

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Op. No. 2017-UP-279 (S.C.Ct.App. filed July 5, 2017)

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S.C. SUPREME COURT

Jose Juan Jimenez, Employee,.....Petitioner,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

APPENDIX

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VOLUME II

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1 **MR. MARTIN:** That's correct. I didn't
 2 actually realize it until I was preparing for this
 3 hearing that y'all had submitted different nurse's
 4 notes in your second personnel file.

5 **MR. BEARD:** Well, we would have to believe you
 6 to believe that, and I don't believe you. So
 7 having stated that, I'm not exactly certain where
 8 that document came from and why you didn't submit
 9 it, already, into evidence.

10 **MR. MARTIN:** Well, are you suggesting that
 11 this is not a note from your nurse?

12 **MR. BEARD:** I have no idea what it is.

13 **MR. MARTIN:** Okay.

14 **MR. BEARD:** I'm suggesting I don't trust
 15 anything you do and I'm just saying that. Plain
 16 and simple.

17 **MR. MARTIN:** Well, thank you.

18 **COMMISSIONER BECK:** Maybe we alt to deal with
 19 the nurse with that document.

20 **MR. MARTIN:** That would be fine with me,
 21 Commissioner. But I would just ask that I be
 22 allowed to at least ask him this question.

23 **COMMISSIONER BECK:** How do we authenticate it,
 24 though?

25 **MR. MARTIN:** Sir?

1 **COMMISSIONER BECK:** How do we authenticate it?

2 **MR. MARTIN:** It was in the personnel file and
3 I've listed the personnel file on my pre-hearing
4 brief, as did Grady. Grady has used documents from
5 the personnel file, as have I. He produced the
6 document to me, I have no other way of getting it.

7 **COMMISSIONER BECK:** Mr. Beard, did you produce
8 it to him?

9 **MR. BEARD:** Commissioner, I don't know that
10 I've ever seen that document right there. I have
11 no earthly idea. I'm looking for the nurse's file
12 to see if I've got what he claims that he's got.

13 **COMMISSIONER BECK:** I would think that your
14 office would maintain a copy --

15 **MR. MARTIN:** Yeah.

16 **COMMISSIONER BECK:** -- of anything that's
17 transmitted to Mr. Martin.

18 **MR. BEARD:** That's what I'm looking for.

19 **MR. MARTIN:** If you pull out a copy of the
20 personnel file that you provided to me I can show
21 you where this note is in it. That's not it,
22 because that's the post-it notes on it.

23 **MR. BEARD:** Well, that's what I produced.

24 **MR. MARTIN:** No --

25 **MR. BEARD:** That's exactly what I produced.

1 **MR. MARTIN:** They --

2 **MR. BEARD:** I produced the personnel file
3 produced to me by my clients.

4 **MR. MARTIN:** This is what they produced --

5 **MR. BEARD:** Okay.

6 **MR. MARTIN:** -- with the post-its.

7 **MR. BEARD:** Right.

8 **MR. MARTIN:** You did not produce that.

9 **MR. BEARD:** That's exactly what I produced.

10 **MR. MARTIN:** Well, I've got two different
11 stacks of documents, okay. I'll be glad to hand
12 those up to the Commissioner and he can go through
13 them and confirm that I did not get the same
14 documents from you that I got from them.

15 **MR. BEARD:** Commissioner, and I don't care if
16 you let him testify about the document. My point
17 is the same point that I would like to make to the
18 Commission; he submits these documents, he's now
19 producing to you a document that he should have
20 presented in advance, and it just looks like the
21 same of stuff, the hiding the ball, all that kind
22 of thing --

23 **COMMISSIONER BECK:** Mr. Beard, if you didn't
24 produce that document to him I would whole-
25 heartedly agree with you. What I'm trying to get

1 to is whether or not you produced that as part of
2 your discovery to Mr. Martin. If you produced it
3 to him and he got it from documents that you
4 provided him ambush doesn't sound like a real good
5 argument to me.

6 **MR. BEARD:** Here are the nurse's notes that
7 I produced to him. They're the same personnel
8 file that I have. To my knowledge, that's all I
9 have.

10 **MR. MARTIN:** This is the nurse's note that I'm
11 referring to, which is the same one that he -- that
12 they produced the first time. Goes down to right
13 here, that. And then it's got this. When he
14 produced records -- they produced this record to
15 me --

16 **MR. BEARD:** Right.

17 **MR. MARTIN:** -- when they responded to
18 personnel file. Then Grady produced records to me
19 on April whatever.

20 **MR. BEARD:** Right.

21 **MR. MARTIN:** And when he produced records to
22 me this was in there. And I didn't notice it, and,
23 you know, I'm sorry. I didn't know that it was
24 okay to disparage someone else's integrity in a
25 hearing like that, but... I got no way of creating

1 that or pulling it out of the air anywhere. I
2 mean, that's something that he produced.

3 **COMMISSIONER BECK:** I'm not casting
4 accusations on one side or the other --

5 **MR. MARTIN:** I know you're not, Commissioner.

6 **COMMISSIONER BECK:** -- I just want to know
7 where it came from.

8 **MR. MARTIN:** I know you're not.

9 **MR. BEARD:** I have no idea. I mean, there is
10 not another nurse's note in this entire personnel
11 file that I got from Kohler Company. It's the only
12 Kohler Company personnel file I have.

13 **COMMISSIONER BECK:** All right.

14 **MR. BEARD:** I have no earthly idea about the
15 documents.

16 **COMMISSIONER BECK:** You are available on the
17 3rd of June?

18 **WITNESS:** Yes, sir.

19 **COMMISSIONER BECK:** All right. Here's what
20 I'm going to do. I'm going to give you guys to the
21 3rd of June to figure this stuff out. I'm going to
22 recess this proceeding today. I want to know where
23 that came from.

24 **MR. MARTIN:** Yes, sir, I can tell you where it
25 came from. I just did.

1 **COMMISSIONER BECK:** Y'all bring me an answer
2 back on the 3rd.

3 We will reconvene with Mr. Brown on the
4 witness stand on the 3rd.

5 This matter is set to reconvene --

6 **MR. BEARD:** I can already -- here's what I can
7 tell. There's no way -- I don't know where this
8 came from unless we've another document that they
9 produced to us that I don't see in this file.
10 Because none of this would have been available when
11 they responded to his subpoena, because they
12 responded back in --

13 **MR. MARTIN:** Right.

14 **MR. BEARD:** -- November --

15 **MR. MARTIN:** That's exactly right, you
16 provided that, they didn't.

17 **MR. BEARD:** I'm just saying I don't know where
18 this came from, because I don't have it. So if
19 you've got it I don't know where it came from.

20 **MR. MARTIN:** Okay. Well, I got it from you.

21 **COMMISSIONER BECK:** All right. We're not
22 going to argue anymore today. I want y'all to
23 figure it out. Be ready to respond. I'll be ready
24 to listen to arguments on the 3rd on that.

25 **MR. MARTIN:** Exactly right.

1 **COMMISSIONER BECK:** With Mr. Brown resuming
2 his testimony at that point in time on redirect.

3 We are scheduled to reconvene at 2:30. I ask
4 the parties to remain flexible on that time,
5 depending on how our morning, early afternoon
6 schedule pans out on that particular day.

7 One thing that I need to note for the record
8 that I don't believe I read into the record when I
9 called this case is there were -- we talked about
10 objections to the APAs and we discussed Mr. Beard's
11 objection to Claimant page seven. Also submitted
12 into evidence -- Mr. Beard, did you submit these
13 depositions?

14 **MR. BEARD:** Yes, sir.

15 **COMMISSIONER BECK:** The deposition of
16 Dr. Savage-Jeter, that's marked as Defendant's
17 Exhibit No. 1 and the deposition testimony of
18 Dr. Rodriguez, which has been marked as Defendant's
19 Exhibit 2.

20 Mr. Martin, I assume there was no objection to
21 these.

22 **MR. MARTIN:** Absolutely no objection. I hope
23 that those will be reviewed thoroughly.

24 **COMMISSIONER BECK:** Page by page.

25 **MR. MARTIN:** Yes, sir.

1 **COMMISSIONER BECK:** All right. With that
2 being said, we are in recess until we reconvene on
3 June the 3rd.

4 ****

5 (Whereupon, the hearing was suspended at 5:10 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did hear the matter of **Jose Jimenez v. Kohler Company**, Workers' Compensation File No. 1122474 and 1219561 on Friday, May 23, 2014, in Columbia, South Carolina, before the Honorable T. Scott Beck;

That the witness(s) were duly sworn under pains and penalties of perjury to testify to the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand this 22nd Day of June 2014.

/s/ Christine Tatum

Christine Tatum
Notary Public For South Carolina
My Commission Expires December 29, 2021

Spartanburg Incident Report

Incident No: 2511

Date 3/14/2012 7:44:21 AM
Superviso Barnwell
Associate Clock 19224
Associate Name JIMENEZ, JOSE J
Years Service 8
Department 3828
Job Title CASTER GROUP 2
Hire 2/7/2004
Incident 3/13/2012
Incident 9:46
Incident Cast Shop - Bench
Incident Near Miss
Dollar Amoun \$0.00
Medical Nurse
Individuals Involved Jose Jimenez
Incident Description On Tuesday morning 3-13-12 associate told me as I was passing by him that his back was sore and asked me if I could get him some pills from the nurse . I asked the associate if he wasok and he said yes ,wherein I got him 3 packs of back pills from Sid Deval .The associate finished his work for the day at 13:30 and went home with no more complaints .On Wednesday morning at 4:50 a m associate came to me and stated that his left leg felt like it was asleep or numb and that this came from rolling the molds over on his floor on Tuesday around 9:00 a m , when I asked associate why he did not report this he said this is why his back was sore and he needed the pills . Asked associate if he could work and he stated he had no problem casting today and is running production .
Action Talked to associate about the correct procedures in rolling over bowls and how important it was to work with his partner to make sure that both casters were rolling over together and one not getting ahead of the other in order to keep the weight distributed evenly . Also to never rush while doing this procedure . Associate will also be required tododouble exercise for a week in order to keep his back muscles loose .

Wednesday, March 14, 2012

First Previous Next Last

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Spartanburg Incident Report

Incident No: 2499

Date 7/15/2011 10:10:20 AM
Supervisor Barnwell
Associate Clock Number 19224
Associate Name JIMENEZ, JOSE J
Years Service 7
Department 3828
Job Title CASTER GROUP 2
Hire Date 2/7/2004
Incident Date 7/14/2011
Incident Time 6:30
Incident Location Cast Shop - Bench
Incident Type Near Miss
Dollar Amount \$0.00
Medical Treatment Nurse
Individuals Involved Jose Jimenez-19224
Incident Description Associate reported to me at 05:00 AM on Friday 7-15-11 that during the process of emptying his drain pans on his floor at 06:30 on Thursday 7-14 -11 he felt something in the lower middle part of his back . Associate stated there was no pain only a little tightness . Associate stated that he could cast his floor as he had continued to do all his procedures the day before he reported this to me and felt fine . Had Associate cast production and sent associate to the Reinstated to Associate that all accidents must be reported as soon as they happen and on the same day , which he is aware of . Reinstated to Associate the proper lifting technique on how to bend at the knees while keeping the back straight and let the legs do most of the lifting .

Action Plan

Friday, July 15, 2011

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Doctors
Care

EXAM ROOM TIME

ACCOUNT NUMBER	DATE	TIME	CHECKOUT TIME	TICKET NO.
274173	04/30/12	09:50am	10:43	1251343
NAME & ADDRESS		DOB: 08/05/1978 (33 years)		INSURANCE BALANCE \$0.00
JIMENEZ, JOSE		GENDER: M		ACCOUNT BALANCE \$0.00
2110 WALL RD				CURRENT CHARGES
BOILING SPRINGS, SC 29316		IBG:		AMOUNT PAID
64-356-4507		CELL:		NEW BALANCE
WRK: INSURED: JIMENEZ, JOSE		RELATION: SELF		CASH: CHECK: M.O: C.C.
INS: UHC/UNITED HEALTHCARE		COPAY: 0.00		
REASON: BACK PAIN/ SHOULDER PAIN				
NICKNAME:				

Personal Hx	Family Hx	Social Hx	ROS (V or O): Fatigue, Dizzy, Weak, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Ear Pain, Sore Throat, SOB, CP, Cough, Sputum, Wheeze, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash	Allergies: NKDA
DM	DM	Alcohol		
HTN	HTN	Tobacco		
Accident? ☐ yes ☐ no If yes, which state: _____			Medications: None	
Date of Accident: _____				
Prev. chart rev., no sig. chg.: <u>1/2</u>			Above Hx rev.: <u>1/2</u>	
WT	HT	BMI	BP	PULSE
210.8	5'9"	32.7	121/72	55
			RESP	TEMP
			17	98.7
			☐ LMP	☐ Tetanus
			Med/Allergies Reviewed <u>1/2</u>	

PHYSICAL: (see reverse) Omit if N/A
☒ if nml., ☐ if abnml. & give details)

General

☐ HEENT☐ Neck☐ Nodes☐ Lungs☐ CV☐ Abd☐ Back☐ Ext☐ GU☐ Neuro☐ Skin/Breasts☐ Chaperone☐ IV☐ Injection☐ Nebulizer☐ Procedure☐ Pulse Ox

Chief Complaint: low back pain, getting worse since Wednesday
 HPI: worse Sat. Aggravated by lifting.
leg is weak. Some @ back pain
& some numbness @ ant lat. & @ toes/feet
Pain score 5/10.
Happened 2-3 times in the
past 11 months. @ took baclofen

☐ CBC
☐ EKG
☐ FBS
☐ Flu
☐ Home
☐ Hgb A1C
☐ H. Pylori
☐ KOH
☐ Microalb
☐ Mono
☐ Strep
☐ Tetanus
☐ UA
☐ U Prep
☐ Wet Prep
☐ X-Ray

DIAGNOSIS:

☐ Labs - Send Out☒ Patient Care Instructions Discussed☐ Lifestyle Modification☐ Preventative Recommendation(s)☒ Prescriptions / OTC Meds☐ Side Effects Discussed☐ Follow-Up: _____

Return:

☐ Worsening symptoms:☒ If not better: 1-2 weeks 2. N/A

Go to ER if:

Crutches/Splints/Supplies ☐ Given ☐ Recommended

PSR Notes:

NEW

99203-144

Staff

1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that no guarantee has been or can be made as to the results of the treatments or examinations of Doctors Care.

2. 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/the patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices.

3. I authorize payment of medical benefits in Doctors Care physicians or their designees for services rendered.

Patient or Authorized Person's Signature: Jose J. JimenezDate: 4/30/12

4. Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records and the treatment I have received or will receive.

Patient or Authorized Person's Signature: _____

Date: _____

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JOSE JIMENEZ,

Employee

-VS-

KOHLER COMPANY,

Employer

and

BROADSPIRE, a CRAWFORD COMPANY

Carrier

WCC File No:
1122474

 **COPY**

Deposition of **PAULA "PAT" ZIMMERMAN**, a witness
called by Counsel on behalf of the DEFENDANTS, pursuant
to the applicable provisions of the South Carolina Rules
of Civil Procedure, taken before Christine Tatum, a
Professional Court Reporter and Notary Public in and for
the State of South Carolina, on Friday, May 30, 2014, at
Kohler Company, 4000 South Pine Street, Spartanburg,
South Carolina, commencing at the hour of 3:15 p.m.

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EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
*Plaintiff's Exhibit No. 1	Copy of Nurse's Notes	50

*Exhibit retained by Counsel

LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[sic]	written as said

This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties that the Witness will waive the reading and signing of the deposition transcript.

Whereupon,

PAULA ZIMMERMAN,

having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR BEARD:

Q. If you would, please state your full name for the record.

A. Paula R. Zimmerman.

Q. And, Ms. Zimmerman, I know you as Pat and most of the people around here --

A. They do.

Q. -- call you Pat, is that what you go by?

A. Yes, around here.

Q. Okay. If you would tell me what your most recent occupation was?

A. Occupational Health Nurse.

Q. Where were you employed?

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1 A. Kohler Company.

2 Q. And how long were you the Occupational Health Nurse
3 for Kohler?

4 A. Forty-six and a half years.

5 Q. And was it always in this plant in Spartanburg?

6 A. Yes.

7 Q. All right. What is your current occupation?

8 A. (No response.)

9 Q. Are you retired?

10 A. Retired.

11 Q. When did you retire from Kohler?

12 A. February 1, 2014.

13 Q. And prior to that, you said, you were here for 46
14 and a half years?

15 A. Yes.

16 Q. Okay. Obviously, you know we're taking your
17 deposition. The Commissioner has asked us to take
18 your deposition, Commissioner Beck. And we are
19 taking your deposition in a case -- actually, two
20 workers' compensation claims have been filed by a
21 gentleman by the name of Jose Jimenez. Do you
22 remember Mr. Jimenez?

23 A. Yes, I do.

24 Q. Okay. And was your memory of him as an employee of
25 this plant?

1 A. Yes, it was.

2 Q. Tell me what you know about Mr. Jimenez and what
3 you remember about Mr. Jimenez.

4 A. He was a caster. And he -- I probably did his pre-
5 employment physical and saw him on several
6 occasions for personal reasons and treated. And
7 then he came in one day, it was in 2011. He said
8 that his shoulder -- one shoulder was higher than
9 the other and it felt like something was sticking
10 in his shoulder and he thought it was protruding.
11 And it did look elevated a little bit, but it could
12 have been, you know, just the way he was. I asked
13 him had he injured himself or twisted his shoulder
14 or anything and he said no. And I put some Sofasco
15 Oil on it and gave him some I-Prin and suggested he
16 see his personal doctor.

17 Q. Okay. Let me ask you, do you mind if I call you
18 Pat?

19 A. Not at all.

20 Q. Pat, when Mr. Jimenez would come into the medical
21 facility here at Kohler did he come by himself?

22 A. Yes, he did.

23 Q. Did he communicate with you?

24 A. Very well.

25 Q. Okay. Did he communicate in English?

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1 A. Yes.

2 Q. Do you speak Spanish?

3 A. Very little.

4 Q. If he had been speaking Spanish would you have
5 needed someone to come in and interpret for you?

6 A. I would have. I have a book, English-Spanish book,
7 I could have used, but if it had been very
8 difficult I would have gotten someone.

9 Q. Did you and Mr. Jimanez have any trouble
10 communicating?

11 A. No.

12 Q. Okay. I'm going to show you what has been marked
13 into evidence in this case as Plaintiff's Exhibit
14 or document number six pages one hundred through
15 one hundred and two and ask you what those records
16 are.

17 A. These are the nurse's notes on Mr. Jimanez.

18 Q. And who would have written those notes?

19 A. I would have.

20 Q. Okay. You wrote all these notes?

21 A. Yes, I did.

22 Q. And they're kind of in reverse order from 100 to
23 102 because this particular Commissioner -- some of
24 them like them in chronological order going from
25 oldest to newest and some of them like them newest

1 to oldest -- he likes the newest first. But what
2 I'm going to look at is I want to go back to page
3 102 and show you, specifically, it's highlighted,
4 as you see on mine, and in the blue you've got --
5 the first entry is dated July 15, 2011, can you --

6 MR. MARTIN: I apologize.

7 MR. BEARD: Sure.

8 MR. MARTIN: Can we take just a second?

9 MR. BEARD: Sure.

10 (Off the record)

11 Q. All right, Pat, we're back on the record. And I've
12 shown you what's page 102 of what we call APAs,
13 and these are Mr. Jimenez's APAs. What I want to
14 ask you to do, if you would, just read for me what
15 July 15, 2011 says in your words.

16 A. (As read): On 7/14/11 at 7:00 or 7:30 a.m. was
17 draining molds, picked up a slip pan and felt low
18 back pull. Is sore now. Biofreeze to low back.
19 Back Quell, tablets two now and tablets two to take
20 every four hours PRN. Use warm soaks over the
21 weekend. Recheck Monday. He says he cut back
22 production to 18 pieces today.

23 And that was at 8:50 a.m. when he was in
24 medical.

25 Q. Okay. Did he have any instructions about coming

1 back any further or what was going to be the --
2 what were you planning for him to do?

3 A. Recheck Monday.

4 Q. Did he come back in on a Monday?

5 A. No.

6 Q. And when he didn't come back in, do you follow up
7 with them or what happens from that point?

8 A. Sometimes I do and sometimes I don't.

9 Q. Okay. And so he did not follow up with you on the
10 Monday after July 15th of 2011. When is the next
11 time you saw him?

