REHAB
9330 MEDICAL PLAZA DR., CHARLESTON, SC
PHONE: 843-797-8887 FAX: 843-797-4814

DATE: 9/25/02 Total RX time: 15 Cancellation ☒ Did not show for appointment ☐

S: _____

O: ☐ Reassess performed ☐ Other: PT stuck in traffic
CX

A: _____

P: Cont.

☐ Continue current plan of care ☐ Increase frequency ☐ Decrease frequency ☐ Contact MD
☐ 3x/week ☐ 2x/week ☐ 1x/week ☐ Every other week ☐ 1x/month ☐ Discharge, see summary

Therapist Signature: [Signature]

DATE: 9/27/02 Total RX time: _____ Cancellation ☐ Did not show for appointment ☐

S: "Feeling much better today"

O: ☐ Reassess performed ☐ Other: Reviewed/primed HEP - SKTC, TR, SLAS, Bridging, PSL, Graduated single leg ext.
ES (LF - quad, scan, pain, edema) x 15 F MHP group position

A: PT given written Handouts on ex. & pain/soreness after fx.

P: Cont PT - progress; DLS at tolerated.

☐ Continue current plan of care ☐ Increase frequency ☐ Decrease frequency ☐ Contact MD
☐ 3x/week ☐ 2x/week ☐ 1x/week ☐ Every other week ☐ 1x/month ☐ Discharge, see summary

Therapist Signature: [Signature]

10/03/02 No show pr apt. [Signature]

DATE: _____ Total RX time: _____ Cancellation ☐ Did not show for appointment ☐

S: _____

O: ☐ Reassess performed ☐ Other: _____

A: _____

P: _____

☐ Continue current plan of care ☐ Increase frequency ☐ Decrease frequency ☐ Contact MD
☐ 3x/week ☐ 2x/week ☐ 1x/week ☐ Every other week ☐ 1x/month ☐ Discharge, see summary

Therapist Signature: _____

Trident Health System
Dedicated Emergency Department Sign-in Sheet for Emergency Services

Patient Information:

Date: _____ Arrival Time: _____
 First Name: Ricky Last Name: Rhame Middle Initial: _____
 Age: 49 Sex: M Soc Sec #: _____ DOB: 11/21/54 Gender: ☒ M ☐ F
 Form completed by: ☐ Self ☐ Other: _____

PART B - TRIAGE INFORMATION (For facility use only)

Called for triage at: 1333 Called for triage at: _____
 Called for triage at: _____ Called for triage at: _____
 Chief Complaint: (1) Shoulder Pain
 Nurse Signature: [Signature]

Initial Acc

IV

TB/SARS Screening Persistent cough 3 weeks or >: Y N Bloody cough: Y N Unexplained Wt Loss: Y N Anorexia: Y N Fever: Y N Night Sweats Y N TB risk score: TB risk score is > 2 Answer the following: Positive TB test in past: Y N Had contact with anyone with TB: Y N Mask Neg. pressure room	Pain: <u>7/10</u> SARS Questions. Healthcare worker or employed in a hospital: Y N Traveled out of country in past 2 weeks or been close to someone who has: Y N Where: _____ Have any close contacts been diagnosed with pneumonia in the past month: Y N	Injured at Work: Y N If yes to any of the SARS questions is yes: In the past 10 days: Fever > 100.4 Y N Shortness of breathing, Diff. Breathing, or cough: Y N Mask Neg. pressure room

PART C - DISPOSITION (For facility use only)

If the Triage Nurse is aware that an individual desires to leave prior to triage or an MSE, every effort must be made to inform the individual of risks and benefits and to obtain the individual's signature (or that of his/her legal representative)

X:

☐ Individual left DED prior to triage ☐ Individual left DED prior to MSE

Facility representative informed of departure: ☐ Yes ☐ No

If Yes, describe efforts to provide risks and benefits education prior to departure

If No, describe attempts to locate the individual

Pt Directed Room

Triage Nurse Signature

Date

Time

HEAD / ENT

oral inspection
pharynx oral

tenderness

swelling

ecchymosis

NECK / BACK

oral inspection
non-tender
painless ROM

tenderness

swelling

ecchymosis

CHEST

no resp distress
non-tender
breath sounds normal

tenderness

ecchymosis

ABDOMEN

non-tender
no organomegaly

tenderness

guarding

RHAME, RICKY R

D00023245796

MR# 0251111410 DR STAPLES CHARLES T.