12 A. According to this card, and that would -- was on
13 9/8/11.

14 Q. Okay. The cards that we have been provided and
15 that we've provided to Mr. Jimenez -- and I'm going
16 to show you pages 102 and 101, because it looks
17 like 102 continues into 101 if I'm reading it
18 correctly. These cards are done how, chronological
19 order?

20 A. Yes.

21 Q. If he had come to see you, for instance, between
22 July 15, 2011 and September 8, 2011 would there
23 have been another entry on the card?

24 A. Yes, every time they come in I enter it on the
25 card.

1 Q. Okay. So what did he come to see you for on
2 September 8, 2011?

3 A. It's when he said his right shoulder was different
4 and --

5 Q. Did he tell you what he thought was causing it or
6 anything?

7 A. He just said it felt like a -- he said it was more
8 prominent, and it did protrude a little bit. And
9 he was asked if he had injured or twisted his
10 shoulder, and he said no.

11 Q. Okay. Now, from July 15th to September the 8th,
12 did Mr. Jimenez ever come and ask you to send him
13 to a doctor about his back or anything of that
14 nature?

15 A. No.

16 Q. So you just never saw him again in the medical
17 facility between those two months?

18 A. No.

19 Q. All right. After September the 8th did he ask you
20 to send him to a doctor?

21 A. No.

22 Q. Okay. When's the next time you saw him?

23 A. He had a flu shot -- flu vaccine in October of '11.

24 Q. Do you administer -- or did you administer flu
25 vaccines --

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1 A. Yes, I did.

2 Q. -- for the employees?

3 A. Yes, I did.

4 Q. So the medical facility here, is it restricted to
5 workers' comp cases or is it just anything that
6 somebody has?

7 A. Anything. I see more -- I saw more personal
8 illnesses, actually, than plant related.

9 Q. Okay. If something is personal is it also
10 maintained in your medical log?

11 A. It is.

12 Q. So everything that he would have seen you for is in
13 your notes?

14 A. That's right.

15 Q. All right. You said you didn't see him between
16 September the 8th and then he had the flu shot in
17 October of 2011, when's the next time you saw him?

18 A. March 14th of 2012.

19 Q. And what did he tell you then?

20 A. He told me that (As read): Was rolling ware over
21 yesterday -- which would have been the 13th -- and
22 felt low back -- and left low back felt sore. And
23 today the area felt like electric shock down his
24 leg. And I applied Biofreeze and gave him I-Prin
25 tables, two, and ten, give him to take tablets one

1 to two every four to six hours. And return for
 2 rechecking the next morning.

3 Q. Okay. Did he come back?

4 A. No, he didn't.

5 Q. All right. When's the next time you saw him?

6 A. On June the 28th of '12.

7 Q. So from March the 14th of 2012 until June the 28th,
 8 some three and a half months, he never came back to
 9 see you?

10 A. No. I checked with his foreman on the 19th and he
 11 said -- of March -- and he said that he said he was
 12 fine and he was doing his regular job.

13 Q. Okay. Who was the foreman that you talked to?

14 A. Sam Barnwell.

15 Q. And you're aware Mr. Barnwell is recently retired?

16 A. I knew he was going to, I didn't know he had.

17 Q. All right. What did he come to see you -- he being
 18 Mr. Jimenez -- what did he come to see you for on
 19 June 28th of 2012?

20 A. He said he felt as though a pulse was beating in
 21 the top of his head. And said he had been doing
 22 that for several days and he said it comes and
 23 goes. And when I checked I could feel no pulse in
 24 that area. And he said he'd been having flashes of
 25 light before his eyes. His blood pressure was 110

1 over 74, pulse, 66. He said he didn't have a
2 headache and his neck was not sore when he bends
3 down and he had been under stress. And I gave him
4 APAP, that's something like Tylenol, two. And I
5 suggested he see his doctor if he continued to have
6 those symptoms.

7 Q. Did he tell you why he had been under stress?

8 A. No.

9 Q. Okay. And do you know whether he went to see his
10 private doctor or not?

11 A. No, I don't.

12 Q. Do the employees come back and tell you when they
13 go see their private doctors?

14 A. Some of them do. And some of them, they have to
15 bring a doctor's slip in, and then go to their
16 foreman, and then they check them in personnel, and
17 then they're filed in their medical folder or
18 either their personal.

19 Q. Okay.

20 A. But I don't know if he did or not.

21 Q. If he had come back and said, I went to see -- you
22 know, Nurse Pat, I went to see my family doctor
23 would that have been recorded?

24 A. It would have been on there.

25 Q. Okay. When's the next time you saw him? And

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1 you're looking, now, at page 100, correct?

2 A. Okay. Yes. In November there was a meeting in my
3 office with his supervisor, his foreman, Mike
4 Tollison, and myself.

5 Q. Who requested the meeting?

6 A. I don't know.

7 Q. And you said Mr. Jimanez was part of the meeting,
8 as well?

9 A. Yes, he was.

10 Q. What was the meeting about?

11 A. He was -- he said he had seen a doctor with his
12 right shoulder and he was now alleging an injury on
13 9/8/11. And he said that the doctor told him that
14 it would not be workers' comp. And he said that he
15 had seen a doctor with his back. And I have noted
16 that he came in on 3/14 and reported that on 3/13,
17 as we stated before, he was rolling ware over, and
18 he was treated here, and he was supposed to be
19 rechecked on the 15th and did not return.

20 Q. Okay. Did he advise you the name of the doctor?

21 A. Dr. Erica Savage is who he said he saw with his
22 shoulder.

23 Q. What about for the back, did he say it was the same
24 doctor or did he even tell you or did you even
25 record it?

1 A. I didn't record it if he did.

2 Q. Okay. Now, at that meeting did Mr. Jimanez ask to
3 be sent to a doctor?

4 A. No, he didn't ask me.

5 Q. Or did you give him any instructions or --

6 A. No, that was just the meeting and I was just there,
7 I didn't say anything.

8 Q. You were just the secretary who made the notes?

9 A. Yeah, and I didn't take down everything the
10 foreman, and supervisor, and Mike said --

11 Q. Right.

12 A. -- I just...

13 Q. Did you hear Mr. Jimanez give any indication that
14 he couldn't preform his job or anything of that
15 nature?

16 A. I didn't.

17 Q. Okay. Did he come back to see you again after
18 that, to your memory?

19 A. To my memory, he didn't.

20 Q. Okay. Now, we have --

21 MR. BEARD: Al, do you have that other report,
22 the one that's got the extra writing on it?

23 MR. MARTIN: I do.

24 Q. This report was presented at the hearing, Pat,
25 and --

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENTS

Volume II

1 A. Okay.

2 Q. -- I don't have the report, I'll tell you that.

3 Mr. Martin says we sent it to him so I don't know

4 what happened, or how it got there, or why we don't

5 have a copy. But if you would, the writing

6 after --

7 A. The meeting?

8 Q. Yeah, well, whatever -- looks like there's a note

9 on November 26 of '12.

10 A. Yeah, (As read): The copies of his medical cards

11 made and on hold incase we needed to send them

12 anywhere.

13 Q. Okay.

14 A. And then (As read): An email from J. Brown with

15 updates on EE, that means Employee and see in

16 medical file. And then (As read): On 1/31/13,

17 email from Joe Brown regarding an EE's visit to his

18 PMD on 1/30/13, see in medical file.

19 Q. What is PMD?

20 A. Private Medical Doctor.

21 Q. Okay. To your knowledge, is that the last time you

22 ever put any kind of entries into the medical

23 folder about --

24 A. To my knowledge it is.

25 Q. Okay. Now, when someone actually pursues a

1 workers' compensation claim at Kohler at this
2 particular location and it's accepted, let's say
3 it's an accepted workers' compensation claim, what
4 is the process?

5 A. We send in a 12-A First Report of Injury to the --
6 Broadspire.

7 Q. They adjust your cases?

8 A. Yes.

9 Q. Okay.

10 A. And then if it's accepted we have notes from the
11 doctor and we record on their medical record and
12 put a copy of the doctor's note in their medical
13 file.

14 Q. Who decides the doctors they go to?

15 A. We send them to our company doctor, which is Family
16 Medical Center, first.

17 Q. Would Dr. Savage be included in that group?

18 A. She is. She is.

19 Q. Okay. Do you know whether some of these doctors --
20 or do you know whether Family Medical Group also
21 serve as the family physicians to some of the
22 employees here?

23 A. They do. They do.

24 Q. Do you know whether Dr. Savage served as the
25 personal medical doctor for --

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1 A. I don't know if she did.

2 Q. All right. So you would send someone to Family
3 Medical Center and then who decides where they go
4 from there?

5 A. The doctor, if they think they need further
6 consultation with a specialist they refer them. We
7 have to get it cleared with Broadspire first --

8 Q. Right.

9 A. -- but then they refer them.

10 Q. Do you have any input into whether a case is
11 admitted or denied?

12 A. No.

13 Q. Okay. When a case is denied from a workers' comp
14 standpoint what happens?

15 A. We get a letter and then, usually, we fill out a
16 form of alleged. Even though it's denied we have
17 to fill out an Alleged 12-A.

18 Q. Same process, you send it in to --

19 A. Yes.

20 Q. -- Broadspire and then you, pretty much -- are you
21 out if it at that point and they handle it?

22 A. Yes.

23 Q. Okay. In this particular instance Mr. -- we have
24 your notes that show that Mr. Jimanez came to see
25 you on July 15th of 2011, which would be one day

1 after the date of accident he alleged of 7/14/11,
2 and then he came to see you on 3/14/12, one day
3 after he claimed to have injured himself on
4 3/13/12. Following those two incidents did he ever
5 come to see you at any point in time about his low
6 back up until the time you had your meeting in
7 November of 2012?

8 A. I believe earlier, before all this, after he first
9 came to work he had -- maybe he pulled his back or
10 said he pulled his back, and then he mashed some
11 fingers. And then one time a piece of ware or
12 something hit him, I think, on the forehead or
13 somewhere, and the foreman took care of it until I
14 got here, I get here at 7:30, and then I
15 sterostripped it. But that's all I can recall.

16 Q. You got a pretty good memory about most of your
17 patients?

18 A. Most of them.

19 Q. Okay.

20 A. They're like family, most of them.

21 Q. Do you and Mr. Jimanez, as far as the times you
22 were together and the times you treated him, have a
23 good relationship?

24 A. Yes.

25 Q. He ever, to your knowledge, ever complain about you

1 to anyone?

2 A. Not to my knowledge, but...

3 Q. Did you ever have any reason to complain about him
4 to anyone?

5 A. No.

6 Q. Okay. And, again, did he ever have an interpreter
7 when he came to see you?

8 A. No.

9 Q. Did you ever need an interpreter?

10 A. No.

11 Q. If Mr. Jimenez had come to you and asked to be sent
12 to a doctor what would you have done?

13 A. He would have gone to Family Medical Center.

14 Q. Did you ever ask you to see a doctor?

15 A. No.

16 MR. BEARD: That's all I have.

17 CROSS-EXAMINATION

18 BY MR. MARTIN:

19 Q. Ms. Zimmerman, thank you for coming in and
20 answering these questions for us today. Let me
21 start off with that page of your notes, right there
22 (indicating) that has no number at the bottom of
23 it. But that appears to be more of your notes and
24 includes after November 1st of 2012 some other
25 dates and January of 2013, is that right?

- 1 A. Yes.
- 2 Q. Are those your notes?
- 3 A. They are, that's my writing.
- 4 Q. That's your handwriting?
- 5 A. Yes, sir.
- 6 Q. Okay. There's not any question that that's
- 7 something that you prepared, is that --
- 8 A. No, because my initial is there, PZ.
- 9 Q. Okay.
- 10 A. That might -- sometimes after I copy the notes to
- 11 be sent somewhere, if something else comes up I put
- 12 it on their cards, so I don't know if that was the
- 13 case or not. But that is -- that's my writing.
- 14 Q. Do you know that -- those notes reference an email
- 15 that's in the medical file, do you know where that
- 16 would be?
- 17 A. It would be in the employee's medical file.
- 18 Q. Okay. If that got copied do you think the email
- 19 would have also been copied?
- 20 A. I don't know. I don't know.
- 21 Q. Do you know when that was copied in that?
- 22 A. No, I don't.
- 23 Q. Who typically does that?
- 24 A. Who copies the cards?
- 25 Q. Yes, ma'am.

1 A. The medical cards? I do.

2 Q. Okay. Do you have any recollection of doing that?

3 A. Unless it was there when I copied all the medical
4 cards that were sent I don't really know. But I...

5 Q. Yes, ma'am, okay. Let's go back to this meeting
6 that occurred on November 1st of 2012, and this is
7 page 100 of those documents you have in front of
8 you there. Okay. I believe you said you and
9 Mr. Tollison were there, were there other people
10 there?

11 A. The supervisor, Joe Brown, and Sam Barnwell, the
12 foreman.

13 Q. Okay. So Joe Brown, Sam Barnwell, Mike Tollison,
14 yourself, and Mr. Jimanez --

15 A. Mr. Jimanez.

16 Q. -- were all present during this?

17 A. (Nods head.)

18 Q. Okay. Now, do you remember there being any
19 conversation about Mr. Jimanez reporting this as an
20 accident and asking to go to the doctor and
21 Mr. Tollison telling him, Well, this is too big a
22 gap, you've waited too long, you hurt yourself back
23 in March and you haven't complained about it again
24 since then, it's too late now, this wouldn't be
25 workers' comp and we can't send you to the doctor?

- 1 A. I don't remember that. I know there was a lot of
- 2 conversation going on back and forth, but I don't
- 3 remember that, specifically -- as Mr. Tollison
- 4 saying that.
- 5 Q. Okay. Do you remember anything about Mr. Tollison
- 6 saying anything about there being a gap or there
- 7 being too long a period of time?
- 8 A. No.
- 9 Q. Don't remember anything --
- 10 A. No, I don't remember that.
- 11 Q. If an employee comes to you with an injury and says
- 12 they think they would like to go to the doctor do
- 13 you always send them?
- 14 A. Yes, most of the time. If they're having --
- 15 Q. Are there occasions where you tell them, I don't
- 16 think you need to go to the doctor?
- 17 A. I'll tell them, Well, do light duty and then if
- 18 it's -- and I tell them if they notice any change
- 19 or anything different to come back that day. And
- 20 then if there is they go to the doctor.
- 21 Q. Okay. And I see where in the one note you told
- 22 Mr. Jimenez to follow up with you on Monday. How
- 23 often do they typically -- do you always have them
- 24 come back and follow up with you?
- 25 A. Most of the time they do.

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1 Q. And when they -- you said most of the time, when
2 would you not have them come back and follow up?

3 A. If it's just something that I treat right there and
4 probably think they won't have any more problem
5 with it, but if it's something like a strain or
6 something like that.

7 Q. I got you. And how often -- do you tell them,
8 Okay, come back -- like you did with one note,
9 Okay, come back on Monday?

10 A. Or the next day. And that was probably on Friday
11 and that's why I told him to come back on Monday.

12 Q. I got you.

13 A. But tell them to see me the next morning or the
14 next day.

15 Q. And do they have a certain amount of time that
16 they're supposed to follow up with you or is there
17 any kind of hard and fast rule on that?

18 A. Well, is someone's on light duty they're supposed
19 to check with me every day.

20 Q. Does that always occur?

21 A. Most of the time it does, sometimes it doesn't.
22 But most of the time, or their foreman will -- if
23 they come up to medical or something they will say
24 they're still on light duty and they say they're
25 still sore or still, you know...

1 Q. Got you. If their foreman does not send them up do
2 you always document it?

3 A. Not always. Not always, no.

4 Q. And who else gives out medication besides yourself,
5 like Back Quell pills or --

6 A. Well, if I'm not here someone in personnel will do
7 that.

8 Q. Okay. The medication --

9 A. Because they're over the counter medicines, they're
10 not prescription medicine. We don't keep any --

11 Q. Yes, ma'am, that was the next question I had for.
12 I was going to ask you. So the medications you've
13 mentioned today, the APAP, and the Back Quell, and
14 the --

15 A. And the I-Prin.

16 Q. -- I-Prin, those are not prescription medications?

17 A. No, we have no prescription meds here.

18 Q. Okay. And I saw in those documents you said to
19 continue taking the medication every four to six
20 hours. Would you typically give them several pills
21 or...

22 A. I would if it was -- especially, like if it was
23 over the weekend.

24 Q. Yes, ma'am.

25 A. And I would. And something like Tylenol or

- 1 something like that I instruct them not to take
2 more than eight in a twenty-four hour period.
- 3 Q. Got you. Do you know if any of the supervisors
4 keep some medication or pills in their desks?
- 5 A. They keep aspirin, but that's about all. They keep
6 aspirin. They have a little first aid box they
7 keep aspirin, and band-aids, and anti-biotic
8 ointment or something incase on the second shift
9 someone gets a scratch or something. And they all
10 keep aspirin.
- 11 Q. Does any of the medication come in like a pack?
- 12 A. Usually two in a tablet -- two tablets in a pack.
- 13 Q. Yes, ma'am.
- 14 A. Even the aspirin.
- 15 Q. Even the aspirin, okay. What does the Back Quell
16 come in?
- 17 A. It comes in packages too. There's two in a pack.
18 And that's more for muscle strains.
- 19 Q. Yes, ma'am. Have you had a chance to speak with
20 anybody about this case before you testified today?
- 21 A. No.
- 22 Q. Okay. And have you had any conversations with
23 anyone in regards to this case?
- 24 A. No.
- 25 Q. Even going back to when you were employed here?

1 A. Probably discussed it with the foreman or the
2 supervisor. They would tell me how he was doing or
3 that he said he'd seen a doctor and had an MRI, and
4 things like that. But, as far as actually
5 discussing it, no.

6 Q. Yes, ma'am. And you said he's seen a doctor and
7 had an MRI, do you remember when he had an MRI?

8 A. No, in one of the notes he, as well as I can
9 remember -- from his supervisor - he told his
10 supervisor that the doctor had suggested an MRI.
11 Now, whether he had it or not, I don't know.

12 Q. Would that have been Sam Barnwell or someone else?

13 A. His supervisor was Joe Brown.

14 Q. Joe Brown?

15 A. Joe Brown.

16 Q. Okay. So you think it was Joe Brown who told you
17 that Mr. Jimenez said the doctor had recommended he
18 have an MRI?

19 A. Yes. He sent out an email, I think, to several
20 people and I was on the list, I believe.

21 Q. I got you. Do you remember when that would have
22 been?

23 A. No, I don't.

24 Q. We talked briefly about when someone else -- or
25 when someone would come if they were not sent by

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1 their supervisor that you may not always document
2 that. Is it possible that Mr. Jimanez on occasion
3 came to you for back pills and it wasn't
4 documented?

5 A. No.

6 Q. That's not possible?

7 A. It's not possible, because every -- I document
8 everything that -- you know, if he came it would be
9 on his medical card.

10 Q. Okay. And let me just ask you, I don't understand
11 a little bit there, I'm making sure I get you to
12 clarify it for me. I think I understood you to
13 say, sometimes, that people will come to you, if
14 they're not sent by their supervisor you won't
15 necessarily document that on their chart. If
16 Mr. Jimanez -- but you're saying you know that if
17 Mr. Jimanez had you would have documented it on his
18 chart?

19 A. No, whether their supervisor sends them or not, if
20 they come to me it's documented on their card.

21 Q. Okay. I think I --

22 A. Because some of them do come just -- they'll leave
23 their job and -- would leave their job and come.
24 But every -- I document everything when I see them,
25 whether they're sent by the -- sometimes the

1 supervisor will call and say they're sending so-
2 and-so up, they have a headache, or they say they
3 pulled their back, or something. And sometimes the
4 supervisor will even come with them, especially if
5 there's a cut or something or a contusion or
6 something, they'll come with them. But every time
7 I see a person -- every time I saw a person it's
8 documented on their card.

9 Q. Okay. And I thought I had asked you that. Did I
10 -- I want to make sure I didn't misunderstand. I
11 thought I asked you if you always documented it or
12 was there an occasion when you didn't document it
13 if they were not sent by their supervisor. And I
14 thought you said there may have been an occasion
15 where I did not document it?

16 A. No.

17 Q. You always document --

18 A. I always document.

19 Q. Okay. I must have misunderstood you. And if a
20 person asks to go to the doctor you always sent
21 them?

22 A. Yes, if they had a -- if they had an injury or
23 something. We didn't always send them right then,
24 we put them on light duty for a few days, like I
25 said before. And I would tell them if they notice

1 any change that day or anything different to come
2 back, and they would be sent. And most -- I can't
3 remember that anybody asked when they first alleged
4 an injury or something to be sent.

5 Q. Okay.

6 A. But we would have.

7 Q. I'm sorry. I don't want to interrupt you.

8 A. That's all right. We would have. If they
9 specifically ask to go to the doctor they're sent.

10 Q. Okay. Do you remember Yuri Valderrama, another
11 employee?

12 A. Yes. Yes, I do.

13 Q. How often did you see him?

14 A. I can't remember the number of times, but over a
15 period of time it was several times.

16 Q. Okay. Would you say more than ten times?

17 A. Probably so.

18 Q. Would you say more than 50 times?

19 A. Probably not that much, I wouldn't say. I'd have
20 to look at his medical card to be sure.

21 Q. Now, you would, though, document when he --
22 whenever he would have come to your office, it's my
23 understanding now, that you would have definitely
24 document --

25 A. I would have, yes.

1 Q. And if he was on light duty he would have been
2 expected to report to you every day?

3 A. He would have been expected to report, but
4 sometimes that wasn't always the case, that they
5 reported.

6 Q. Okay. So he -- for instance, I believe he was on
7 light duty for, approximately, a year?

8 A. Probably so, something like that.

9 Q. So he would not have reported to you every day --

10 A. Probably not every day, but they're -- the rule is
11 that they should, but that -- I don't know how long
12 that's been in effect, that rule, but most of the
13 associates did, but some of them, not always.

14 Q. Okay. Do you remember Jesus Lugo?

15 A. Yes, I remember.

16 Q. Do you remember if he ever asked you to send him to
17 the doctor?

18 A. I think he probably did at one time, I'm not sure,
19 but he mentioned a doctor. It seems he might have
20 mentioned a specialist. And, as well as I remember
21 him, we would be going to send him to the doctor,
22 but he would end up -- he would either go on his
23 own or go to a chiropractor. I'm not sure about
24 that, because that's been a long time ago. But I
25 don't remember him specifically asking to go to the

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1 doctor.

2 Q. Okay. But y'all never sent him to the doctor,
3 would that be a fair statement, or do you recall?

4 A. I don't know. I don't really know.

5 Q. And in his case you said he went to the doctor on
6 his own and he would come back and tell y'all about
7 that?

8 A. I know that one time he was going to a chiropractor
9 and would say he saw him or something.

10 Q. Okay. What happens if someone comes in and brings
11 you a medical note and, you know, says, my doctor's
12 put me on light duty, do they give that to you or
13 do they give that their supervisor?

14 A. They give it to their supervisor first.

15 Q. And then where does it go from there?

16 A. It probably goes to the HR.

17 Q. Okay.

18 A. But unless -- if they go to their personal doctor
19 and he puts them on light duty I don't think they
20 honor that, from the personal doctor, it has to be
21 from the doctor we sent them to.

22 Q. Is it a practice, occasionally, to tell the
23 employees, if you don't think that something is
24 work related, that they go see their primary care
25 physician?

- 1 A. Yes.
- 2 Q. Okay. Do you think you might have told Mr. Lugo
- 3 that?
- 4 A. I can't recall that I did, no.
- 5 Q. You did tell Mr. Jimanez that, the gentleman --
- 6 A. With the shoulder, because I asked him had he hurt
- 7 it or twisted it and he said no. And that's when I
- 8 told him to see his doctor.
- 9 Q. And then when he came for the meeting on
- 10 November 1st and said he'd been to the doctor for
- 11 his shoulder and he'd been to the doctor for his
- 12 back, and you noted that he previously injured his
- 13 back on March 14th of 2012, did you create a
- 14 workers' comp claim at that point?
- 15 A. I don't know if I did at that point, but it seems
- 16 like down the line that I might -- without having
- 17 the folder before me I couldn't tell, but it seems
- 18 like I might have done an Alleged Form.
- 19 Q. Okay. Now, would you --
- 20 A. But I wouldn't have done that unless I had been
- 21 told to.
- 22 Q. And who would tell you to do that?
- 23 A. Probably -- I don't know if Dean Yagodinski in corp
- 24 -- it seems like he told me on one of them, but I'm
- 25 not sure that's one. If they get a report in that

1 they're alleging an injury and we don't know about
2 it then we'll --

3 Q. I'm sorry. Dean Yagodinski, he's in Wisconsin?

4 A. Yes, he is, at corp.

5 Q. And he's the?

6 A. Safety and Health and workers' comp too, I guess.

7 Q. Okay. Now, if an employee comes to you and says
8 they got hurt on the job and they want to go to the
9 doctor is there anybody at the plant that you talk
10 to before you send them?

11 A. I would probably talk to their supervisor or
12 foreman and if they just -- if we have no record of
13 it -- if they have no record of it -- they're
14 supposed to report every injury to their foreman or
15 supervisor.

16 Q. In this case, when he came back on November 1st
17 would you have talked to Mike Tollison about...

18 A. Mike and I do discuss some -- you know, some of the
19 cases.

20 Q. Yes, ma'am.

21 A. But I don't recall if I talked to him about that or
22 not. I could have.

23 Q. What is the rule here at your plant, as far as the
24 giving notice that you were injured on the job,
25 what do you have to do to provide notice?

1 A. They're supposed to report it to their foreman when
2 it happens. And then if they notify the foreman
3 they send them to medical.

4 Q. Okay. So in this case, Mr. Jimanez, on the two
5 dates that we talked about -- July 15th of 2011 he
6 reported to Sam Barnwell that he had injured
7 himself the day before and Mr. Barnwell filled out
8 an incident report and then sent him to the doctor
9 on the 15th -- I'm sorry, not the doctor, sent him
10 to you?

11 A. Yeah.

12 Q. Pardon my mis-speaking. And then on March 14th of
13 2012, pretty much the same thing --

14 A. Yeah, he was hurt, I think he said, on the 13th and
15 he came on the 14th.

16 Q. And Mr. Barnwell did an incident report. So, as
17 far as Kohler's concerned, that would have been
18 sufficient notice of him being injured on the job?

19 A. It would have been sufficient notice of him -- of a
20 near miss on the job. The foreman fills out a Near
21 Miss Report.

22 Q. Okay. Well, so if they say they're hurt, what's
23 the difference, exactly, tell me that. I want to
24 make sure I understand the distinction you're
25 making.

P512

1 A. I'm not making a distinction. I just know they
2 fill out a Near Miss Report.

3 Q. Okay. Well, the report says -- I think it says
4 Spartanburg Incident Report and then there's
5 several different ways they can categorize it, is
6 that right? They can categorize it as a near miss,
7 they can categorize it as an injury, they can
8 categorize it as -- I'm not sure if I'm remembering
9 that right, but I think that's accurate. So what I
10 asked you before was, if they do an incident report
11 with their supervisor and say I got hurt on the job
12 the supervisor sends them to you in the Nurse's
13 Office and you say, He said he hurt himself rolling
14 over ware the day before, and you give him some
15 back medicine?

16 A. Yeah, and usually put Biofreeze on the back and
17 tell him to return --

18 Q. What else does he have to do at that point to give
19 notice that he had an accident at work where he's
20 claiming that he hurt his back?

21 A. Nothing. If it keeps bothering him he should come
22 back, return.

23 Q. Is there any requirement that he asked to go to the
24 company doctor in order for it to be considered --
25 that they feel like he got hurt on the job or not,

- 1 or if he says I got hurt on the job and he comes to
2 the nurse is that good enough?
- 3 A. Well, if -- and sometimes they're just treated here
4 and, you know, if it continues to bother them then
5 they're sent to the company doctor.
- 6 Q. Yes, ma'am.
- 7 A. Or if it's something real -- that we think they
8 need to go then, right then, they're sent then.
- 9 Q. But you don't have to go to the company doctor in
10 order to have given notice that you had a work
11 accident, right?
- 12 A. No.
- 13 Q. Okay. I just wanted to make sure I understood that
14 correctly. In your note there from -- I think it's
15 over here, the one that's not numbered -- I believe
16 it's from January 31st of 2013. And correct me if
17 I'm wrong. You mentioned something about an email
18 you received from J. Brown regarding --
- 19 A. The employee's visit to his PMD on 1/30/13 and see
20 in medical file.
- 21 Q. Okay. How is J. Brown?
- 22 A. Joe Brown. I'm sorry.
- 23 Q. Joe Brown, okay. Well, no, that's what I think it
24 says, I just wanted to make sure I understood.
- 25 A. Yeah, it does. It's his supervisor, Joe Brown.

P514

1 Q. And do you remember what that email said?

2 A. Not right off hand, I don't.

3 Q. Okay. Do you know anything about Mr. Jimanez's
4 termination?

5 A. I don't.

6 Q. Did you know that he was terminated?

7 A. I knew he wasn't here any longer, but I didn't know
8 -- I didn't know why.

9 Q. Yes, ma'am, okay. In Mr. Valerrama's case, do you
10 remember that he was operated on several times by
11 Dr. Keith over at Orthopedic Specialty?

12 A. Yes, his knee surgery, I believe.

13 Q. Yes, ma'am. That was the authorized doctor?

14 A. At that time I think it was.

15 Q. Yes, ma'am.

16 A. Or he might have seen another doctor and then
17 requested -- I'm not sure about that. I'd have to
18 see his record.

19 Q. Okay. Do you know if the doctor that recommended
20 the MRI was Dr. Savage-Jeter?

21 A. I'm not sure.

22 Q. Is there a form that you give employees when they
23 go see Family Medical Center for a workers' comp
24 case?

25 A. Uh-huh.

PS15

1 Q. And that's a special Kohler form that you guys use?

2 A. Yeah, it has the regular job, light duty, or, as I
3 can remember, light work, 20 to 30 pounds, or
4 something like that, and time to be rechecked, and
5 approximate length of time before they think
6 they'll be able to return to their regular job if
7 they are on light duty.

8 Q. Okay. And do y'all require that the employees get
9 that form filled out as opposed to whatever the
10 work form is that any doctor may have at their
11 office?

12 A. We usually send that with them. Now, if they're
13 referred to -- if our doctor refers them to another
14 doctor, like an orthopedic doctor or something,
15 usually on the day they go I send that form, but
16 they doctor doesn't fill that out, they have their
17 own form. Like Orthopedics Associates, I know,
18 have their own form that they send back and it's
19 filed in their -- noted on their medical card and
20 filed in their medical folder.

21 Q. Got you. But if they go to Family Medical Center,
22 your company doctor, then you guys have them fill
23 out this Kohler form?

24 A. Yes, if we send them as a work related.

25 Q. What would happen if somebody came in and said, I

1 need to get that form, because the doctor said I
2 need to get that filled out for y'all over at
3 Family Medical Center -- Dr. Savage, for instance,
4 sent me back to the plant because she said y'all
5 have a special form I'm supposed to get
6 restrictions written up on?

7 A. Unless it was work related incident we wouldn't
8 give them that form even if they came back for it.
9 I mean if it was a personal injury, a personal
10 illness or anything we wouldn't get that form.

11 Q. So in this case, for instance, y'all did not
12 consider Mr. Jimanez's injuries work related, is
13 that correct?

14 A. Not the shoulder.

15 Q. Okay. Well, did you consider the back work
16 related?

17 A. He wasn't sent to the doctor, because he never came
18 back after he initially said that he injured his
19 back. He didn't return. We didn't hear any more
20 about it.

21 Q. Until the meeting on November 1st?

22 A. That's right.

23 Q. Okay. And then after the meeting on November 1st
24 do you recall him or do you know if he came in and
25 said, Dr. Savage-Jeter needs the Kohler form to

1 give me the restrictions? Is it my understanding
2 if that had been the case y'all would have told
3 him, You can't have them, because you don't have a
4 work accident?

5 A. He never asked me for one.

6 Q. Okay. If he had asked for one I think you just --

7 A. We wouldn't --

8 Q. I'm not talking about you.

9 A. I know.

10 Q. If he had asked someone else for one it's my
11 understanding from what you just said a moment ago
12 that he wouldn't have been given one if you guys
13 didn't consider it work related.

14 A. Unless we had sent him we wouldn't have given him
15 one, no.

16 MR. MARTIN: I believe that's all the
17 questions I have.

18 MR. BEARD: Pat, I've got a couple of follow
19 ups, only because I need to address some things for
20 the Commissioner that he asked about. He,
21 obviously, can't see you, because we're in a
22 deposition, and I need to ask you a few questions.

23 REDIRECT EXAMINATION

24 BY MR. BEARD:

25 Q. Currently, you were obviously unable to come to

PS18

1 Columbia for a hearing, because it's so far away.
2 I understand you can't come to Greenville next
3 week --

4 A. No.

5 Q. -- for the same reasons, why is that?

6 A. Due to my husband's condition.

7 Q. And how old is your husband?

8 A. Eighty-nine.

9 Q. All right. And what's wrong with him?

10 A. He's had two strokes, and he has cardiac problems,
11 and blood dyscrasia problems.

12 Q. And are you his primary care taker?

13 A. I am.

14 Q. And I think I've heard somewhere that you have
15 children who live in this area?

16 A. We do, two that live in this area and one in
17 Louisville, Kentucky.

18 Q. Okay. And is one of your children keeping your
19 husband now, while you're here?

20 A. Yes.

21 Q. You testified you have been a nurse at this plant
22 for 46 and a half years?

23 A. Yes.

24 Q. And I apologize, how old are you?

25 A. Do I have to tell you?

1 Q. Well, if you don't mind.

2 A. I'll tell the truth. Eighty-four.

3 Q. Okay. And -

4 A. And I was 83 when I retired.

5 Q. All right. So you basically started work here
6 before you were 30 years old?

7 A. No.

8 Q. Or right around 30 years old?

9 A. Yeah, I was in my late 30s.

10 Q. Okay. And are you the person who treats or sees
11 all of the workers' compensation cases, at least
12 initially?

13 A. Yes.

14 Q. Is there any other plant nurse?

15 A. No.

16 Q. Okay. In this case, the Jimanez case -- or cases
17 -- he came to see you once on March -- or excuse me
18 -- once in July of 2011 saying he had a back strain
19 or something he thought he had done the day before,
20 correct?

21 A. That's correct.

22 Q. Are you familiar with the types of jobs that
23 Mr. Jimanez performed?

24 A. Yes.

25 Q. What a caster does?

P520

1 A. Yes, I am.

2 Q. Is caster pretty heavy manual labor?

3 A. It is heavy manual labor. They have some ergonomic
4 help in some of the departments now.

5 Q. And I'm going to ask you this question. If
6 Mr. Martin objects let him state his objection,
7 because I think he may, but I'm going to ask you
8 the question anyway.

9 A. All right.

10 Q. Having been in the medical profession for 46 and a
11 half years, could someone with a herniated disc, in
12 your opinion --

13 MR. MARTIN: Yes, I'm going to object to the
14 form of the question.

15 Q. Could someone with a herniated disc have performed
16 the job of a caster without coming in and
17 complaining to you for, in essence, from July until
18 March of 2012?

19 A. I wouldn't think so.

20 Q. Okay. Could someone with a herniated disc in their
21 back come and see you in March of 2012 never to
22 return again until eight months later in November
23 of 2012?

24 A. I wouldn't think so.

25 Q. In November -- or on November 1st when y'all had

P521

1 the meeting, and we know who all was there, and
2 that included Mr. Tollison; I think there --

3 A. Yes.

4 Q. -- was something in conversation, did you and
5 Mr. Tollison ever talk, obviously y'all were at
6 that meeting together.

7 A. Yes.

8 Q. Did Mr. Jimenez, at that point, ask to file or
9 pursue a workers' comp claim?

10 A. Not to my knowledge.

11 Q. Did he ask to go see a doctor?

12 A. Not to my knowledge.

13 Q. In fact, did he tell you he had already been to a
14 doctor?

15 A. He did mention that he'd seen a doctor.

16 Q. And according to your notes did he tell you that my
17 doctor said this is not workers' comp?

18 A. He did.

19 Q. And that doctor was Dr. Savage, was that your
20 understanding?

21 A. Jessica Savage, yes.

22 Q. And we understand that she is company doctor?

23 A. She is.

24 Q. But do you also understand that she was his
25 personal family doctor?

P522

1 A. I know that he saw her, I don't know if she was his
2 regular family doctor or not.

3 Q. Okay. You never sent him to Dr. Savage for --

4 A. No.

5 Q. -- workers' comp, did you?

6 A. No, I did not.

7 Q. All right. I think you testified Mr. Jimenez never
8 asked you, specifically, for a form to carry to a
9 workers' comp doctor or to carry to a doctor for
10 restrictions?

11 A. No.

12 Q. Who else has those forms besides you, anybody, or
13 just you?

14 A. They're in the medical department.

15 Q. Okay. And did you testify -- this may be where
16 there was some confusion, I know when Mr. Martin
17 asked the question. Did you testify it was not
18 uncommon for some of these employees not to come
19 back and see you even though they're supposed to?

20 A. Most cases they do, but some cases they don't.
21 It's not uncommon for them not to come back. Do
22 you mean when they're on light duty --

23 Q. Yes, ma'am.

24 A. -- when they're supposed to report? Some do and
25 it's not uncommon for them not to come back every

1 day.

2 Q. And if they don't come back do you assume that
3 they're feeling better?

4 A. Yes.

5 Q. Okay. And then, again, in this case, according to
6 the records, again, that are marked pages 100
7 through 102 of, again, what we call APA submissions
8 of the Claimant, from July of 2011 when Mr. Jimanez
9 said he was doing something and says he was
10 draining molds?

11 A. Slip -- let me see -- draining molds, uh-huh.

12 Q. Okay. When he said he was doing that the day
13 before and thought he had strained his back, you
14 never saw him again about that incident?

15 A. No, I didn't.

16 Q. The next time he came back it was something to do
17 with his shoulder?

18 A. That's correct.

19 Q. Okay. You never saw him again about that until
20 November of 2012?

21 A. That's right.

22 Q. And then he came to see you one more time in March
23 of 2012, again, complaining about his low back,
24 saying that he had been rolling ware the day
25 before?

P524

1 A. That's right.

2 Q. I'm going to show you what's been marked as Exhibit
3 B from what is called our APAs -- Defendant's APAs
4 -- and ask you, are you at all familiar with these
5 types of forms, Change Questionnaires?

6 A. Yes.

7 Q. Okay. What's the first question that's asked of an
8 employee on these forms?

9 A. (As read): Do you have any physical limitations
10 that prevent you from casting this floor.

11 Q. In this particular document what did Mr. Jimanez
12 say?

13 A. No.

14 Q. What's the date of the document?

15 A. 11/28/12.

16 Q. Would you agree that was four weeks after your
17 meeting with Mr. Jimanez?

18 A. Yes.

19 Q. You were asked questions about a gentleman named
20 Yuri Valderrama and a gentleman named Jesus Lugo,
21 were they even working here when Mr. Jimanez came
22 to see you?

23 A. I don't know.

24 Q. Okay. I'll represent to you both of their workers'
25 compensation claims are over -- or basically over.

PS25

1 Were you ever deposed or called as a witness in
2 those cases?

3 A. No. No, I don't think so.

4 Q. Do you know who their lawyer was?

5 A. No.

6 Q. You're not aware that Mr. Martin was the lawyer for
7 both of those gentlemen?

8 A. Yes, I remember now. Yes.

9 Q. But he never took your deposition or asked you any
10 questions about your treatment of his clients?

11 A. No.

12 MR. BEARD: Thank you, ma'am.

13 MR. MARTIN: Let me just ask you a few follow
14 up real quick.

15 RECROSS-EXAMINATION

16 BY MR. MARTIN:

17 Q. The document that he showed you had a new plate
18 number and an old plate number, do you know
19 anything about plate numbers?

20 A. Not really, no.

21 Q. Okay. Do you know -- you're looking at that form
22 again, which, I believe, is page three of the
23 Defendant's APAs. Do you know if one of those
24 refers to a position that's lighter than the other
25 one?

P526

1 A. I don't. I'm sorry, I don't.

2 Q. That's okay. Do you have any recollection of
3 Mr. Jimanez being placed in a lighter duty job --

4 A. No.

5 Q. -- in November? You do not?

6 A. No.

7 Q. Okay. Do you know how many months Mr. Jesus Lugo
8 worked after his work accident where he herniated
9 his disc before he went out of work?

10 A. No.

11 Q. Do you remember the position that Mr. Valderrama
12 was working at at the light duty?

13 A. I believe he was in the lab, as well as I can
14 remember.

15 Q. Do you recall him being terminated from his lab
16 position around September 26th of 2011?

17 A. I knew he wasn't there then, I don't know if he was
18 terminated or not.

19 MR. MARTIN: Why don't we just go ahead and
20 mark this.

21 MR. BEARD: That's fine.

22 (Whereupon, the above described Copy of
23 Nurse's Notes was marked Plaintiff's
24 Exhibit No. 1.)