DOB 11/21/56 49/H Trident Med Ctr

SS# 251-11-1410

DOS 05/25/06

PROGRESS:

Time unchanged improved re-examine

PROCEDURES:

REDUCTION OF SHOULDER DISLOCATION

- ☐ IV sedation
- ☐ Traction / Counter Traction
- ☐ Kocher maneuver
- ☐ Weights (lbs)
- ☐ Scapular manipulation
- ☐ Other

POST-REDUCTION X-RAY

normal (anatomic position)
not reduced Hill-Sachs fx

RECHECK POST-REDUCTION:

time
alert somnolent

OTHER

sling / shoulder immobilizer / clavicle strap
other

X-RAYS ☐ Intern by me ☐ Reviewed by me ☐ Discd w/ radiologist

R/L Shoulder Clavicle

normal / NAD
normal alignment
no fracture
normal soft tissue
shoulder dislocation (anterior / posterior)
clavicular fracture
AC joint separation 1" 2" 3"
humeral fracture
(head / neck / shaft / greater tuberosity)
fracture-dislocation
Hill-Sachs fracture

Other study

Ricky Rhame

195

Rx given
referred to / discussed with Dr Time
will see patient in office / ED / hospital

CLINICAL IMPRESSION:

Fall Allego

Contusion / Hematoma / Sprain / Strain / Laceration

R/L shoulder forearm wrist
arm elbow hand

Fracture R/L clavicle scapula humerus head/neck

Shoulder Separation R/L 1" 2" 3" degree

Dislocated Shoulder R/L anterior posterior

IC Coronoid fracture

DISPOSITION ☐ Home ☐ admitted ☐ transferred ☐ AMA

Time

CONDITION ☐ unchanged ☐ improved ☐ stable

DISCHARGED ☐ walk ☐ we ☐ carried ☐ amb ☐ other

291

ACTIONS

TIME	INIT
cardiac monitor	
pulse oximeter O_2 <u>1</u> <u>na</u>	
Accu-Chek	
1410 ready for Dr eval. notified doctor / seen by Dr <u>Sc...</u>	
restraints see documentation	

VITAL SIGNS

TIME	BP	P	RR	T	SpO ₂	GCS	Pain
							/10
							/10
							/10
							/10

ADDITIONAL NOTES

IV STARTS

TIME	#	gauge	site	attempts	complications	INIT

IV / MEDICATION INFUSION RECORD

Start Time	Solution / Med	C/D/P	Rate ml/hr	Stop Time	Amount Infused	INIT
	Response: no change	improved				
	Response: no change	improved				
	Response: no change	improved				

MEDICATIONS

TIME	Medication	Dose	Route	Site	INIT
	Response: no change	improved			
	Response: no change	improved			
	Response: no change	improved			
	Response: no change	improved			
	Response: no change	improved			

PROCEDURES

TIME	INIT
1404	
1406	
Foley	fr. mL return
NG	fr. mL return
placement confirmed	to suction low / intermittent

lab drawn / sent by ED tech / nurse / lab	
results back	
awaiting physician review	
to Xray w/ monitor / nurse / O ₂ / tech	
return to room	
to CT w/ monitor / nurse / O ₂ / tech	

Ricky Rhame, Page #66

196

INTAKE

W / saline lock discontinued

OUTPUT

Total Amt Infused

Time Initials

PROPERTY TO:

patient family security safe see patient below

DISPOSITION

discharged home police nursing home ME funeral home
 verbal / written instructions BRX given to patient
 verbalized understanding
 learning barriers addressed
 accompanied by / driver

admitted / transferred to

report to time

transfer documentation completed

notified family / police / ME

left AMA / LWBS signed AMA sheet refused

physician notified of

Discharge Vitals

BP 140/112 HR 78 RR 20 Temp 98.5 SpO₂
 pain level at discharge 6 / 10

Pt. has been given Universal Medication form and pamphlet

CONDITION

unchanged improved stable other

Depart Time 1415 Mode walk crutches W/C stretcher and

Discharge Nurse Signature

Continuation Sheet

SIGNATURE

IN

05

Trident Health System EMERGENCY PHYSICIAN RECORD Shoulder Injury (-)