25 Q. I'm showing you what's been marked as Plaintiff's

1 Exhibit 1. And these are those notes have the
2 additional dates. And just to clarify one last
3 time, that is your handwriting and those are your
4 notes, is that correct?

5 A. That is correct.

6 MR. MARTIN: Okay. Thank you.

7 MR. BEARD: Is that it?

8 MR. MARTIN: That's it. Nothing further.

9 MR. BEARD: Thank you, Pat.

10 *

11 (Whereupon, the deposition concluded at 4:20 p.m.)

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STATE OF SOUTH CAROLINA

CERTIFICATE

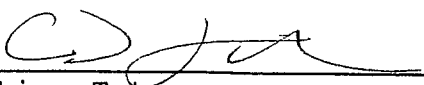
Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did have **PAULA "PAT" ZIMMERMAN**, appear before me on Friday, May 30, 2014 at 3:15 p.m. at Kohler Company, 4000 South Pine Street, Spartanburg, South Carolina;

That the witness was duly sworn under pains and penalties of perjury to testify the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand this 1st Day of June 2014.



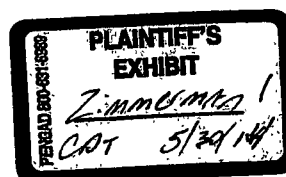
Christine Tatum
Notary Public For South Carolina
My Commission Expires December 29, 2021

MEDICAL DEPARTMENT—CASE RECORD 4

KOHLER

DATE	REMARKS	Name	Lock No.
11-1-12	Meeting - J. K. Brown S. Baughman and Mr. Tolson EE has seen Dr. Eric Savage with his at shoulder. He is now allig in jiggy on 9-8-11. Dr. Savage called for shoulder. EE says Dr. Savage told him would not be W/C. EE says that he has seen a doctor with his back. EE came in on 3-14-12 and reported that on 3-13-12 the man with his back was over and his left arm back felt sore (see note on card dated 3-14-12 8:55 a.m.) was treated here on 3-14-12 was supposed to be checked on 3-15-12 but did not return.	J. K. Brown	19204
11-26-12	1045 Copy of medical, medical cards made and on hold.		
1-25-13	825 E-mail from J. K. Brown 640-date on EE. See in Medical Folder.		
1-31-13	755 E-mail from J. K. Brown re: EE's visit to his PMD on 1-30-13. See in Medical Folder.		

K-372 (4/06)



Wine! Neg - neg - neg 5.0 - neg

MEDICAL DEPARTMENT - CASE RECORD

KOHLER CO.

DATE	REMARKS	NAME
4-2-01	Physical Here - Fml @ 10:30 a.m.	J. J. J.
4-3-01	9:15 PM - Jm C called R.P.R. - urine drug screen - neg.	J. J. J.
6-25-01	12:00 midnight caught Rt. thumb between boards while closing boards. Thumb nail is blue & has blood plaster @ end of thumb sent to Dr. Medlock @ 1:30 PM Linda - Jm C called Post accident urine drug screen negative.	J. J. J.
6-25-01	sample Dr. Medlock Rt. Thumb nail showed - has pinkish - Tetanus shot then in determination - knot OSHA recordable.	J. J. J.
3-6-02	02:45 comes in - sample 3-5-02 around 6:30 was closing mine on mine but left ring & middle fingers. Left ring finger in sample & sore - sharp middle finger Pain off - softwood / 1/2 lb Sample - tube sample - will of nail showing to let fighting up for several days. Return is doesn't get better Dr. Medlock - sample - 1/2 3-14-02 - SF returned to regular job on 3-13-02.	J. J. J.

K-372 (7/82)

-Over-

KOHLER CO.

DATE	REMARKS	Name	Age	Sex	Ref	1934
3-11-10	ES was rolling back of Ware and hit body pulling breaking on the handle on top. When he picked up handle slip to get it off the handle broke at a piece him bent above his left eye. First aid for a bruise till P. S. arrived to work. Cleared out above left eye - no more. Then for Steri-Strips 5 on 2 and 1 bandage. Amap took it home. Mr. TV. came to take 4 4 in P.M. & off work Monday after today. With Mon. as before it has only gotten K.	W. J. S.	40	M		
3-15-10	2:30 AM by fire truck. 1/2					
4-1-11	5-11-85 on 7-14-11 @ 7:00 & 7:30 AM was draining milk picked up a slip pen and felt low back pulling - saw now. B. J. T. gave 4 pain back. Back pain. Then it was as took it to take 4 4 in P.M. Use Warm Soaks from the weekend. Fresh: Mon. Soap cut back production to 18. Soap today.					
4-18-11	1:00 Soap Rt. Shoulder is suffered then left Soap bone at the top of shoulder is more prominent. It does protrude more. He says he has not injured shoulder - not hit or twisted etc. Says at times feels as though something is sticking in shoulder. Duration - about a month.					

K-372 (3/82)

could - Over -

MEDICAL DEPARTMENT—CASE RECORD

DATE	REMARKS
12/20/21	

REMARKS

Name

Journal of the

10

1

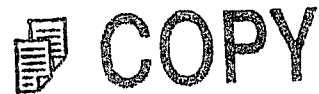
5

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Clock No. 19224

—Ov

P553

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

JOSE JIMENEZ,

Employee

-VS-

KOHLER COMPANY,

Employer/Carrier

VOLUME II
WCC FILE NOS.
1122474 & 1219561

Pursuant to Notice of the Workers' Compensation
Hearing taken on the 3rd day of June 2014, heard before
the Honorable T. Scott Beck, and commencing at the hour
of 2:54 p.m. in Greenville, South Carolina.

Tatum Court Reporting
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Edgefield, SC 29824
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ALSO PRESENT

Wilmer Aviles
Translator

Mike Tolleson
Company Representative

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LEGEND OF THE TRANSCRIPT

dashes [--] intentional or purposeful interruption
[ph] denotes phonetically written
[sic] written as said

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P R O C E E D I N G S

(Whereupon, the Deposition Transcript of Paula "Pat" Zimmerman was premarked Defendant's Exhibit No. 3.)

COMMISSIONER BECK: Today's date is June 3, 2014. This is Workers' Compensation File Numbers 1122474 and 1219561. Claimant in this matter is Jose Jimenez, represented today by Attorney Al Martin, Jr. The Employer is Kohler Company, Carrier is Westfield Insurance Company -- they are actually self-insured, represented today by Attorney Grady Beard.

This is a matter we commenced on May 23, 2014. We recessed at that time and are now resuming this proceeding at approximately 2:54 on June 3, 2014.

At the time we recessed Mr. Joe Brown was on the stand.

Mr. Brown, I remind you that you are still under oath in this proceeding.

It's my understanding we were on cross-examination. Or were we on redirect?

MR. BEARD: I think we were on redirect. Al was questioning him, yeah.

COMMISSIONER BECK: I believe we're on

PS 38

1 redirect so, Mr. Martin, I'll turn it over to you.

2 MR. MARTIN: Thank you, sir.

3 COMMISSIONER BECK: Before we go on. During
4 the pre-hearing in this there was a deposition
5 taken of a nurse in the matter by the name of Paula
6 "Pat" Zimmerman. That has been admitted without
7 objection and marked as Defendant's Exhibit No. 3.

8 All right. Mr. Martin.

9 MR. MARTIN: Thank you, your Honor.

10 REDIRECT EXAMINATION (CONT'D FROM 5/23/14)

11 BY MR. MARTIN:

12 Q. Mr. Brown, was Sid DeVaul in the meeting that
13 occurred on November 1st of 2012?

14 A. No, he wasn't.

15 Q. Okay. And have you had any discussions with anyone
16 about this case since we were last together?

17 A. Absolutely not.

18 Q. Okay. Let me make sure. I believe where we were
19 in your testimony was in relation to whether you
20 had received any notice from the Claimant in
21 January of 2013 about the medical treatment he was
22 receiving. And I was about to show you a document.
23 I'll show it to you now. It's Exhibit one of
24 Ms. Zimmerman's deposition. And she has verified
25 that these are her notes. And I'm going to refer

1 you to the note that begins on January 25, 2013.

2 Says (As read): Email from J. Brown. Update on
3 employee. See his medical folder.

4 Do you know what that was about?

5 A. Well, there's, you know, a lot of emails that go
6 back and forth. Pat received it as CC, it was more
7 than likely sent to Mr. Tolleson or Mr. DeVaul. Of
8 update on where Mr. Jimenez was.

9 Q. Okay. In relation to his medical treatment?

10 A. Medical treatment or this one could very possibly
11 be the leading into his termination.

12 Q. Okay. Could it have been in relation to him having
13 a MRI scheduled?

14 A. I think that's when it came back. I'm not 100
15 percent sure, but I believe this is when he came in
16 on the 25th and said that he went and had an MRI
17 and they suggested that he was to go on to light
18 duty. And that's where I said light duty for
19 personal injuries were not allowed in the plant.
20 That we were going to go ahead and -- Sam Barnwell
21 and David Lee -- I was on vacation that day -- told
22 them that since it was not work related injury, a
23 we saw it to be, that he was to be -- go back to
24 the doctor and bring back a note saying that he was
25 ready to go back to full regular duty, we did not

1 offer light duty.

2 Q. Okay. And I think that may have occurred on
3 January 30th, and this is January 25th, I believe.

4 A. That's what it says.

5 Q. You don't know what that might be --

6 A. I wouldn't know what that would have been.

7 Q. Okay.

8 A. 'Cause the only email I remember is, you know,
9 discussing that case with him.

10 Q. Right. And I believe you told me previously that
11 there -- you were not aware and there was not any
12 form that Kohler has -- special form that employees
13 take back for work related injuries.

14 A. That's correct.

15 Q. Okay. And so you don't recall Mr. Jimenez asking
16 you for that form?

17 A. No. Once again, I was not there that day, it was
18 Sam Barnwell and David Lee, which is a cash op
19 specialist, gave him the instructions based on what
20 I told them. Was to allow him to go back to his
21 doctor, get a full release to come back to work,
22 and for him to clearly understand that he needs to
23 call us back and give us a update what's going on.

24 Q. Okay. So you were aware that -- I believe we just
25 discussed that Ms. Zimmerman's deposition was

1 taken. Were you aware that she testified that
2 there is a special form that Kohler uses and
3 requires the company doctor to fill out for a
4 workers' comp injury?

5 A. Could be. You asked me if I am aware of it. No,
6 I'm not.

7 Q. Okay. And -- well, let's go on. January 31st of
8 2013 it reflects another email from J. Brown,
9 that's you, right?

10 A. That's correct.

11 Q. Regarding employees visit to his primary -- or it
12 says PMD, we'll say that's --

13 A. Okay.

14 Q. -- primary doctor, on January 30, 2013. See
15 medical folder.

16 Do you remember what that was about?

17 A. That was probably the one I was just discussing
18 that I was saying that, you know, he went and saw a
19 doctor, had a MRI taken, and came in with a light
20 duty.

21 Q. Okay.

22 A. 'Cause I don't remember the January 25th.

23 Q. Correct me if I'm wrong, but I was thinking when we
24 were together before that you did not know anything
25 about a MRI.

1 A. MRI came through an email from Sam Barnwell to me.
 2 You asked me if I knew anything about a MRI prior
 3 to the meeting that we had in November. That's
 4 when I said I did not know anything about anything
 5 prior to his illness until November.

6 Q. Okay. So in January when he got the MRI you were
 7 aware that he had received that MRI and that he was
 8 claiming that he had a problem with his back and
 9 needed to be --

10 A. Through Sam Barnwell's email, yes.

11 Q. Okay. What did Sam Barnwell's email say?

12 A. Basically, Sam told me that Mr. Jimenez came in --
 13 'cause he asked for a day's vacation from me and I
 14 says that was fine. Even though vacation was
 15 closed I really didn't need his product at that
 16 time so I had to let him take a day's vacation. He
 17 took a days' vacation, he came back in the next
 18 day, and that's when he brought a note back saying
 19 that he had a MRI done and they wanted to put him
 20 on lighter restriction duty. And that's when I had
 21 my vacation day. And I said that, you know, we're
 22 not going to honor that because of it not being a
 23 work related injury and I had no record of a work
 24 related injury.

25 Q. Okay. But you were in the meeting on November 1st

1 of 2012 when he had claimed he injured his back at
2 work.

3 A. He claimed a couple of things.

4 Q. Yeah.

5 A. Claimed a back, claimed a shoulder, claimed
6 whatever he could when we said that we haven't seen
7 you -- here it was November and we haven't seen you
8 in over six months, you haven't complained to
9 anybody over six months. And during that
10 discussion I remember him saying that, Well, can I
11 claim my shoulder, then.

12 Q. Okay.

13 A. Then that's what I said once before.

14 Q. Did you know that his doctor had directed him to
15 come back in October to speak with folks at the
16 plant to clear up the fact that this was a work
17 related injury?

18 A. No, I'm not aware of that.

19 Q. I'm showing you page 90 of APAs --

20 **COMMISSIONER BECK:** What page?

21 **MR. MARTIN:** Page 90 of the Claimant's APAs.

22 Q. -- and that is a physical therapy note dated
23 10/30/12 right there. And that would have been two
24 days before his meeting at the plant, right, on
25 November 1st, 2013?

1 A. (No response.)

2 Q. Is that correct?

3 A. I'm not quite sure of the date in November, but
4 it's -- yes.

5 Q. Okay. But if you'll look at this Exhibit right
6 here, this is the nurse's note dated November 1,
7 2012 meeting, does that help you recall?

8 A. Yes.

9 Q. Okay. So that was two days before -- or, excuse me
10 -- the meeting was two days after this note from
11 the doctor.

12 A. Huh-huh.

13 Q. Or therapist. And it says (As read): Patient
14 comes to therapy and expresses concern reporting
15 his shoulder pain, which he related to injury at
16 work -- looks like approximately, if this --

17 **COMMISSIONER BECK:** Which he stated he injured
18 at work.

19 **MR. MARTIN:** Yes, sir.

20 Q. -- one year ago. Patient -- excuse me -- physical
21 therapist listens to patient's concerns and
22 recommended him to talk to the unit secretary for
23 further clarification of his coverage. Patient
24 reports he will talk to HR and he will call back
25 for further clarifications regarding his -- looks

1 like directions.

2 **MR. BEARD:** I think it's decision.

3 **COMMISSIONER BECK:** Looks like decision to me.

4 **MR. MARTIN:** Okay.

5 Q. All right. So that pretty well correlates with
6 this meeting that occurred on November 1, 2012,
7 wouldn't you say?

8 A. Well, I mean, he's complaining about his shoulder.
9 When I walked into the room -- once again I was not
10 there for the whole part of the meeting, but when I
11 walked in he was talking about his back, he was not
12 talking about his shoulder.

13 Q. Okay.

14 A. When we said that we have never saw him come back
15 and see Pat about his back since the six months
16 went by, that's when Mr. Jimenez said, Well, how
17 about my shoulder. And that's what I remember
18 hearing.

19 Q. Okay. Now, who was doing most of the talking while
20 you were in this meeting?

21 A. Mr. Tolleson and Mr. Jimenez.

22 Q. Okay. What comments did the nurse make during the
23 meeting?

24 A. Just -- I think if anything was said by Pat was
25 basically that you haven't come back and saw me,

1 that type of thing. Nothing that I remember that
2 stood out. It's just for, you know, If you did
3 hurt your back and you still had soreness in your
4 back how come you never come back and saw me in six
5 months, that's normally what Pat would -- that's
6 what I remember it to be.

7 Q. Were you aware the Form 50 in this case was filed
8 on February 1st of 2013?

9 A. No.

10 Q. And Mr. Jimenez was terminated on February 5th of
11 2013, is that right?

12 A. I don't have the dates right in front of me, but
13 sounds close.

14 Q. Looking back at this Exhibit 1 of Ms. Zimmerman's
15 deposition. This indicates on November 26th of
16 2012 that copies of medical -- medical cards made
17 and on hold. Is that in relation to the meeting
18 that occurred on November 1st?

19 A. I can not answer that question.

20 Q. Okay. And November 28th, you testified earlier --
21 well, I think you testified there was about an
22 eight year period, on cross-examination, where he
23 was in the same job.

24 A. Huh-huh, casting.

25 Q. Okay. And it wasn't until after that that he moved

1 to a different job, that's where he did the change
2 order.

3 A. It was still casting, it was just a different
4 model.

5 Q. Okay. And that was a plate change document that he
6 signed?

7 A. That's correct.

8 Q. And that position was lighter than the one he was
9 in?

10 A. That's correct.

11 Q. And that was on November 28th of 2012.

12 A. Okay.

13 Q. Do the foremen keep medical kits on their desks?

14 A. Medical kits are usually kept by first responders.
15 If somebody had, I'll say, a band-aid box or
16 something like that -- if a foreman --they would
17 brought it in themselves, it wasn't issued from the
18 plant. Only issued first aid kits are given to
19 first responders.

20 Q. Okay. So if Ms. Zimmerman, the nurse, had
21 testified that the foremen keep medical kits at
22 their desk that have medicine in them, is that...

23 A. Not to my knowledge.

24 Q. Looking at deposition of Dr. Jeter. On page 21 of
25 that deposition in response to a question from

1 Mr. Hagler, the attorney for Kohler, on line eight
2 it says (As read): And did you take him out of
3 work in mid-January. And the answer on line nine
4 is (As read): Mid-January.

5 Do you know where Mr. Hagler got that from,
6 that he was taken out of work in mid-January?

7 A. Absolutely not.

8 Q. And were you aware that Dr. Savage-Jeter testified
9 that she directed the Claimant to go back to his
10 job concerning paperwork and to get that and bring
11 it back to him?

12 A. No.

13 Q. Where you aware that she testified --

14 **MR. MARTIN:** That's on page 22.

15 Q. -- that she expected a call back from Human
16 Resources, but never heard anything?

17 A. No.

18 Q. Okay.

19 **MR. MARTIN:** And that's on page 25 and 26.

20 Q. Regards to 26 -- well, at the top of the page there
21 (As read): So my anticipation was to receive a
22 call back from someone.

23 You're not aware of the doctor expecting any
24 call from Kohler and you weren't aware that there
25 were any kind of special forms?

1 A. No, sir.

2 Q. Okay. The nurse testified that she documents
3 everything and there's no light duty references
4 documented in any of her cards. You've had a
5 chance to review this record and I would refer you,
6 also, to pages 100, 101, and 102, these are the
7 other notes provided by the nurse. Do you recall
8 him doing light duty?

9 A. No.

10 Q. Okay. Now, he was deposed on April 16th of 2013,
11 Mr. Jimenez, and --

12 **MR. BEARD:** Commissioner, his deposition is
13 not in evidence so he can't question him about
14 anything out of that deposition, that would be
15 completely improper.

16 **COMMISSIONER BECK:** Mr. Martin?

17 **MR. MARTIN:** Well, I'm going to question him
18 about something that Mr. Tolleson testified to in
19 relation to sitting in that deposition, which I
20 think I can do.

21 **COMMISSIONER BECK:** All right.

22 Q. Mr. Tolleson attended the deposition and he
23 testified that there was occasion where -- he
24 testified this last week -- there's occasion where
25 Mr. Jimenez was on light duty, or supposed to be on

1 light duty, but he wasn't performing the light duty
2 and Mr. Tolleson came out and counseled him about
3 that and said, you know, Why aren't you doing the
4 light duty like you're supposed to, you shouldn't
5 be doing this work.

6 You don't recall any light duty, though?

7 A. You asked me if we had Mr. Jimenez on light duty.
8 There was no light duty due to the fact -- when I
9 came to work that day after he went and saw the
10 nurse and whatever, he was instructed by the nurse
11 to -- it's called lighten up. It's usually up to
12 the individual of the castor or the person of how
13 many pieces they can go back to casting. We have
14 castors who come in and go see the nurse, get some
15 Biofreeze or something like that put on their back,
16 and they go right back working to their full job.

17 Once again, in Mr. Jimenez's case, if he was
18 instructed by Pat Zimmerman or Mr. Tolleson to
19 lighten up I did not receive that until coming into
20 work that day. When I came into work I talked to
21 Sam. Sam said, He's casting multiple pieces and
22 said he's okay.

23 Q. Here's my point I'm trying to make. And I
24 apologize for not being clearer in my question.
25 The nurse has testified that she documents

1 everything.

2 A. She does a pretty good job.

3 Q. Okay. And there's no documentation of light duty,
4 an issue in this case --

5 **MR. BEARD:** Commissioner, I object. That's
6 actually incorrect. That's not what the nurse's
7 notes say. And I object to Mr. Martin testifying.
8 He's not testifying, he's not asking questions.

9 **COMMISSIONER BECK:** What's your question?

10 **MR. MARTIN:** I apologize. My question is, the
11 nurse, whose deposition testimony has been
12 submitted into evidence without objection,
13 testified that she documents everything. There's
14 no light duty documented. I'm trying to figure
15 out --

16 **MR. BEARD:** That's incorrect. The deposition
17 will state -- and you'll be able to read that --
18 the nurse said, I told him to do light duty and
19 that all -- that employees don't always do what I
20 tell them, and he, apparently, did not.

21 What he's saying is incorrect.

22 **MR. MARTIN:** I'm not incorrect.

23 **MR. BEARD:** Well, I think you are.

24 **MR. MARTIN:** Well, I'd like -- I mean, I
25 apologize, but I'd like you to show me where it

1 says -- where she said --

2 **MR. BEARD:** I'd like you to show him where it
3 says --

4 **COMMISSIONER BECK:** I think that burden's on
5 you, Mr. Martin.

6 **MR. BEARD:** Correct.

7 **MR. MARTIN:** Well, I'm not the one making --
8 raising a comment that he says --

9 **MR. BEARD:** I'm objecting to an improper
10 statement out of a deposition.

11 **MR. MARTIN:** Yeah, but you're asking me to
12 prove a negative. I mean --

13 **MR. BEARD:** You're stating that the nurse said
14 this in her deposition, then you need to show us
15 that.

16 **COMMISSIONER BECK:** Cite the location in here
17 (indicating) that you're referring to.

18 **MR. MARTIN:** Yes, sir.

19 **MR. BEARD:** Commissioner, page 23 says exactly
20 the opposite of what Mr. Martin just said --
21 represented to the Court.

22 Under -- beginning at line 15, that's
23 Mr. Martin's question, (As read): Are there
24 occasions where you tell them, I don't think you
25 need to go to the doctor. She said (As read):

1 I'll tell them, Well, do light duty and then if
2 it's -- and I tell them if they notice any change
3 or anything different then come back that day, and
4 then if there is they go to the doctor.

5 She clearly referenced that she tells people
6 to go on light duty.

7 **MR. MARTIN:** Your Honor, that has nothing to
8 do with what I was saying.

9 **COMMISSIONER BECK:** Then point me to the
10 reference that you're making --

11 **MR. MARTIN:** Okay. My point was that she says
12 she documents everything. That's what I said. And
13 that she claims that she documents everything in
14 her records and there's no reference in her records
15 to light duty.

16 This comment that Grady just pointed out is a
17 general comment about what she does --

18 **COMMISSIONER BECK:** My point is, what
19 relevance does that have to this witness? What
20 question do you want to ask him that's relevant to
21 that?

22 **MR. MARTIN:** Well, the relevance has to do
23 with the --

24 **COMMISSIONER BECK:** What's the question?

25 **MR. MARTIN:** The question is, why isn't there

1 anything reflected in the notes if --

2 COMMISSIONER BECK: In the nurse's notes?

3 MR. MARTIN: Yes, sir.

4 COMMISSIONER BECK: Well, aren't you asking
5 the wrong person?

6 MR. MARTIN: Well, I have asked him if he was
7 aware of this gentleman ever performing light duty
8 and I'm asking him why it's not in the notes.

9 COMMISSIONER BECK: He didn't make the notes.

10 MR. MARTIN: Yes, sir, I'm aware of that.

11 MR. BEARD: The nurse's note at page 102 says
12 he is supposed to be coming in the next few days.
13 She testified in her deposition that is what she
14 does on light duty, tells them to come back in the
15 next few days to check in with her.

16 You're asking them --

17 MR. MARTIN: Now you're testifying. And I'd
18 like you -- I apologize, but show me where in there
19 -- in that deposition -- show me where in her --

20 MR. BEARD: I'm showing you on the notes, Al.
21 That's what you just said. You can't keep flipping
22 back and forth --

23 MR. MARTIN: I'm not flipping back and forth.

24 MR. BEARD: -- trying to confuse the judge,
25 this witness --

1 **MR. MARTIN:** I'm not trying to confuse
2 anybody.

3 **MR. BEARD:** That's exactly what you're doing.

4 **MR. MARTIN:** That's not what I'm doing, your
5 Honor. And I apologize if I am confusing, I
6 certainly have no --

7 **COMMISSIONER BECK:** Let me get back to the
8 heart of the issue. You're asking him to explain
9 something that's not in a nurse's note based on
10 testimony a nurse made that she documents
11 everything --

12 **MR. MARTIN:** Yes, sir.

13 **COMMISSIONER BECK:** How can he possibly know
14 the answer to that question?

15 **MR. MARTIN:** Well, your Honor, basically, I'm
16 trying to get to the point -- and I apologize if
17 I'm not doing it well or articulately -- but the
18 point I'm trying to make is Mr. Tolleson has
19 testified under oath that he's counseled this
20 gentleman for not performing light duty. The nurse
21 has testified under oath --

22 **MR. BEARD:** That's also incorrect. He's
23 misstating the record in this case. That's not
24 what Mr. Tolleson said.

25 **MR. MARTIN:** I believe it is. I believe

1 that's what he testified to last week. He
2 specifically pointed out --

3 **MR. BEARD:** With all due respect, I just need
4 to state this on the record, because I don't know
5 where this is going. We have sequestered witnesses
6 in this case. He is now pitting witnesses against
7 each other, which is completely improper when you
8 sequester witnesses. The reason you're not allowed
9 to do what he's doing now is the witness did not
10 get to hear the actual testimony and he's
11 interpreting the testimony, I believe, completely
12 inaccurately. He's not allowed to do, in my
13 opinion, what he is currently attempting to do
14 through witnesses because he didn't do it with
15 other witnesses. That's completely improper.

16 And we're way outside of the direct and cross-
17 examination of this witness from before. We're
18 into completely new matter that was never addressed
19 before.

20 **COMMISSIONER BECK:** I agree. Let's move on.

21 Q. How many people work in the casting department?

22 A. At the time of this or currently?

23 Q. At the time this occurred.

24 A. About 120.

25 Q. How many of those were Hispanic?

1 A. You're asking me to, basically, guess, but I'll
2 come as close as I possibly can. Probably about
3 50.

4 Q. How many of the supervisors and foremen speak
5 Spanish?

6 A. Speak fluid Spanish? One, that I know of.

7 Q. Okay. And how many of the 50 employees, would you
8 say, speak English -- 50 Hispanic employees?

9 A. Probably about 40.

10 Q. Mr. Jimenez speaks some English.

11 A. Huh-huh.

12 Q. Is that correct?

13 A. I believe, yes.

14 Q. Okay. And I apologize for repeating myself, but
15 for the court reporter you have to give a yes or a
16 no or maybe -- verbal response. Try to avoid
17 saying huh-huh and uh-huh.

18 A. Yes.

19 Q. Okay. We provided an email to Mr. Beard on
20 March 27th of 2013 advising him that Mr. Jimenez
21 does speak some English, but it is not his first
22 language and he is far from fluent.

23 MR. BEARD: With all due respect, what does
24 that got to do with this witness, the reading of an
25 email to me?

1 **COMMISSIONER BECK:** Number one, remember,
2 we're on redirect, you had your first best shot on
3 direct. Stay in the scope. What's the purpose of
4 this line?

5 **MR. MARTIN:** It has to do with the questions I
6 just asked about the -- whether the employees speak
7 Spanish or English, and that's where I'm going with
8 that.

9 **COMMISSIONER BECK:** And the relevance of that?

10 **MR. MARTIN:** Well, I believe Mr. Beard brought
11 up on cross-examination that Mr. Jimenez speaks
12 English. And he's implied that he doesn't need an
13 interpreter and that that's somehow a waist of our
14 time, that he's being provided an interpreter.
15 That was all brought up on cross-examination by
16 Mr. Beard.

17 **COMMISSIONER BECK:** It was, but you have an
18 interpreter and we're proceeding with an
19 interpreter.

20 **MR. MARTIN:** Yes, sir. I agree with that, but
21 it's been brought up, regardless of that, every
22 single witness, that he speaks English. And I'd
23 like to point out the fact, if I may, that
24 Mr. Beard was aware of that. And that's what this
25 line of questioning is going towards.

1 **MR. BEARD:** Then why does he need an
2 interpreter? If you sent me an email saying he
3 speaks and understands English why is there an
4 interpreter here today? Why did you make my client
5 pay for an interpreter to take his deposition?

6 **MR. MARTIN:** Why don't I read the email. (As
7 read): While Mr. Jimenez does speak some English
8 it is not his first language and he is far from
9 fluent. He retained us because we have a Spanish
10 interpreter on staff. In fact, I have never
11 communicated with him in English. We want to make
12 sure he understands all of your questions and
13 answers the questions as accurately as possible.
14 You'll need to provide an interpreter in order to
15 depose him.

16 That's what we said, I believe that's what he
17 testified to in his deposition, and I believe both
18 of the doctors -- on page 11 of Dr. Jeter's
19 deposition beginning at line 15 and on page 11 and
20 12 of Dr. Rodriguez's deposition beginning on page
21 11 -- all testified to the fact that while he does
22 understand English he appears to have some
23 difficulty. Both of the doctors noted that he had
24 some difficulty.

25 **COMMISSIONER BECK:** All right. I think I got

1 the point. Any other questions for this witness?

2 MR. MARTIN: No, sir.

3 COMMISSIONER BECK: Mr. Beard, any questions?

4 MR. BEARD: Just a couple of follow ups,

5 Commissioner.

6 RECROSS-EXAMINATION

7 BY MR. BEARD:

8 Q. You were asked about, Mr. Brown, page 90, a
9 physical therapy note, and it's dated October the
10 30th of 2012, correct?

11 A. That's correct.

12 Q. What is the complaint by the patient on that
13 particular physical therapy note, is it the
14 shoulder?

15 A. That's what they're saying.

16 Q. Say anything about the low back?

17 A. No, it does not.

18 Q. Okay. And then it says at the bottom, what was
19 read it you, it says (As read): Patient reports he
20 will talk to HR and he will call back for further
21 clarifications regarding his decisions.

22 Are you HR?

23 A. No.

24 Q. Okay. Who's HR?

25 A. Sid DeVaul.

1 Q. Okay. And were you aware that Dr. Jeter-Savage is
2 this gentleman, Mr. Jimenez's, personal family
3 doctor?

4 A. No.

5 Q. Okay. 11/1 of '12 is the day that you had the
6 meeting with all the folks at the plant, correct?

7 A. Correct.

8 Q. All right. I want to show you page 89 of
9 Dr. Jeter-Savage's medical records. Happen to be
10 dated November 1, 2012. And it starts out at the
11 top and says, quote: I heard a big, quote, pop,
12 close quote, sound on my back. My leg's still
13 tingling.

14 Now, did Mr. Jimenez tell you that on
15 November 1, 2012 that he had hurt his back again,
16 had heard a big pop on his back that day?

17 A. No.

18 Q. And if you'll read on down the report it says it
19 started hurting when he was doing something in the
20 morning before work, do you see that down there
21 where it's highlighted?

22 A. Yes.

23 Q. It says before he started work, correct?

24 A. That's correct.

25 Q. Okay. Did he tell you that when he was in that

1 meeting with you on November 1st?

2 A. No, he did not.

3 Q. Okay. And that meeting would have taken place, I
4 assume, before 2:30 in the afternoon, which is when
5 he told the doctor, according to the top of her
6 note, correct?

7 A. I'm not exactly sure --

8 Q. Okay.

9 A. -- what time the meeting was.

10 Q. Okay. What country are we in?

11 A. USA.

12 Q. What language do people in the United State of
13 America speak?

14 A. English.

15 Q. What language do you expect your employees at
16 Kohler to speak?

17 A. English.

18 Q. What language do you expect the supervisors,
19 foreman, management, and other folks at Kohler to
20 be proficient in?

21 A. English.

22 Q. Okay. Have you ever had a problem communicating
23 with Mr. Jimenez on the job?

24 A. Absolutely not.

25 Q. Okay. Did you ever speak to him in Spanish?

1 A. No.

2 Q. Did he ever have an interpreter when he was
3 speaking with you?

4 A. No. We have used them, but not in Mr. Jimenez's
5 case. He understood everything I was telling him.

6 Q. Okay. Has Mr. Jimenez ever served as the
7 interpreter for other employees, to your knowledge?

8 A. No, not that I can remember.

9 MR. BEARD: That's all I have.

10 MR. MARTIN: I have a couple of follow ups.

11 **FURTHER DIRECT EXAMINATION**

12 BY MR. MARTIN:

13 Q. Looking at page 93, dated 3/23/12. So this would
14 be seven days before. Under functional gains, then
15 is says (As read): Patient also complains of low
16 back pain.

17 MR. BEARD: It doesn't say patient. It says
18 physical therapy call the doctor. You're talking
19 about -- where are you talking about?

20 MR. MARTIN: I'm talking about under --

21 MR. BEARD: Okay.

22 MR. MARTIN: -- functional gains --

23 MR. BEARD: I got you.

24 Q. (As read): Patient also complains of low back
25 pain. Is that correct?

1 A. That's what it says.

2 Q. And the date is 3/23/12?

3 A. That's correct.

4 Q. 10/25/12 on page 91. Page 91 at the top, 10/25/12
5 is evaluation date at the top. That says (As
6 read): Patient reported pain on low back started a
7 year ago. Do you see that?

8 A. That's what it says, yes.

9 Q. Okay. That, again, is dated 10/25/12?

10 A. That's correct.

11 Q. Let's flip back to the note that Mr. Beard had you
12 read, page 89. Down at the very bottom of the page
13 where it says assessment clinical impressions. (As
14 read): Per patient report he talked with nurse at
15 work. No file was done under workers' comp.
16 Patient reported in front of us -- excuse me -- in
17 front of Ms. Libby, the secretary and myself, he
18 did not know where to go and follow nurse's advice
19 to go to his primary care physician, Dr. Savage.

20 Do you see that?

21 A. That's what it says, yes.

22 Q. And that's dated November 1, 2012, correct?

23 A. Yes.

24 Q. And that's the same day that this meeting occurred
25 at the plant?

1 A. That's correct.

2 MR. MARTIN: That's all the questions I have.

3 COMMISSIONER BECK: Mr. Beard.

4 MR. BEARD: Thank you, Commissioner.

5 FURTHER CROSS-EXAMINATION

6 BY MR. BEARD:

7 Q. Page 91, let's go back to that one, because it's
8 pretty important. Under past medical history it
9 says an x-ray of the lumbosacral spine was taken on
10 that day. And what did it show?

11 A. (No response.)

12 Q. Does it say it showed an old coccyx fracture?

13 A. Once again, these aren't our notes. This --

14 Q. Can you read it, though, is that --

15 A. -- x-ray --

16 Q. Shows an old coccyx fracture?

17 A. That's correct.

18 Q. Okay. And are you aware that he's claiming that
19 the events that caused him injuries here were mere
20 lifting episodes, not any falls or fracture -- or
21 anything that would have fractured his low back?

22 A. That's correct.

23 Q. And it also says on that same note (As read):
24 Patient reported he had several falls at work due
25 to slippery surface.

1 Has he ever told you that?

2 A. No.

3 Q. We're not here about any of those kind of
4 complaints are we?

5 A. Uh-huh.

6 MR. BEARD: Commissioner, that's all I have.

7 COMMISSIONER BECK: Are we through with this
8 witness?

9 MR. MARTIN: Yes, sir.

10 COMMISSIONER BECK: You may step down, sir.
11 Thank you very much.

12 Mr. Martin?

13 MR. MARTIN: Yes, sir, we'd call Sid DeVaul.

14 ****

15 Whereupon,

16 SID DeVaul,

17 having been first duly sworn,
18 was examined and testified as follows:

19 ****

20 COMMISSIONER BECK: Please state your full
21 name for the record.

22 WITNESS: My name is Sid DeVaul, S-i-d
23 D-e-v-a-u-l.

24 COMMISSIONER BECK: Mr. Martin.

25 MR. MARTIN: Thank you, sir.

DIRECT EXAMINATION

BY MR. MARTIN:

Q. Mr. DeVaul, what is your position at Kohler?

A. I'm the Human Resources Manager.

Q. And how long have you been in that position?

A. I been in this position here at this plant for a little over 18 years.

Q. Did you attend a meeting on November 1st of 2012 in regards to Mr. Jimenez in the nurse's office?

A. I wasn't there --

Q. Okay.

A. -- no.

Q. Were close enough that you could hear what was being said?

A. I knew there was a meeting there, but I didn't -- I was not close to hear what was being said.

Q. Okay. Your office is attached to the nurse's office or --

A. It's probably ten or fifteen feet, twenty feet away, something like that --

Q. Okay.

A. -- yes.

Q. And were you in your office at the time of this meeting?

A. Probably. I mean, I'm in and out of the office,

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1 out in the plant, in and out, yeah.

2 Q. Okay. Would you ever on occasion provide pills to
3 employees for problems they were having with
4 their --

5 A. Very, very rarely. I have done it, but it's very
6 rare.

7 Q. Okay. And did you ever provide pills to foremen or
8 supervisors to give to their employees that had a
9 problem?

10 A. Very rarely, but I have.

11 Q. Okay. Have you talked to Mr. Jimenez at any point
12 since November 1st of 2012?

13 A. Yes.

14 Q. And on what occasions?

15 A. The one that I can remember is after he was
16 terminated, and that was, I guess, sometime in
17 February, probably, of 2013.

18 Q. Does February 5th sound about right?

19 A. Could be, yeah. Could be close.

20 Q. Okay. And what was that discussion, if you could
21 relate that to us?

22 A. As I remember, it occurred in the lobby of the
23 Human Resources Office. And I think he had some
24 family members there. And I think the original
25 intent of him being there is asking about W2 Form

1 -- I think is what it was, and then there was some
2 discussion about the termination.

3 Q. And a W2, that would have been for his preparation
4 of his tax return?

5 A. Correct, yes.

6 Q. How was he informed of his termination, did you do
7 that?

8 A. I called him. As I remember, I called him about
9 that.

10 Q. Would that have been prior to that meeting?

11 A. Yes.

12 Q. Would that have been the same day or?

13 A. I think it was before that, I think, yeah. A day
14 or two before, maybe.

15 Q. And did he ever ask you for any forms for him to
16 take to his doctor?

17 A. I don't remember him asking me for any forms.

18 Q. Does Kohler have forms that they provide to
19 employees to take to the doctor when they've been
20 injured on the job?

21 A. When they're injured on the job. I don't think we
22 have any for being injured on the job. I don't
23 think so, but that would have been the nurse's job
24 to do that, I think.

25 Q. Okay. Would those forms have been maintained in

1 the medical department?

2 A. Yes, if -- yes.

3 Q. And when the nurse is not there do you or someone
4 from your office kind of stand in for her?

5 A. Well, from a form standpoint I wouldn't get
6 involved in that. But so, you know, wouldn't be
7 standing in for much as a medical situation.

8 Q. Okay. What was the basis of his termination?

9 A. It was absenteeism.

10 Q. And was there any reason that he was terminated at
11 this particular time?

12 A. Yes. We have a point system at the plant. So if
13 somebody misses a day they get charged three
14 points, that's assuming they call in and inform
15 supervision of their absence within the first hour
16 of the start of the shift. Points are tracked over
17 a rolling twenty-six week period. If somebody
18 doesn't call in at all or they don't call in within
19 the first hour of the shift they get charged six
20 points. So in his case he had some points that had
21 already occurred and then he had a series of days
22 where there was no call in at all.

23 Q. Okay.

24 A. So it added up to the -- went over the limit.

25 Q. Would he have been given -- I believe January 30th

1 is the day that he came in and provided a medical
 2 note from a doctor's appointment that he had
 3 attended on January 29th. Would he have been
 4 given three points for that day?

5 A. Depends on whether he called in or -- I don't know
 6 about that day in particular. I just can't recall
 7 that specific day.

8 Q. And would he have been given six points for each
 9 day thereafter up through February 5th, at which
 10 time he was terminated?

11 A. He would have if he did not call in, and I think
 12 that was the case.

13 Q. So the fact that he was written out of work or
 14 written on light duty didn't prevent him from being
 15 terminated --

16 A. Well --

17 Q. -- or effect his --

18 A. -- I don't think there was a note in existence at
 19 that time, I think is the case. Because I don't
 20 make the final decisions on terminations. I gather
 21 all the information and then if it looks like a
 22 termination should occur I write everything up and
 23 send it to a corporate attorney who goes over it.
 24 And, you know, if we'd of had a note at that time,
 25 you know, that would have been taken into

1 consideration, but at that point we didn't have
2 anything that excused him, to not call in,
3 especially.