RHAME RICKY R
DOB 11/23/56
SSN
DR STAPLES, CHARLES T.
49/H Trident Med Ctr
DOS 06/25/06

TIME SEEN 1415 ROOM 25 EMS ArrivalHISTORIAN patient spouse paramedics

_HX / _EXAM LIMITED BY

HPI

chief complaint Injury toright / left shoulder arm neck

duration / occurred

just prior to arrival

today yes

yesterday

days PTA

where

home

neighbor's

work

school

park

street

severity of pain

mild moderate severe

worse / persistent since

pain intermittent / lasting

context:

fell direct blow

dislocated while raising arm

associated symptoms

tingling / numbness

ROS

neck pain

blow to head

chest pain

head / neck / other injuries

PAST HX

negative

R / L HANDED

prior injury

prior records indicate

other problems

Medx- none / see nurses note

Allergies- NKDA / see nurses note

☒ Nursing Assessment Reviewed ☐ Vitals Reviewed ☐ Tetanus immun UTDV/S BP HR RR Temp

PHYSICAL EXAM

General Appearance mild / moderate / severe distress

no acute distress

anxious

alert

SHOULDER

normal inspection

see diagram

tenderness soft-tissue / bony

full ROM

swelling

no dislocation

ecchymosis

deformity

clavicular deformity AC drop-off

anterior fullness

limited ROM

held in

adduction

abduction

internal rotation

external rotation

limited

adduction

abduction

internal rotation

external rotation

flexion

extension

see diagram

NEURO

sensation intact

motor intact

sensory / motor deficit

weak arm abduction (deltoid)

abnormal reflexes

VASCULAR

no vascular

compromise

abnormal color / warmth / cap refill

brachial pulse deficit

radial pulse deficit

UPPER EXTREM.

Ricky Rhame - Page #67

197

SKIN

diaphoretic / cool / cyanotic

293

45 Trident Health System
EMERGENCY PHYSICIAN RECORD
Shoulder Injury (4)

RHAME, RICKY R.

MR

DOB

SSN

12/21/90

DR. WALLER, MATTHEW C.

49/H Trident Med Ctr

DCS 05/27/06

TIME SEEN _____ ROOM _____ EMS Arrival

HISTORIAN patient spouse paramedics

HX / EXAM LIMITED BY _____

HPI

chief complaint: injury to,	
right <u>left</u> shoulder	arm <u>neck</u>
duration / occurred.	where.
(use prior to arrival)	home
today	neighbor's
yesterday	work
3 days PTA	<u>work</u> <u>NO SWELLING</u>
severity of pain:	worse / persistent since
mild <u>moderate</u> severe	pain intermittent / lasting
context.	dislocated while raising arm
<u>x several days</u>	
associated symptoms: <u>swelling / numbness</u>	
ROS <u>neck pain</u> blow to head chest pain	
head / neck / other injuries <u>see below</u>	

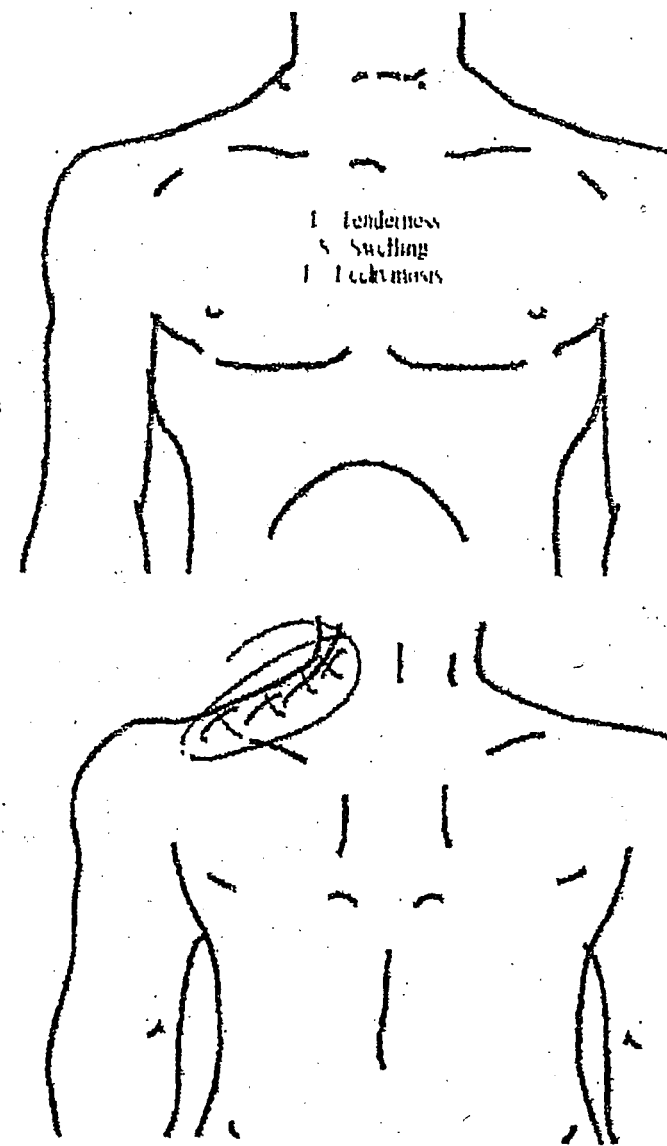
PAST HX	negative	R / L HANDED	prior injury
prior records indicate <u>none</u>			
other problems <u>none</u>			
Meds: none / see nurses note			
Allergies: NKDA / see nurses note			

☒ Nursing Assessment Reviewed ☒ Vitals Reviewed ☐ Tachycardia Immun. TD

V/S BP _____ HR _____ RR _____ Temp _____

PHYSICAL EXAM

General Appearance	<u>mild / moderate / severe distress</u>
<u>no acute distress</u>	<u>anxious</u>
<u>alert</u>	
SHOULDER	<u>see diagram</u>
<u>normal inspection</u>	<u>tenderness soft-tissue / bony</u>
<u>full ROM</u>	<u>swelling</u>
<u>no dislocation</u>	<u>ecchymosis</u>
	<u>deformity</u>
	<u>clavicular deformity AC drop-off</u>
	<u>anterior fullness</u>
<u>limited ROM</u>	
<u>held in</u>	<u>adduction</u> <u>abduction</u>
	<u>internal rotation</u> <u>external rotation</u>
<u>limited</u>	<u>adduction</u> <u>abduction</u>
	<u>internal rotation</u> <u>external rotation</u>
	<u>flexion</u> <u>extension</u>
PER EXTREM.	<u>see diagram</u>
<u>uninjured below</u>	<u>tenderness soft-tissue / bony</u>



NEURO

<u>mentation intact</u>	<u>sensory / motor deficit</u>
<u>motor intact</u>	<u>weak arm abduction (deltoid)</u>
	<u>abnormal reflexes</u>
VASCULAR	<u>abnormal color / warmth / cap refill</u>
<u>no vascular compromise</u>	<u>brachial pulse deficit</u>
	<u>radial pulse deficit</u>
	<u>dysphoretic / cool / cyanotic</u>

Nichols, Mary

From: TRACY KESSLER [TRACY_KESSLER@charleston.k12.sc.us]
Sent: Monday, May 04, 2009 8:27 AM
To: Nichols, Mary
Subject: w/c paperwork
Attachments: Rhame, Ricky FROI DOI 5-4-09.pdf; Rhame, Ricky IR DOI 5-4-09.pdf

Mary,

Please see the attached w/c paperwork for Ricky Rhame.

I spoke to him this morning and completed the paperwork with him.