4 Q. So did you have any discussion with Joe Brown where
5 he told you that this gentleman had come in with a
6 light duty note from his doctor and he had sent him
7 to...

8 MR. BEARD: That's not what he said. I'm
9 waiting to object. I was going to wait until you
10 finished your question, but.

11 MR. MARTIN: All right.

12 COMMISSIONER BECK: It's clear it's coming.

13 MR. MARTIN: Yeah, I know.

14 MR. BEARD: And luckily he heard this recently
15 so he'll be able to know whether you're misstating
16 it.

17 MR. MARTIN: Okay.

18 Q. ...came in with a light duty note from his doctor
19 and was told he had -- that light duty was not
20 recognized by a doctor's note from another doctor
21 and he had to get a note saying he was released to
22 full duty?

23 A. As I remember there was no note involved. There
24 was some -- maybe some request for light duty, some
25 discussion, but there was no documentation.

1 Q. When was the request for light duty?

2 A. I think it was sometime before he stopped reporting
3 to work.

4 Q. And you're not aware of any conversation he had
5 with Mr. Brown or anyone else where Mr. Brown had
6 directed that he go back to the doctor and get a
7 written note changed to say that he could come back
8 to full duty?

9 A. I wasn't present during that discussion.

10 Q. Were you aware of it?

11 A. I think there was a discussion about that.

12 Q. But that wouldn't have created any excuse for these
13 following days until he was terminated?

14 A. Correct. I think he was specifically told that he
15 had to call in each day if he was not going to be
16 there.

17 Q. Do you recall that he had reported a work accident
18 at a meeting in November and was complaining that
19 he needed medical treatment at that time?

20 A. I was not aware of it. I wasn't present at the
21 meeting and I was not aware of any specific report.

22 Q. Okay. Did anyone discuss that meeting with you?

23 A. I don't think so.

24 Q. Okay. Do you usually have potential workers'
25 compensation claims referred to you as the Director

1 of Human Resources?

2 A. No, occasionally I'm involved, but it basically
3 goes through Mike, and the nurse, and corporate.

4 Q. The policy at Kohler, as I understand it, is that
5 if you are on light duty you're required to come
6 back and see the nurse on a regular basis.

7 A. That's generally correct.

8 Q. If I understand correctly, there is no obligation
9 and no rule requiring you to come back if you
10 report an injury, it's only if you're on light
11 duty, is that...

12 A. Well, I mean, if somebody is on light duty they are
13 supposed to check in with the nurse. And the
14 second part of your question was about just
15 reporting an injury --

16 Q. Yes.

17 A. -- itself? Well, I mean, if an injury's reported
18 usually the nurse would have been involved.

19 Q. Right.

20 A. Yeah.

21 Q. So if they've -- and I apologize -- I think you've
22 answered my question.

23 Were you aware that he underwent a MRI in
24 January?

25 A. No.

1 Q. Did you receive any emails from Joe Brown in
2 January in relation to his medical treatment,
3 referring to Mr. Jimenez, or MRI, or any doctors he
4 was seeing?

5 A. I don't remember any specific medical information
6 coming from Joe Brown. I don't -- can't remember
7 specifically.

8 Q. Do you remember any emails from Joe Brown in
9 relation to Mr. Jimenez?

10 A. There was -- there were some emails concerning the
11 absences, as I remember.

12 MR. MARTIN: I believe that's all the
13 questions I have for this witness.

14 COMMISSIONER BECK: Mr. Beard.

15 MR. BEARD: Thank you, Commissioner.

16 CROSS-EXAMINATION

17 BY MR. BEARD:

18 Q. Mr. DeVaul, just to make certain I understood. You
19 were not present during the meeting on November 1,
20 2012 in the nurse's --

21 A. Correct.

22 Q. Okay. Want to show you what has been marked as
23 page 100 out of the documents that were submitted
24 by Mr. Jimenez in this case. Is that one of Nurse
25 Zimmerman's notes?

1 A. It looks like her writing.

2 Q. And is that the note from November 1, 2012?

3 A. It's dated that, yes.

4 Q. Can you read that note?

5 A. You want me to read what I can read?

6 Q. Yes, sir.

7 A. Okay. (As read): Says 11/1/2012. Looks like the
8 time is 11:15 meeting with Joe Brown -- J. Brown,
9 S. Barnwell, and Mr. Tolleson -- or Mike Tolleson
10 -- M. Tolleson. Employee has seen Dr. Erica Savage
11 with his right shoulder. He is now alleging an
12 injury in -- I can't read that word -- I think it's
13 on 9/8/11 -- on 9/8/11. Dr. Savage ordered patient
14 for shoulder... employee says Dr. Savage told him
15 would not be workers' comp.

16 Q. Stop there. That's what I wanted you to read.

17 A. Okay.

18 Q. What did he tell Nurse Zimmerman that his personal
19 family doctor told him about whether or not this
20 was a workers' comp claim or not?

21 A. The only thing I know is what was on here --

22 MR. MARTIN: I'm going to object at this
23 point, since he was not at the meeting and he's
24 reading a note that he was asked --

25 MR. BEARD: I don't think that matters. I

1 thin the document's in evidence and he can
2 certainly read what the note says.

3 **COMMISSIONER BECK:** I'll allow it.

4 Q. Does the note indicate that he said his personal
5 family doctor said this was not workers' comp?

6 A. It does.

7 Q. Okay. Additionally, are you aware we're not here
8 for any accident that may have happened in
9 September of 2011 relative to his shoulder?

10 A. As far as I know, yes.

11 Q. Okay. Are you familiar with the change
12 questionnaire forms when someone changes from one
13 process to a different process?

14 A. I'm a little bit aware of that, yes.

15 Q. Okay. I'm going to show you what's been marked as
16 Defendant's -- our Exhibit -- B, page three and ask
17 you if you're familiar with that type of form?

18 A. I've seen it, yes.

19 Q. Okay. What's the date that everyone signed that
20 form at the bottom?

21 A. 11/28/12.

22 Q. Okay. Who all signed the document?

23 A. Jose J. Jimenez, Sam Barnwell, and it looks like
24 Joe Brown's signature.

25 Q. Okay. And would agree that November 28th of 2012

1 would be four weeks after this meeting that took
2 place?

3 A. Correct.

4 Q. All right. First question that's asked -- well,
5 first of all, he's changing processes, is he still
6 doing casting?

7 A. Yes.

8 Q. Okay. Casting -- are you familiar with castors?

9 A. Yes.

10 Q. Is that a pretty hard job?

11 A. It is.

12 Q. Okay. What' the first question that Mr. Jimenez
13 was asked on that form?

14 A. (As read): Do you have any physical limitations
15 that prevent you from casting this floor.

16 Q. What was his answer?

17 A. No.

18 Q. Okay. Thank you. To your knowledge, did
19 Mr. Jimenez miss any work because of these, now
20 what he's claiming to be severe, injuries that
21 occurred on these two dates?

22 A. I'm not aware of any absences.

23 Q. Are you familiar with South Carolina Department of
24 Employment and Workforce Records?

25 A. Yes.

- 1 Q. Okay. I want to show you quarterly statements,
- 2 which would be page two of Defendant's APAs. And
- 3 specifically what I want you to look at are the
- 4 years 2011 and 2012. And according to the first
- 5 accident that we have here it would have occurred
- 6 in July of 2011, is what has been claimed. That
- 7 would be the third quarter of the year, correct?
- 8 A. Correct.
- 9 Q. Tell me, in the second quarter of 2011 versus the
- 10 third quarter of 2011 did Mr. Jimenez make more
- 11 money in which quarter?
- 12 A. Third quarter.
- 13 Q. Okay. So he made more money in the quarter that he
- 14 supposedly got hurt, the first accident, correct?
- 15 A. Correct.
- 16 Q. Did he continue to make more money the rest of the
- 17 year from the first two quarters?
- 18 A. He did.
- 19 Q. Okay. In 2012 is there any indication that he ever
- 20 stopped making more money?
- 21 A. No.
- 22 Q. Okay. The second accident occurred in March of
- 23 2012, which would be the first quarter of 2012,
- 24 correct?
- 25 A. Correct.

1 Q. Is there any indication that Mr. Jimenez ever
2 stopped making a full salary at Kohler during that
3 period of time?

4 A. No.

5 Q. Okay. Thank you.

6 MR. MARTIN: I just have a few questions.

7 MR. BEARD: I'm not through yet.

8 MR. MARTIN: I'm sorry.

9 MR. BEARD: Actually, I am through.

10 MR. MARTIN: Thank you.

11 COMMISSIONER BECK: Mr. Martin.

12 MR. MARTIN: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. MARTIN:

15 Q. Referring you back to page 100. This here, it
16 looks like a W/C., is that the symbol that you're
17 referring to indicates workers' compensation?

18 A. Yes.

19 Q. Okay. So that's your interpretation of that
20 abbreviation?

21 A. It is.

22 Q. Okay. And then, if you would, read the rest of
23 this.

24 A. (As read): Employee says that he has -- looks like
25 -- seen a doctor with his back. Employee came in

1 on 3/4/12 and requested -- reported, I think it
2 says -- that on 3/13/12 he was rolling ware over
3 and his left low back -- I think is what -- I think
4 it's low back -- felt sore. In parentheses, see
5 note on -- probably, looks like medical card -- M
6 card dated 3/14/12 -- I think -- 8:55 a.m. Was
7 treated here on 3/4/12 [sic]. Was supposed to be
8 scheduled on 3/15/12, but did not return.

9 Q. Okay. How many points do you have to get to be
10 terminated?

11 A. Twenty-four.

12 Q. Okay. How many times -- well, let me ask you this.
13 Isn't it true that Mr. Jimenez has pointed out
14 multiple times?

15 A. I'm not aware of that at all.

16 Q. So you did not know that in 2009 he received a
17 final warning after 21 points?

18 A. Well, final warning would be issued at 21 points,
19 that would be the procedure.

20 Q. And would he have received that in 2010 also?

21 A. It depends on how many points he had.

22 Q. 2011?

23 A. It would depend on how many points.

24 Q. 2012?

25 A. Depend on how many points.

1 Q. Okay. You're not denying that he got -- had that
2 issue with attendance all those years?

3 A. I really don't know.

4 Q. Do you know when he would have received a raise in
5 2011?

6 A. 2011 there would have been a general wage increase
7 at the first -- on the first Monday in February of
8 2011.

9 Q. Do you know if the plate change that you were shown
10 -- I believe it was Defendant's Exhibit 3 -- if the
11 change reflects a lighter duty job?

12 A. I wouldn't know that.

13 MR. MARTIN: That's all the questions I have.

14 COMMISSIONER BECK: Anything further,
15 Mr. Beard?

16 **RECROSS-EXAMINATION**

17 BY MR. BEARD:

18 Q. Twenty-one points doesn't get you fired, does it?

19 A. No.

20 Q. Twenty-one points gets you a warning?

21 A. Final warning, correct.

22 Q. Okay. So if he got the 21 points he would have
23 gotten a final warning each time?

24 A. Should have, yes.

25 Q. And as a general rule do employees, including

1 Mr. Jimenez, generally, when they know that
2 termination is the next step they usually stay in
3 line and don't have an absenteeism problem after
4 that?

5 A. Some do and some don't.

6 MR. BEARD: Okay. That's all I have.

7 COMMISSIONER BECK: Anything further,
8 Mr. Martin?

9 MR. MARTIN: No, sir.

10 COMMISSIONER BECK: All right. You may step
11 down. Thank you.

12 Mr. Martin, your next witness.

13 MR. MARTIN: Yes, sir. I'm going to look
14 outside and see if Mr. Valderamma and Mr. Lugo are
15 here if that's all right with you.

16 COMMISSIONER BECK: All right. Let's go off
17 the record for about five minutes.

18 (Brief recess)

19 ****

20 Whereupon,

21 JESUS LUGO,

22 having been first duly sworn,
23 was examined and testified as follows:

24 ****

25 COMMISSIONER BECK: Please state your full

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1 name for the record.

2 **WITNESS:** Jesus Lugo Hernandez.

3 **COMMISSIONER BECK:** Mr. Martin.

4 **MR. MARTIN:** Thank you, your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. MARTIN:

7 Q. Mr. Lugo, you were an employee of Kohler?

8 A. Yes.

9 Q. For how long?

10 A. From 2001 through 2007.

11 Q. Okay. And you were injured at work in 2005 and
12 2006, is that right?

13 A. Yes.

14 Q. What happened after the first accident?

15 **MR. BEARD:** Commissioner, I'm going to object,
16 because I don't think Mr. Lugo Hernandez's injury
17 has anything to do at all with the merits of two
18 workers' compensation claims filed by Mr. Jimenez.
19 And I don't think that that's proper to go into his
20 accidents. I don't think they're relevant at all.

21 **COMMISSIONER BECK:** Mr. Martin?

22 **MR. MARTIN:** Well, I think relevance is the
23 issue. It goes to the weight of the testimony.
24 And I believe it is relevant, because the issue
25 that we are harping on here and trying to make a

1 point of is that Kohler, even though people report
2 accidents to them, and go to the nurse, and talk to
3 the nurse about the accidents, and ask to go to the
4 company doctor, they're not referred to the company
5 doctor and their claims are denied. So that's the
6 point that we've made in Mr. Jimenez's case and
7 this shows a pattern of the exact same behavior
8 that we're claiming occurred in his case. So it
9 would be relevant to establish a pattern.

10 **COMMISSIONER BECK:** Mr. Beard?

11 **MR. BEARD:** It's not relevant. That would be
12 like saying -- well, we have a rule in the Rules of
13 Evidence about prior bad acts. He basically is
14 trying to use these witnesses to say something
15 about prior bad acts of Kohler Company in this
16 instance that have absolutely nothing to do with
17 the merits of Mr. Jimenez's case.

18 Mr. Lugo could testify if he knows about
19 Mr. Jimenez being mistreated on either one of his
20 dates of accident or anything of that nature, but
21 it would be hard for him to do that since he didn't
22 work there until -- he last worked in 2007, and
23 we're here for a 2011 and a 2012 workers'
24 compensation claim. He can't possibly add anything
25 to the merits of this case.

1 **MR. MARTIN:** He can. And, you know, I
2 understand why they don't want to allow that in,
3 but that doesn't come within the definition of
4 prior bad acts. I'm not alleging any criminal
5 behavior on the part of Kohler. Any issues
6 regarding their bad acts has already been addressed
7 previously and I've already agreed not to raise
8 their previous bad acts. What I'm establishing is
9 a pattern. A pattern of this is how we handle
10 workers' comp claims, and that's a matter of fact,
11 it's not a question of what kind of --

12 **COMMISSIONER BECK:** All right. Let's go off
13 the record.

14 (Off the record)

15 **COMMISSIONER BECK:** Based on the fact that I
16 believe that the sole purpose of the testimony of
17 Lugo and Valderamma -- I believe it is relevant to
18 the Defendant's notice defense. And, quite
19 frankly, with regard to Rule 406, Habit and Routine
20 Practice, that rule states that evidence of a habit
21 of a person or the routine practice of an
22 organization, whether corroborated or not, and
23 regardless of the presence of eyewitnesses -- and
24 in this case we actually have the witnesses here --
25 is relevant to prove that the conduct of the

1 person or organization on particular occasion was
2 in conformity with a habit or routine practice.

3 And I'm going to allow the testimony of both
4 Lugo and Valderamma in that respect.

5 Mr. Martin, it's a short leash.

6 **MR. MARTIN:** Yes, sir.

7 **COMMISSIONER BECK:** Get your witness back in
8 here.

9 Mr. Martin.

10 **MR. MARTIN:** Thank you, your Honor.

11 Q. Mr. Lugo, what happened after your accident at work
12 in 2005?

13 A. All I want to say, first of all, is that more than
14 anything, you know, I understand we're human beings
15 and I'm here, also, before God's eyes. And had I
16 received attention before, at the time that I had
17 mentioned that I had problem I don't think I would
18 be in the situation that I'm in. And the reality
19 is that this is something I'm going to have to
20 endure with for the rest of my life and my children
21 are going through difficulties because of my
22 health.

23 Q. Let me stop you. I'm sorry, I didn't ask a very
24 good question. I need to get you to talk about
25 certain things I'm going to ask you about. Did you

1 report that you'd injured yourself to your foreman
2 or a supervisor?"

3 A. Yes.

4 Q. Okay. And were you sent to the nurse?

5 A. On the first accident I had he didn't tell me to go
6 see the nurse, he just told me to stay there at
7 work, do what I could, and that he would speak with
8 the insurance. At the end of the day he then told
9 me, Hey, listen, I've already spoken with the
10 insurance and they've already said that they're not
11 going to help you on this so just go on home and
12 bring the report from Doctors Care with the medical
13 excuse of how many days you're going to be out. So
14 I went home and -- since he told me that they
15 weren't going to help me I went home and I came
16 back with the doctor's note. So after a few days I
17 went to the office, because I had taken the report
18 over to my bossman, Tyrone, but I wanted to take
19 that, also, to the office. So when I went to the
20 office and asked them if my bossman had brought
21 over a medical excuse they told me that he had not
22 brought any type of doctor's excuse. Aside from
23 that, he had also put some charges in my report
24 that I already had receive several warnings.
25 Basically, that they wanted to get me out of a job.

1 **MR. BEARD:** Commissioner, I'm going to --

2 **COMMISSIONER BECK:** Off the record.

3 (Off the record)

4 **COMMISSIONER BECK:** Mr. Beard, you had an
5 objection?

6 **MR. BEARD:** Yes, your Honor. At this point I
7 would like to object to all the testimony that
8 Mr. Lugo Hernandez has provided thus far and move
9 to strike everything that has been responded to
10 thus far as being outside the scope of what you had
11 allowed him to testify about, and, also, being non-
12 responsive to the only question that he'd been
13 asked so far.

14 **COMMISSIONER BECK:** All right. With regard to
15 that objection. I will sustain that except for the
16 testimony that he was an employee of the Defendant
17 from 2001 to 2007 and he suffered injuries in 2005
18 and 2006. Other than that I'm going to strike all
19 of his other testimony.

20 Mr. Martin, you need to get more on point in
21 the questions and answers here.

22 **MR. MARTIN:** Yes, sir. And I would just, in
23 response to that, say that I believe in reference
24 to asking him if he had reported it to his foreman
25 or supervisor, that was where he was providing

1 testimony and had identified someone by name and we
2 haven't been able to follow up yet and find out if
3 that was his foreman or supervisor.

4 **COMMISSIONER BECK:** I would caution you to
5 remember the conversation we just had outside this
6 room.

7 **MR. MARTIN:** Yes, sir.

8 **COMMISSIONER BECK:** Please proceed.

9 **MR. MARTIN:** Thank you.

10 Q. Mr. Lugo, did you speak with the nurse about your
11 injuries?

12 A. Yes, the one I had in 2006 I did.

13 Q. Okay. And did you ask her if she would send you to
14 the company doctor?

15 A. Yes.

16 Q. Did you tell her that you --

17 **MR. BEARD:** Commissioner, I'm going to object
18 to leading. He's actually testifying, not asking
19 questions.

20 **MR. MARTIN:** And, Commissioner, I'm trying to
21 do exactly what you told me. I'm not trying to
22 lead in this situation. I believe if you give me
23 some leeway I can keep this testimony on point, as
24 you've asked.

25 **COMMISSIONER BECK:** There's no question it's

1 leading.

2 **MR. BEARD:** And it couldn't be any more
3 prejudicial. I mean, we've objected to the
4 witness, because I don't think it's relevant. You,
5 pretty much, said it was close. And now Al is
6 testifying. He hadn't asked a question, he's told
7 him what to answer in every question that's been
8 asked thus far. That is as improper as it can be
9 and I don't know how we can defend a case if Al
10 testifies and not the witness.

11 **MR. MARTIN:** I don't believe that that's
12 what's occurring.

13 **COMMISSIONER BECK:** I'm not going to allow you
14 to lead.

15 **MR. MARTIN:** Yes, sir.

16 **COMMISSIONER BECK:** Figure out another way of
17 doing it.

18 **MR. MARTIN:** Okay.

19 Q. How many times did you talk to the nurse?

20 A. Three times.

21 Q. And what discussions did you have with her about
22 sending you to the company doctor?

23 A. Well, the first time I asked her if I could see a
24 doctor and she told me no. Because, you see, the
25 first time all she did was give me some pills and

1 also give me something to put on my back and told
2 me she was going to put me on light duty for three
3 days.