He stated that he was told two years ago that he had a work related issue with his lower back and he felt that it wasn't that bad so he chose not to pursue it at that time. He further stated that he lifts ac units all the time and he thinks that continuing to do this is making his back hurt worse now than before. He did see a physician last week and is currently seeing a chiropractor for this problem. I told him that the last time he injured himself his adjuster was Glenn, gave him your number and recommended that he call Glenn if he hasn't heard from him by tomorrow.

Thanks,

Tracy Kessler
Technician III
Risk Management
Charleston County School District
3999 Bridge View Drive
North Charleston, SC 29405
Phone: (843)746-RISK (7475)
Fax: (843) 745-7149
www.ccsdschools.com

Excellence is Our Standard

**CHARLESTON COUNTY SCHOOL DISTRICT
ACCIDENT/INCIDENT REPORT**

This Portion of Form To Be Completed By Individual Who Witnessed or Was Made Aware of Incident

HVAC	Rhame, Ricky	☒ Male	DOB <u>11/21/1956</u>
SCHOOL OR OFFICE	NAME OF INJURED	☐ Female Age <u>52</u>	

Incident Date: ?	Indicate Status of Injured Party ☐ Student ☒ Employee ☐ Visitor ☐ Other _____ COMPLETE THIS SECTION FOR EMPLOYEES ONLY EMPLOYEE'S POSITION <u>Heat & Air Tech</u> POTENTIAL EXPOSURE TO BLOOD OR BODY FLUID (EMPLOYEE) ☐ YES ☒ NO
Incident Time: ?	
Report Date: <u>5/4/09</u>	

Nature of Incident	PART OF BODY INJURED				Location of Incident
	Indicate Side	Indicate Side			
☐ Abrasion ☐ Dislocation	Left Right	Left Right	☐ Face	☐ Lip	☐ Bus ☐ Stairs
☐ Bite ☐ Fracture	☐ Ankle	☐ Foot	☒ Back	☐ Neck	☐ Classroom ☐ Calhoun
☐ Burn ☐ Laceration	☐ Ear	☐ Hand	☐ Chest	☐ Nose	☐ Hallway ☐ Courtyard
☐ Bruise ☐ Puncture	☐ Elbow	☐ Knee	☐ Chin	☐ Ribs	☐ Lunch Room ☐ Parking Lot
☐ Contusion ☐ Sprain	☐ Eye	☐ Leg	☐ Head	☐ Abdomen	☐ PE Class ☐ Rest Room
☐ Dental ☒ Other:	☐ Finger	☐ Shoulder	☐ Hip	☐ Other	☐ Playground ☒ Other
		☐ Wrist			

Describe the Incident and/ or injury
Ongoing lifting of AC units over several years has caused lower back pain.

Name of Individual who witnessed or was made aware of the incident Debbie Gunn 778/

This Portion of Form To Be Completed and Signed By Individual Who Rendered Assistance/First Aid

Describe First Aid Given: _____

WHO WAS NOTIFIED? ☐ Parent/Guardian Name _____ ☐ Other: _____

INJURED TAKEN: ☐ Back To Class by _____ Time _____
☐ Home ☐ MD ☐ Dentist ☐ Hospital ☐ Other _____ Time _____

INJURED TRANSPORTED BY: Name _____ ☐ Parent/Guardian ☐ EMS ☐ Spouse ☐ Other _____

SIGNATURE OF INDIVIDUAL RENDERING ASSISTANCE/FIRST AID	SIGNATURE OF PRINCIPAL OR SUPERVISOR
_____ Tracy Kessler	_____ Tracy Kessler