4 The second time I told her that I was feeling
5 really bad, but she told me that -- and I told her
6 that I couldn't work. And she told me that she
7 couldn't send me to the doctor, because we were
8 already very close to December, we were going to go
9 on vacation and she couldn't put me out of work,
10 that I would have to go to the doctor, pay with my
11 own insurance.

12 **COMMISSIONER BECK:** Mr. Martin, I want to make
13 sure we're talking about Nurse Zimmerman here.

14 **MR. MARTIN:** Yes, sir.

15 Q. Were you talking to Pat -- Nurse Pat Zimmerman that
16 worked at the Kohler plant?

17 A. Yes.

18 **MR. MARTIN:** And, your Honor, you'll see from
19 her deposition that she's the only nurse that's
20 been there for 46 and a half years.

21 A. The third time I went she told that me my problems
22 were for life and that they weren't going to help
23 me. That I had too many problems, that's all she
24 told me. And I told her that, well, she should
25 have on her record where they sent me to get a test

1 done before I started work and that that test
2 should show whatever I have and don't have, that I
3 needed to be up to 100 percent to work there. That
4 she would have those records in her file if that
5 was the case. And she didn't tell me anything
6 else.

7 Q. Are you referring to your pre-employment physical?

8 A. Yes.

9 Q. And you're saying in the pre-employment physical
10 you didn't have any back problems?

11 **MR. BEARD:** Commissioner, the question that
12 was just asked was completely -- I don't -- with
13 all due respect to Mr. Lugo, I don't care about his
14 claim. His claim is gone, it's over. We're here
15 about a different claim. His pre-employment
16 physical condition is irrelevant to Jose Jimenez's
17 workers' comp claim.

18 **MR. MARTIN:** And, your Honor, basically, I
19 agree. All I'm trying to do is clarify what he
20 said, because, you know, I don't want you wondering
21 where he's going with this. I mean, you asked who
22 the nurse was and that sort of thing. I'm just
23 trying to make it clear what he's saying. I'm not
24 trying to go into his case at all.

25 **COMMISSIONER BECK:** All right. Well, let's

1 get away from it.

2 **MR. MARTIN:** Yes, sir.

3 Q. After your second work accident in 2006 where you
4 injured your back again how long -- or when did you
5 undergo surgery?

6 A. It was October 17 of 2007 and November 11 of 2008.

7 Q. Those are your two surgeries?

8 A. Yes.

9 Q. Okay. And from the accident in 2006 until you had
10 surgery in 2007 did you continue to work?

11 A. When I had my accident in 2006 I worked for about
12 seven to eight months while still being injured.
13 They never took me out of work duty during that
14 time. They knew that I wasn't doing a hundred
15 percent with my body. They never got me off of
16 that job. To the point where I was almost pulling
17 myself in the place where I was working, because I
18 couldn't work well enough.

19 Q. Did you continue to tell your foreman or supervisor
20 that you were having problems from your back
21 related to work?

22 **MR. BEARD:** Commissioner, I object to the
23 question, unless is foreman or his supervisor were
24 the two gentlemen who testified in this case. I
25 don't care about other people.

1 **COMMISSIONER BECK:** Narrow that question.

2 **MR. MARTIN:** Commissioner, I don't believe it
3 matters --

4 **COMMISSIONER BECK:** I do.

5 **MR. MARTIN:** -- if their company has a pattern
6 of practice, you know, if that's what all the
7 foremen do.....

8 **COMMISSIONER BECK:** I believe that's a pretty
9 broad brush.

10 **MR. MARTIN:** Yes, sir, it may be, but that's
11 the direction we're going. And if you're telling
12 me I can not ask that then I won't, but I believe
13 it's relevant.

14 **COMMISSIONER BECK:** I'm not going to allow
15 you, not unless you can tie it to one of the
16 witnesses that's already testified in here that
17 you've called. If there's somebody else that told
18 him that you should have had them here as a
19 witness.

20 Q. Who was your supervisor?

21 A. Neftali Sandoval.

22 Q. And who is your foreman?

23 A. I don't remember very well, because I didn't have
24 much contact with him.

25 Q. Did you have contact with, in addition to Nurse

1 Zimmerman, Sid DeVaul?

2 **TRANSLATOR:** I'm sorry. Could you ask that
3 again? Could you repeat that?

4 **MR. MARTIN:** Did you have contact with Sid
5 DeVaul?

6 A. Yes.

7 Q. And what discussions did you have with him related
8 to your workers' comp?

9 A. I did bring him the note from the doctor to work
10 telling them that I needed light duty work, not
11 heavy duty work, because that's what the doctor
12 told me, to let them know I that needed light duty
13 work. He recommended me that I take the report to
14 my employer so that they could help me find light
15 duty there. When I went there and took the report
16 they said give them two to three days to find me
17 some light duty work. When I spoke to Neftali
18 Sandoval --

19 **MR. BEARD:** Commissioner, I'm going to object
20 to whatever Neftali Sandoval said or had anything
21 to do with this case.

22 **COMMISSIONER BECK:** Sustained.

23 **MR. MARTIN:** I think we need to hear the rest
24 of his response, though, Commissioner in order to
25 know -- I mean, he had a very lengthy answer to

1 that question and we don't know what the rest of
2 the answer is.

3 **COMMISSIONER BECK:** I'm sustaining Mr. Beard's
4 objection to anything -- and I can't pronounce the
5 name again -- said. Now, if there's more to it
6 that doesn't include that --

7 **MR. MARTIN:** Your Honor, we would proffer
8 whatever the response was to that question.

9 **COMMISSIONER BECK:** All right.

10 A. -- so when I went back it was on the weekend,
11 Saturday, Sunday. When I went back on Monday and
12 spoke with him he told me that I was out of a job.
13 But I told him, How is that possible when I had
14 always told him that I was injured on the job. So
15 he said, Well, let me talk with Jessica. And when
16 he went to speak with Jessica he came back about an
17 hour later and said they would help me out for
18 about six months, but that I was out of a job after
19 that.

20 **MR. BEARD:** Can we just note for the record
21 that everything after Neftali Sandoval is --

22 **COMMISSIONER BECK:** Is proffer only.

23 **MR. BEARD:** Thank you.

24 Q. Were you placed on short term disability?

25 **MR. BEARD:** Commissioner, I object for

1 relevance at to this case.

2 **MR. MARTIN:** Commissioner, I would appreciate

3 just a little leeway. I mean, the questions I'm

4 asking are hardly objectionable. It's just a

5 constant --

6 **MR. BEARD:** The answers that we're getting,

7 though, are very long and drawn out and are not

8 answers to your questions so that's why I'm going

9 to object to every question that's irrelevant.

10 **MR. MARTIN:** Okay. Well, I asked --

11 **MR. BEARD:** Because I have a right to do that.

12 **MR. MARTIN:** Sure you do. But I asked if he

13 was on short term disability --

14 **MR. BEARD:** Irrelevant to this case.

15 **MR. MARTIN:** -- I don't think that calls for a

16 long drawn out response and I don't think we'll get

17 one.

18 **MR. BEARD:** I object to relevancy.

19 **COMMISSIONER BECK:** What's the relevance?

20 **MR. MARTIN:** The relevance has to do with the

21 fact that he wasn't place on workers' comp, instead

22 he was placed on short term disability.

23 **COMMISSIONER BECK:** All right. Ask him the

24 question.

25 Q. Were you placed on short term disability?

1 A. Yes.

2 Q. Okay. Did you -- just -- I don't want to know what
3 you discussed with Mr. Sandoval or with Jessica, I
4 just want to know what you discussed with Sid
5 DeVaul. What discussion did you have with him
6 regarding your work injury?

7 A. The only thing that I spoke with him was about why
8 he fired me. I wanted to know why he fired me.
9 Because I told him, if I had always been advising
10 you and telling you about my injury it doesn't make
11 any sense that you would fire me now.

12 Q. And what did Mr. DeVaul say?

13 A. Well, he surprised because he didn't think that I
14 was going to have a response. So at that moment he
15 said, Well, hold on, let me just go talk to Jessica
16 and see what we can do.

17 Q. And then what happened?

18 A. What he told me was that after he came out after an
19 hour of speaking with Jessica was that they were
20 going to help me out on six months short term
21 disability and wait for me another six months to
22 see if I would improve to come back to work.

23 Q. Did you tell Mr. DeVaul that you were hurt at work?

24 A. Yes, at that moment I told him. Because every time
25 that I would tell my bossman about anything that

1 would happen he would send me to the office, and
2 from the office they would look over me with the
3 nurse. So I never met with Sid DeVaul until last
4 minute when they fired me.

5 Q. Did you ever have any discussions with Mike
6 Tolleson?

7 A. No.

8 Q. Did they deny your workers' compensation case?

9 A. When? When do you mean?

10 Q. When did they admit your workers' compensation
11 case?

12 A. After almost a year.

13 Q. Okay. Had you already undergone surgery at that
14 point?

15 A. Yes.

16 Q. How had you paid for that?

17 A. I paid out of pocket for that with my own money,
18 and I think at that time I was also paying for my
19 own insurance. I was paying about \$300 a month for
20 that insurance. And they had taken away my
21 insurance by that time.

22 Q. Were you ever sent to a company doctor?

23 A. No.

24 MR. MARTIN: That's all the questions I have
25 for this witness.

1 **COMMISSIONER BECK:** Mr. Beard.

2 **MR. BEARD:** Thank you, Commissioner.

3 **CROSS-EXAMINATION**

4 BY MR. BEARD:

5 Q. Mr. -- do you go by Mr. Lugo or Mr. Hernandez?

6 A. How ever you would like, Lugo is my maternal last
7 name, Hernandez is my paternal last name.

8 Q. Okay. Who is Dr. Nowatka?

9 A. That's my family doctor.

10 Q. Is he also a company doctor for Kohler's workers'
11 compensation claims?

12 A. I really don't know.

13 Q. Okay. Who is Dr. Mourtada?

14 A. He is the one -- he's my pain doctor.

15 Q. Okay. And you did get treated by Dr. Nowatka,
16 correct?

17 A. Yes, but that wasn't at the beginning, that was
18 almost at the end of my treatment.

19 Q. I understand. Your testimony was you were never
20 seen by a company doctor, and you're testifying you
21 didn't know that Dr. Nowatka at the Family Medical
22 Center is the company doctor for workers'
23 compensation purposes?

24 A. I had no idea that he was the workers' comp doctor
25 for the company. When we receive insurance we have

1 to select a doctor that we're going to see for our
2 insurance and that's the doctor that I chose to go
3 to, to go see whenever I get a cold or anything
4 else, or receive any type of treatment. I didn't
5 know that he was a doctor for the company to do
6 workers' comp cases.

7 Q. Where did you go for your pre-employment physical
8 that you discussed earlier?

9 A. With Dr. Nowatka.

10 Q. So the company sent you to Dr. Nowatka?

11 A. Yes.

12 Q. So you knew Dr. Nowatka was the company doctor?

13 A. No. I had no idea at that moment that he worked
14 for the company. I mean, they told me to go to a
15 doctor, that's the doctor that I go to, regardless
16 of which ever doctor I was assigned to go to, but I
17 didn't know that he handled any workers' comp
18 cases.

19 Q. But you did know that they sent you -- they being
20 Kohler -- sent you to Dr. Nowatka for a company
21 physical before you came to work at Kohler,
22 correct?

23 A. Yes.

24 Q. Did Dr. Nowatka ever tell you that you had a
25 workers' compensation injury?

- 1 A. No.
- 2 Q. So even though you went to see Dr. Nowatka after
- 3 you had these workers' compensation claims he never
- 4 supported you in a workers' comp situation?
- 5 A. The problem is that when I had my accident and I
- 6 informed about my accident they kept me working
- 7 there for seven months. I needed medical treatment
- 8 so that's when I went to see a chiropractor. And
- 9 the chiropractor, after I saw that wasn't helping
- 10 me, that's when I decided to go to my family
- 11 doctor. I didn't know that it was a workers' comp
- 12 suit, because at that time I hadn't even placed a
- 13 workers' comp suit for my injury.
- 14 Q. Mr. Lugo, do you speak English?
- 15 A. No. I know a few words, but, as far as speaking it
- 16 like that, no.
- 17 Q. How did you, then, communicate with the plant nurse
- 18 when you would go see her those three occasions,
- 19 because she doesn't speak Spanish, does she?
- 20 A. No, she doesn't.
- 21 Q. Okay. So how did you speak with her when you went
- 22 to see her in the medical department?
- 23 A. Whenever they would send me over to the nurse
- 24 Neftali would be the one to tell me, Hey, this day
- 25 they're waiting for you over at the nurse's office

1 so I knew that she was waiting for me. And when I
2 would go all I knew how to tell her was; hurts,
3 back, or still hurts. But, as far as communicating
4 with her, I couldn't, all I know are those two or
5 three words that I would tell her.

6 Q. And you never took an interpreter with you when you
7 went to see the nurse, did you?

8 A. No, because I can understand more than I can speak
9 English.

10 Q. Neftali Sandoval spoke English, didn't he?

11 A. And Spanish, both.

12 Q. Okay. Did you take Neftali Sandoval with you when
13 you would go see the nurse?

14 A. No.

15 Q. Did you take an interpreter with you when you went
16 to see Sid DeVaul?

17 A. Yes.

18 Q. Who was your interpreter?

19 A. An American lady that speaks Spanish.

20 Q. Okay. Who was the American lady?

21 A. Her name is Maria. I can't remember her last name
22 right now. She was married to a Hispanic guy so
23 that's how she knew Spanish.

24 Q. Did she work at Kohler?

25 A. No.

1 Q. So you just took somebody with you to see Sid
2 DeVaul?

3 A. Yes, so that she could interpret for me.

4 Q. All right. Now, you testified you got injured in
5 2005 and 2006, is that correct?

6 A. Yes.

7 Q. Do you recall being deposed in your workers'
8 compensation claim for 2006 on the date of October
9 the 30th, 2007?

10 A. I don't remember the exact date, but it was
11 somewhere around there.

12 Q. Okay. And at that time you had a lawyer by the
13 name of Jeremy Danton, is that correct?

14 A. I had contracted Danny Smith. And together with
15 Danny Smith and his company Jeremy was present.

16 Q. Okay. And you also at that deposition had an
17 interpreter by the name of Jenny Restrepo, is that
18 correct?

19 A. Yes.

20 Q. All right. And you were being questioned by a
21 lawyer at that time who was representing Kohler for
22 their workers' compensation claims, is that
23 correct?

24 A. Yes.

25 Q. Okay. And you were asked questions about the first

1 accident you had in 2005. And do recall testifying
2 that the only person that knew about the accident
3 at the time you left the plant were you and someone
4 named Mr. Martinez?

5 A. Yes.

6 Q. And Mr. Martinez was not a manager or anything at
7 Kohler, he was just one of your co-employees,
8 correct?

9 A. Yes.

10 Q. All right. And then you were asked, did you tell
11 anybody else about it -- about the accident, and
12 you said no, you didn't tell anybody else, do you
13 recall that?

14 A. Yes.

15 Q. All right.

16 A. And the reason for that was because he was my
17 partner at the time and he actually saw. He saw
18 when I had the accident and he saw when my foot
19 slipped, he saw everything.

20 Q. But he wasn't a manager, or a foreman, or a
21 supervisor, or anything else to do with management
22 of Kohler, correct?

23 A. Yes.

24 Q. And when you went to the doctor, Dr. Cole and
25 Dr. Nowatka saw you, is that correct?

1 A. Yes.

2 Q. And when you went to Drs. Cole and Nowatka they
3 never gave you any restrictions from work, did
4 they?

5 A. No, not at that moment. They actually knew about
6 the accident, but they didn't give me any
7 restrictions.

8 Q. You testified you got short term disability in this
9 case -- or in your case, correct?

10 A. Yes.

11 Q. So you were paid for the time you were out of work?

12 A. Yes.

13 Q. And, in fact, you're aware that short term
14 disability means it's not a workers' compensation
15 claim, correct, that's why you got short term
16 disability?

17 A. No, I don't understand that.

18 Q. Okay. Did you -- did your insurance bills pay your
19 medical bills and then you paid whatever the co-
20 pays were that were not paid by group insurance?

21 A. Yes.

22 Q. Okay. And following that August 2005 accident you
23 worked continuously from the time of that accident
24 up until the time you claimed to have injured
25 yourself in 2006, correct?

MR. MARTIN: I'm going to just note an objection here, Commissioner, because the 2006 accident was determined compensable, there's not any allegation to it. That Order has been issued, was not appealed, and there's no question that he had an accident in 2006.

COMMISSIONER BECK: I'm not sure that was the question.

MR. BEARD: It was completely not the -- the question was he worked nonstop from 2005 until he had the second accident in 2006.

MR. MARTIN: Okay.

MR. BEARD: That was the question.

COMMISSIONER BECK: Please proceed.

Q. Is that correct?

A. No, I did stop, because they didn't want to help me from the first incident either, and I was out about of work for about six weeks in which they didn't pay me. And I went to them and I told them that I had a need to receive some type of help, because who was going to pay for my expenses.

MR. BEARD: Commissioner, I would like to have the interpreter -- I'd like to use the deposition and I don't have copies. I'm going to have to make copies of this, because I didn't anticipate I was

1 going to need all this information. This is the
2 deposition taken of Mr. Lugo in his case by Rusty
3 Infinger on October 30th of 2007 relative to his
4 workers' compensations claims. And the question I
5 just asked him is completely different than the
6 answer he just gave.

7 **MR. MARTIN:** If he is providing a copy of the
8 deposition I have no objection to him asking
9 questions from it.

10 **COMMISSIONER BECK:** All right. You're going
11 to provide me a copy --

12 **MR. BEARD:** Yes, sir.

13 **COMMISSIONER BECK:** -- of that?

14 **MR. BEARD:** Yes, sir.

15 **COMMISSIONER BECK:** All right. Proceed.

16 **MR. BEARD:** I've highlighted what I want you
17 to ask him to read is page 18, lines 11 through 20.
18 The questions and the answers, you can read them to
19 him, because I assume he can't read them, but...

20 **TRANSLATOR:** You said to line 21?

21 **MR. BEARD:** It's line 20, where ever it's
22 highlighted.

23 Can you read it now in English just for the
24 record?

25 **WITNESS:** (As Read): Line 11: Question: But

1 when you return to work following that accident in
2 August of 2005 you worked continuously until the
3 time you had your second accident on October the
4 3rd of 2006, is that correct? Yes. Question: And
5 when you returned to work following that August
6 accident did you go right back to work as a caster?
7 Answer: Yes. Did you have any restrictions?
8 Answer: No.

9 **MR. BEARD:** Okay. Thanks.

10 Q. At some point you terminated your relationship with
11 the Harrison Law Firm, is that correct?

12 A. I don't understand. Could you repeat that?

13 Q. Did you fire them as your lawyers and hire Al
14 Martin to be your lawyer?

15 A. Yes.

16 Q. All right. And Mr. Martin has been your lawyer for
17 quite some time over this workers' compensation
18 claims, correct?

19 A. Yes.

20 Q. How many times did you and Mr. Martin prepare for
21 your testimony here today?

22 A. You mean for today?

23 Q. Yes. Or when we were meeting back in Columbia two
24 weeks ago.

25 A. I haven't seen him.

1 Q. Okay.

2 MR. MARTIN: I thought that was obvious.

3 Q. Is it your testimony you've had no communications
4 with Mr. Martin or anybody in his office about your
5 testimony in this case here today?

6 A. No, all they did was call me to tell me to come to
7 give testimony, that's all.

8 Q. Why did you come live here today to come give
9 testimony rather than being videotaped in a
10 deposition at your home for any testimony you may
11 ever give in another case?

12 MR. MARTIN: Well, I can answer that,
13 Commissioner.

14 MR. BEARD: I would like him to answer it. I
15 don't really need you to answer it.

16 MR. MARTIN: But I would like to note my
17 objection.

18 COMMISSIONER BECK: What's your objection? He
19 asked a question.

20 MR. MARTIN: My objection is that he's reading
21 from a Consent Order and that Consent Order was
22 from another case. And, basically, I'm not dealing
23 with Hugh McAngus anymore, I'm dealing with Grady
24 Beard. And I know Grady Beard was going to object
25 to any kind of attempt to videotape him as opposed

1 to bringing him live. That's why he's here.

2 **COMMISSIONER BECK:** Mr. Beard, your question?

3 **MR. BEARD:** My question was, given that
4 there's a Consent Order that says (As read):
5 Should any future hearings be necessary requiring
6 Mr. Lugo's testimony it may be submitted by video
7 deposition taken from his home. Why didn't that
8 take place in this case?