FAX TO 745-7149

WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP) Charleston County School District 75 Calhoun St. Charleston, SC 29401 Carrier code #1656		CARRIER/ADMINISTRATION CLAIM NUMBER 07-09-000298		REPORT PURPOSE CODE 01	
SIC CODE 2800		EMPLOYER FEIN 57-6000322		LOCATION #: 0111 PHONE #: 843-566-8152	
CARRIER/CLAIMS ADMINISTRATOR					
CARRIER (NAME, ADDRESS & PHONE NO) Charleston County School District c/o CorVel 171 Church St., Ste. 140 Charleston, SC 29401 Carrier code # 1656 843-937-4900		POLICY PERIOD n/a TO		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) CorVel 171 Church St., Ste. 140 Charleston, SC 29401 843-937-4900	
CARRIER FEIN n/a		POLICY/SELF-INSURED NUMBER n/a		ADMINISTRATOR FEIN n/a	
AGENT NAME & CODE NUMBER n/a					
EMPLOYEE/WAGE					
NAME (LAST, FIRST, MIDDLE) Rhame, Ricky		DATE OF BIRTH 11-21-1956		DATE HIRED 07-01-1987	
ADDRESS (STREET, CITY, STATE, ZIP) N. Charleston, SC 29420		SEX ☒ MALE ☐ FEMALE ☐ UNKNOWN		MARITAL STATUS ☒ UNMARRIED ☐ SINGLE/DIVORCED ☐ MARRIED ☐ SEPERATED ☐ UNKNOWN	
PHONE 843-552-7073		# OF DEPENDENTS 0		OCCUPATION/JOB TITLE Maintenance EMPLOYMENT STATUS FT-Active NCCI CLASS CODE 7300	
RATE PER ☐ DAY ☐ MONTH ☐ WEEK ☐ OTHER		# DAYS WORKED/WEEK 5		FULL PAY FOR DAY OF INJURY? ☒ YES ☐ NO DID SALARY CONTINUE? ☒ YES ☐ NO	
OCCURRENCE/TREATMENT					
TIME EMPLOYEE BEGAN WORK 07:30 ☒ AM ☐ PM		DATE OF INJURY/ILLNESS alleged repetitive over years		TIME OF OCCURRENCE 08:00 ☒ AM ☐ PM	
CONTACT NAME/PHONE NUMBER Steve Wasson / 843-566-8152		TYPE OF INJURY/ILLNESS strain		PART OF BODY AFFECTED low back	
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? alleged		TYPE OF INJURY/ILLNESS CODE 1000		PART OF BODY AFFECTED CODE 1000	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED n/a		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED n/a			
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED n/a		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED n/a			
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 EE alleges due to lifting equipment over the years at work, he has low back pain.					
DATE RETURN(ED) TO WORK 05-04-2009		IF FATAL, GIVE DATE OF DEATH n/a		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? ☐ YES ☐ NO WERE THEY USED? ☐ YES ☐ NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) n/a		HOSPITAL (NAME & ADDRESS) n/a		INITIAL TREATMENT ☒ NO MEDICAL TREATMENT ☐ MINOR: BY EMPLOYER ☐ MINOR CLINIC/HOSP ☐ EMERGENCY CARE ☐ HOSPITALIZED > 24 HRS ☐ FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED	
WITNESSES (NAME & PHONE #) n/a					
DATE ADMINISTRATOR NOTIFIED 05-04-2009		DATE PREPARED 05-04-2009		PREPARER'S NAME & TITLE Tracy Kessler, Risk Mgmt	
PHONE NUMBER 843-746-7475					

SEE BACK FOR IMPORTANT STATE INFORMATION/SIGNATURE

WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP) Charleston County School District 75 Calhoun Street Charleston, South Carolina 29401		CARRIER/ADMINISTRATION CLAIM NUMBER 07-09-000298		REPORT PURPOSE CODE	
SIC CODE 2811		EMPLOYER FEIN 57-600322		LOCATION #: 0111 PHONE #: 566-8152	
CARRIER/CLAIMS ADMINISTRATOR CARRIER (NAME, ADDRESS & PHONE NO) Charleston County School District 75 Calhoun Street Charleston, South Carolina 29401 843-937-6469		POLICY PERIOD TO		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) The Schaffer Companies, Ltd. 171 Church Street, Suite 140 Charleston, South Carolina, 29401	
CHECK IF APPROPRIATE ☒ SELF INSURANCE					
CARRIER FEIN 6156		POLICY/SELF-INSURED NUMBER		ADMINISTRATOR FEIN	
AGENT NAME & CODE NUMBER					
EMPLOYEE/WAGE					
NAME (LAST, FIRST, MIDDLE) Rhame, Ricky		DATE OF BIRTH 11/21/56		SOCIAL SECURITY NUMBER	
ADDRESS North Charleston, SC 29420 11415		SEX ☒ MALE ☐ FEMALE ☐ UNKNOWN		DATE HIRED 7/1/1987	
PHONE 843-		# OF DEPENDENTS		STATE OF HIRE SC	
RATE PER ☐ DAY ☐ MONTH ☐ WEEK ☐ OTHER		# DAYS WORKED/WEEK 5		OCCUPATION/JOB TITLE Heat & Air Tech	
		MARITAL STATUS ☒ UNMARRIED ☐ SINGLE/DIVORCED ☐ MARRIED ☐ SEPERATED ☒ UNKNOWN		EMPLOYMENT STATUS FT - Perm	
				NCCI CLASS CODE	
				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 Unkown/Ongoing		TIME OF OCCURRENCE ☐ AM ☐ PM	
CONTACT NAME/PHONE NUMBER Steve Wasson 566-7275		TYPE OF INJURY/ILLNESS Disc Pain		PART OF BODY AFFECTED Lower Back	
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?		TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		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 Ongoing lifting of AC units over several years		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
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 Ongoing lifting of AC units over several years					CAUSE OF INJURY CODE
DATE RETURN(ED) TO WORK		IF FATAL, GIVE DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? ☐ YES ☐ NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL (NAME & ADDRESS)		WERE THEY USED? ☐ YES ☐ NO	
WITNESSES (NAME & PHONE #)		INITIAL TREATMENT ☐ NO MEDICAL TREATMENT ☐ MINOR BY EMPLOYER ☐ MINOR CLINIC/HOSP ☐ EMERGENCY CARE ☐ HOSPITALIZED > 24 HRS ☐ FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED			
DATE ADMINISTRATOR NOTIFIED 5/4/09		DATE PREPARED 5/4/09		PREPARER'S NAME & TITLE Tracy Kessler - Risk Mgt. Tech	
				PHONE NUMBER 566-1919	

SEE BACK FOR IMPORTANT STATE INFORMATION/SIGNATURE



BLUESTEIN • NICHOLS • THOMPSON • DELGADO LLP
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

September 8, 2010

VIA HAND DELIVERY

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
1333 Main Street Suite 500
Columbia, South Carolina 29202

RE: Ricky Rhame v. Charleston County School District
WCC File No.: 0906212

Dear Ms. Crocker:

Attorneys Ken Harrell and Patrick Jennings of the Joye Law Firm have associated John Nichols and me to assist in representing Mr. Ricky Rhame in his workers' compensation case. Please let this letter serve as notice of John's and my representation to the Commission.

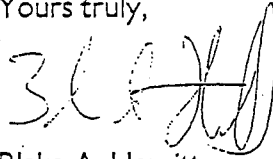
I have enclosed the original of the *Claimant's Petition for Rehearing* for filing in this case. I have also enclosed a certificate of service of this document upon counsel for the Employer.

Because the Commission does not have a regulation which governs petitions for rehearing, I do not believe that there would be a filing fee associated with this filing. Out of an abundance of caution, however, I have attached a filing fee of \$25. The closest comparison to this petition, in my view, is a motion for an expedited adjudication, which requires a filing fee of this amount. In the event you agree that there is no filing fee for this petition, I would appreciate your returning the \$25 check to me via the attached self-addressed and stamped envelope.

Thank you for your assistance in this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

/Signature page attached

Yours truly,

A handwritten signature in black ink, appearing to read 'Blake A. Hewitt', with a stylized flourish at the end.

Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

BAH/awh
Enclosures

cc: Kenneth W. Harrell, Esquire (attorney for Claimant)
Patrick L. Jennings, Esquire (attorney for Claimant)
Leslie M. Witten, Esquire (attorney for Defendant)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
G. Bryan Lyndon, Commissioner

WCC File No. 0906212

Ricky Rhame, ... Appellant,

v.

Charleston County School District, ... Respondent.

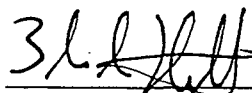
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by the parties and not any other material.

/Signature page attached

May 26, 2011

Respectfully submitted,



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