9 A. Because at that time I couldn't leave my home. At
10 that time I had no way to move from where I was so
11 that's why I did it on video, I was at home and
12 couldn't leave there. But this time around my wife
13 is able to bring me. And really, to be honest with
14 you, I wanted to talk about the injustices that
15 happened to me. I don't want another person to
16 have to wait seven to eight months like I did
17 before they receive any type of help --

18 **MR. BEARD:** Commissioner, I'm going to move to
19 strike all of that, as well as being non-responsive
20 to my question.

21 **COMMISSIONER BECK:** I'll allow it.

22 **MR. MARTIN:** Your Honor, I'd like to proffer
23 the rest of that response as -- we don't know what
24 the rest of it is without hearing it and I don't
25 know whether some of that may be responsive or not.

1 **COMMISSIONER BECK:** I said I'll allow it.

2 **MR. MARTIN:** I'm sorry.

3 A. -- and so I get upset when things like this happen.

4 Q. According to the Order that I just read from we're
5 not talking about back in 2007 or any time like
6 that, we're talking about in September the 3rd of
7 2013, less than a year ago.

8 A. I don't understand. I don't understand the
9 question that you're making. I'm not completely
10 paralyzed that I can't move from my house. My wife
11 can take me to where I need to go and I asked her
12 to bring me. And like I said, the reason why I
13 came today is because I don't want another
14 injustice to happen to someone else. Because just
15 imagine, I'm talking about my condition, the
16 situation I'm in for the rest of my life. I
17 wouldn't like for this other individual to go
18 through something like that.

19 Q. Your attorney, Mr. Martin, stipulated and testified
20 -- or stipulated and stated for the record that
21 your 2006 claim was an admitted accepted workers'
22 compensation claim, is that correct?

23 **MR. MARTIN:** I don't believe that's what I
24 said. I believe I said that it had been ruled
25 upon. It was not admitted. We've already --

1 **COMMISSIONER BECK:** You did use the word
2 admitted.

3 **MR. MARTIN:** Okay. Well, I apologize. It was
4 subsequently admitted, but it was denied for over a
5 year, and then it was admitted and we have an Order
6 establishing the compensability of it. But it was
7 -- there is a Consent Order admitting it, yes.

8 **COMMISSIONER BECK:** Mr. Beard.

9 Q. You were not working at Kohler when Mr. Jimenez
10 allegedly got injured in 2011 or 2012, correct?

11 A. Correct.

12 Q. You don't know anything about whether he got
13 injured, how he got injured, or who he talked to,
14 do you?

15 A. Correct.

16 Q. All right. You testified you only talked to the
17 plant nurse three times from 2005 all the way up
18 until the end of your workers' compensation claim,
19 is that correct?

20 A. Yes.

21 Q. So for a period of multiple years you only went to
22 the plant nurse three times because of your back
23 condition?

24 A. I don't understand what you said about multiple
25 years, could you explain that?

1 Q. Sure. You got injured in 2005, you claimed to get
2 injured in 2006, you then had a deposition at the
3 end of 2007, you testified here today in 2014 you
4 only saw the plant nurse three times, is that
5 correct?

6 A. Yes.

7 Q. All right. Sid DeVaul, you testified you went to
8 talk to him, but I think I heard at the end of your
9 testimony you went to talk to Sid DeVaul after you
10 had been terminated, correct?

11 A. Yes.

12 Q. All right. You didn't go see Mr. DeVaul about
13 your workers' compensation claims, you went to see
14 Mr. DeVaul about being terminated, right?

15 A. Yes.

16 Q. And you eventually were terminated, correct? When
17 were you terminated?

18 A. I went out of work, I think it was, May 2nd of
19 2007.

20 Q. All right. Did you file any kind of lawsuit
21 against Kohler for employment reasons?

22 A. No.

23 Q. And I think I heard you say in your testimony, I
24 just want to make sure I'm accurate, that it was
25 not until you went to see Mr. DeVaul, apparently

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- 1 after May of 2007 when you were terminated, that
2 you first mentioned to him anything about your
3 workers' compensation allegations, correct?
- 4 A. I never mentioned anything to him.
- 5 Q. Okay. About workers' comp?
- 6 A. No. At that moment I hadn't even put a lawsuit.
7 At that time I was still working with him before I
8 got fired, how was I going to put a workers' comp
9 suite against them. I was working for about five,
10 six days until they fired me.
- 11 Q. All right. I'm pretty certain, and correct me if
12 I'm wrong, your testimony earlier was that at that
13 moment when you went to talk to Sid DeVaul about
14 being terminated you told him about your work
15 related accident, is that not correct?
- 16 A. At that moment I had told him that I had gone to
17 the nurse, but that she had not sent me to the
18 doctor. It was negligence on their part. They
19 know who's injured there and they never send them
20 to the doctor.
- 21 Q. Well, let me ask you some more about your
22 deposition. Do you recall telling Mr. Infinger
23 that between 2005 and 2006 that everything was good
24 until October 3rd of 2006 and that you were doing
25 your job without any pain, without any problems,

1 and without any complaints?

2 A. Yes, because I told them that since my accident in
3 2005 when I had been out of work for six weeks I
4 went back to work and it wasn't until October 3rd
5 of 2006 when I got injured again.

6 Q. Well, you said they don't do anything about folks
7 who get injured on the job, yet your testimony is
8 there was nothing wrong with you from an injury
9 that you claimed in 2005, because you continued to
10 work regular without pain, with problems, and
11 without any complaints, what were they supposed to
12 do?

13 A. But they didn't send me to a doctor. I was the one
14 who went ahead and went to the doctor on my own,
15 paid with my own insurance, and then paid out of
16 pocket. They -- even though they saw me and knew
17 that I was bad they didn't say, I'm going to send
18 you to the doctor. No, I was the one who
19 personally went to the doctor.

20 Q. Well, how could you be bad, Mr. Lugo, if you were
21 working and you were not in any pain, you were not
22 having any problems, and you were not having any
23 complaints?

24 **MR. MARTIN:** I don't believe that was his
25 testimony, I'm going to have to object to the

1 misrepresentation of what he said.

2 **COMMISSIONER BECK:** What does the deposition

3 say?

4 **MR. MARTIN:** I believe --

5 **MR. BEARD:** It says (As read): You were doing

6 your job without any pain, without any problems,

7 and without any complaints. Answer: Yes.

8 **MR. MARTIN:** His testimony had to do with him

9 being out of work for six weeks after the accident

10 in 2005. And that's what he said he paid for, the

11 medical treatment on his own with, okay, and he was

12 out of work for six weeks.

13 What you're asking him is different than what

14 he's responded to.

15 **MR. BEARD:** How do you know that? How do you

16 know that it's different than what I'm -- than

17 what he's responding to.

18 **MR. MARTIN:** Because I'm reading the

19 deposition.

20 **MR. BEARD:** Did I misstate any of the words in

21 the deposition?

22 **MR. MARTIN:** You've omitted a significant

23 portion of it, but I'll address that in a minute.

24 Q. I think you said you've never talked to Mike

25 Tolleson, correct?

1 A. They never sent me with him.

2 Q. So the answer is, you never talked to him?

3 A. No.

4 Q. Mr. Lugo, are you legally in the United States of
5 America?

6 MR. MARTIN: I object.

7 COMMISSIONER BECK: I'll allow it.

8 A. No.

9 Q. How long have you been illegally in the United
10 States of America?

11 A. Almost 20 years.

12 Q. Have you been lying to everyone in the United
13 States of America in terms of government agencies,
14 in terms of anyone about your legality here?

15 A. No.

16 Q. So how do you manage to get through without any
17 legal documents making you a legal person of the
18 United States?

19 MR. MARTIN: I'm going to object to the
20 relevance of this.

21 COMMISSIONER BECK: Credibility. I'll allow
22 it.

23 A. Could you repeat the question? I didn't
24 understand.

25 Q. Sure. How do you manage to make it through year,

1 after year, after year in the United States of
2 America without any documentation that allows you
3 to be here legally?

4 A. Because I been able to use a Social Security that I
5 invented, it's not stealing anybody's identity or
6 anything like that.

7 Q. So you have been representing to government
8 agencies, people that you may fill out applications
9 for, Kohler Company -- you have manufactured a
10 person that does not exist, is that correct?

11 A. I haven't manufactured any identity. Sometimes you
12 can buy these things from other people.

13 Q. Do you have a Social Security card?

14 A. No.

15 Q. Do you have a fake Social Security card?

16 A. Yes, I used to have one. I don't have it anymore,
17 because we can't keep that anymore.

18 Q. Do you have a drivers license?

19 A. Yes.

20 Q. Is it a fake drivers license?

21 A. No.

22 Q. How did you get a drivers license in the United
23 States if you're not legal?

24 A. You would have to ask that to the government,
25 because if they're the ones who gave me the drivers

1 license they're the ones who would tell you how
2 they were able to give me that.

3 Q. When you filled out the application for the drivers
4 license did you lie on the application and use
5 false information?

6 A. No. In North Carolina, where I obtain my drivers
7 license from, they don't ask you for a Social
8 Security Number. What they ask you for is your
9 birth certificate, some kind of certificate from
10 school if you don't have your birth certificate,
11 and some type of receipt that shows your address
12 where you live. They never asked me for a Social
13 Security Number or a card.

14 Q. Let me ask a better question. Do you have a South
15 Carolina Drivers License?

16 A. No.

17 Q. Have you ever had a South Carolina Drivers License?

18 A. No.

19 Q. Do you live in North Carolina or South Carolina?

20 **MR. BEARD:** I understood a lot of that,
21 Commissioner. My question was --

22 **COMMISSIONER BECK:** I didn't.

23 **MR. BEARD:** -- do you live in --

24 **COMMISSIONER BECK:** I didn't.

25 **MR. BEARD:** Okay. The answer had nothing to

1 do with my question.

2 **MR. MARTIN:** Can we hear it?

3 **COMMISSIONER BECK:** Yes.

4 A. Listen, when I came this country I started to work
5 picking fruits, and I would work in Florida, I
6 would work in North Carolina, I would work in North
7 Carolina, go back to Florida. And so, lastly, when
8 I would finally situated myself here twelve or
9 thirteen years ago is where I...

10 **COMMISSIONER BECK:** All right. Mr. Beard, ask
11 your question again.

12 I'd appreciate if you'd answer the question
13 this time.

14 Q. My specific question is, do you live in North
15 Carolina or South Carolina?

16 A. Here in South Carolina.

17 Q. How long have you lived in South Carolina?

18 A. About 13 years, more or less.

19 Q. So the North Carolina Drivers License that you
20 possess for, I assume, identification purposes is
21 not legitimate, correct?

22 A. What do you mean it's not legit?

23 Q. I mean your North Carolina Drivers License is no
24 good if you live in South Carolina, is that
25 correct?

- 1 A. Yes.
- 2 Q. Okay.
- 3 A. It is a legitimate license. I know that you have
4 to change the license to where ever you're living
5 currently, but here they won't give you another
6 license.
- 7 Q. Okay. You haven't tried to get a South Carolina
8 Drivers License because you know they won't give
9 you one, because you're illegally in the United
10 States, correct?
- 11 A. Yes.
- 12 Q. Do you have your drivers license and your Social
13 Security Card on you?
- 14 A. No.
- 15 Q. Do you have --
- 16 A. I have my drivers license. No, actually I left it
17 at home, because the one who drives is my wife.
- 18 Q. Okay. So you don't have either one of those
19 identifications with you?
- 20 A. No.
- 21 Q. What other forms of identification do you have?
- 22 A. My Consulate Card.
- 23 Q. Okay. Do you have that with you?
- 24 A. Yes.
- 25 Q. And while you're looking. What is a Consulate

1 Card?

2 A. It's an ID that the Mexican Consulate gives to
3 their nationals in this country so that they can
4 have an ID.

5 COMMISSIONER BECK: Mr. Beard, I've got to ask
6 a question.

7 MR. BEARD: Okay.

8 COMMISSIONER BECK: You said you didn't have
9 your drivers license or your Social Security Card
10 with you, is that the truth?

11 WITNESS: The Social Security, I don't have
12 it.

13 COMMISSIONER BECK: Do you have your drivers
14 license with you?

15 WITNESS: Yes.

16 COMMISSIONER BECK: Did you just tell
17 Mr. Beard you didn't?

18 WITNESS: I do have it. It's expired, it
19 doesn't work anymore.

20 COMMISSIONER BECK: Didn't you just tell me
21 that you left that card at home because your wife
22 drove today?

23 WITNESS: Yes, I said that.

24 COMMISSIONER BECK: Mr. Beard?

25 MR. BEARD: Commissioner, I have no further

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1 questions. But I would request that your Honor
2 allow us to find Mr. Lugo's nurse's records and
3 since that, essentially, has become a part of this
4 case we be allowed to submit his nurse's records,
5 as well, from the plant.

6 **COMMISSIONER BECK:** Mr. Martin?

7 **MR. MARTIN:** I think we knew that was coming
8 for a while now. I'm not sure that we need to
9 extend it with getting more records. I've never
10 seen those records, because they weren't part of
11 the other case. But I'm not sure why we would need
12 them at this point, but if -- you know, I'll go
13 along with --

14 **COMMISSIONER BECK:** I'll allow it.

15 **MR. MARTIN:** But I do have --

16 **COMMISSIONER BECK:** Close of business Friday.

17 **MR. MARTIN:** I think Grady's done.

18 **MR. BEARD:** I am through.

19 **MR. MARTIN:** Okay. Your Honor, I would just
20 point out a --

21 **COMMISSIONER BECK:** Before you start. The
22 deposition of Mr. Lugo, as well.

23 **MR. BEARD:** Yes, sir.

24 **COMMISSIONER BECK:** Both of those on Friday.

25 **MR. BEARD:** Yes, sir.

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1 **COMMISSIONER BECK:** Mr. Martin.

2 **MR. MARTIN:** Yes, sir, Commissioner. I would
3 just make some transcript references to Mr. Lugo's
4 deposition; page sixteen, beginning at line twenty
5 -- actually, let's start on page sixteen, beginning
6 at line two, which reads (As read): How much time
7 and from when to when. The accident occurred on
8 the 7th, I didn't go to work that 8th and 9th. I
9 believe I was out possibly six weeks, I don't
10 remember exactly when I returned, I believe it was
11 either September 29th or August the 29th.

12 And the rest of that page, actually, which
13 refers to his 2005 accident.

14 All of page 17, all of page 18 --

15 **COMMISSIONER BECK:** I'll read the whole thing.
16 It's coming in, I'm going to read the whole thing.

17 **MR. MARTIN:** Okay.

18 **COMMISSIONER BECK:** Any other questions of
19 Mr. Lugo?

20 **MR. MARTIN:** No, sir.

21 **COMMISSIONER BECK:** All right. You may step
22 down sir. Thank you very much for your time.

23 **MR. MARTIN:** Next witness will be
24 Mr. Valderamma.

25 **COMMISSIONER BECK:** We're going to take a five

1 minute break.

2 (Brief recess)

3 **MR. MARTIN:** Your Honor, Mr. Valderamma speaks
4 English, it's not his first language. And I'll
5 leave it up to you, as far as --

6 **COMMISSIONER BECK:** Well, let's try to do it
7 in English. If it becomes burdensome we'll adjust
8 it.

9 **MR. MARTIN:** Thank you.

10 *****

11 Whereupon,

12 **YURI VALDERAMMA,**

13 having been first duly sworn,
14 was examined and testified as follows:

15 *****

16 **COMMISSIONER BECK:** Please state your full
17 name for the record.

18 **WITNESS:** My name is Yuri Valderamma.

19 **COMMISSIONER BECK:** Mr. Martin.

20 **MR. MARTIN:** Thank you, Commissioner.

21 **DIRECT EXAMINATION**

22 BY MR. MARTIN:

23 Q. Mr. Valderamma, you worked at Kohler?

24 A. Yes.

25 Q. And what dates?

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1 A. I work about -- almost ten years at Kohler. Can't
 2 remember exactly the dates, but from 1995, I think,
 3 to -- I can't remember. I'm sorry. But it from
 4 1996 or '7 to 2011, I think.

5 Q. Okay. September 20, 2011 sound about right for
 6 your last day?

7 A. Yes.

8 Q. Okay.

9 A. Yes.

10 Q. And what departments did you work at Kohler?

11 A. I work in different areas during my job in Kohler.
 12 I start as a castor for six months, then I have a
 13 promotion for foreman, supervisor night shift. I
 14 work like a year over there. I work also on -- in
 15 the projects -- special projects with Ron Morales,
 16 who was in charge of develop projects around the
 17 company. So I help him in develop different
 18 products around the company. We create different
 19 places where we make more efficient the work and --
 20 I mean, this is -- it was part of my job. But then
 21 I work in the -- we create the hospital area and
 22 they let me stay in the hospital area as a -- I was
 23 trying people to work in that specifically area,
 24 because either one that the start with the hospital
 25 area, maybe I go visit, no.

1 **MR. MARTIN:** Are you okay, or?

2 **COMMISSIONER BECK:** We're fine.

3 **MR. MARTIN:** Okay.

4 Q. Did you work as a rover?

5 A. Yes. Yes.

6 Q. Okay. And is that the job that you were doing when
7 you were injured?

8 A. Yes. Yes.

9 Q. And, as best you can recall, when were you injured?

10 A. I believe it was in June 24th -- June 24, 2001, I
11 think.

12 Q. Could it have been 2008?

13 A. 2008. I'm sorry. That's it.

14 Q. And did you report your injury to the nurse?

15 A. I report to my supervisor, because I believe it's
16 the way that's supposed to do every time we have
17 any injury. So immediately I reported to my
18 supervisor. And I guess they report it to the
19 nurse. They take I don't know how many hours. But
20 I don't even sure that the same day they report it
21 to the nurse. I don't know.

22 Q. Okay. Eventually did you see the nurse for your
23 work accident?

24 A. Yes.

25 Q. Okay. And did you eventually go to the company

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1 doctor?

2 A. Yes.

3 Q. And did you undergo surgery --

4 A. Yes.

5 Q. -- for your knee?

6 A. Yes.

7 Q. Okay. Then did you have a problem develop with
8 your other knee?

9 A. At the beginning I don't feel any special
10 (unintelligible), but with the time I start to
11 feeling kind of weird like feeling on my knee.

12 Q. Okay. Did you ask to be treated for your right
13 knee?

14 A. Yes.

15 Q. And what happened?

16 A. They disagree completely to --

17 **COMMISSIONER BECK:** Mr. Martin, I'm going to
18 need you to zero in on this a little bit more.
19 We're starting to get real vague here.

20 **MR. MARTIN:** Yes, sir.

21 **MR. BEARD:** And what I would want -- I want to
22 note for the record to that question. I'm just
23 telling you as a defense lawyer, and I would hope
24 any Commissioner -- when you start alleging other
25 body parts that late in the game they're going to

1 be denied and they're going to be fought, that's
2 just the nature of workers' comp. And if that's
3 what they're going to try to use as a pattern in
4 this case I don't know how that possibly can be
5 relevant to what's going on.

6 **COMMISSIONER BECK:** That will be a decision
7 I'll have to make.

8 **MR. MARTIN:** How late in the game are you
9 talking about?

10 **MR. BEARD:** Doesn't matter. Doesn't matter
11 how late in the game.

12 **MR. MARTIN:** I haven't said when it was.

13 **COMMISSIONER BECK:** Well, what I need you to
14 do before we go any further is start identifying
15 who some of these conversations took place with and
16 when.

17 **MR. MARTIN:** Yes, sir.

18 Q. Dr. Keith was the surgeon that operated on your
19 left knee a couple of times?

20 A. Yes.

21 Q. Okay. And he -- is he the one that eventually
22 operated on your right knee?

23 A. Yes.

24 Q. How long was the delay in getting your right knee
25 treated?

1 **MR. BEARD:** Commissioner, I'm going to object,
2 because it's just not relevant. His workers' comp
3 claim is not relevant. And that question is
4 completely -- again, as a defense lawyer, it is
5 very proper to defend a case, you have a right to
6 defend a case and deny benefits if that -- that
7 sounds like the type of case that any defense
8 lawyer would recommend to their client to question
9 and probably deny, pending some Order from a
10 Commissioner. I just don't think that's proper for
11 what he has offered to you today as a pattern that
12 he's going to use these two witnesses for.

13 **COMMISSIONER BECK:** Well, being proper,
14 Mr. Beard, and whether I place any weight on it are
15 two different things. I'll allow it.

16 **MR. MARTIN:** Thank you.

17 Q. How long was the delay?

18 A. Well -- how you say it -- I had three injuries.
19 Okay. The first --

20 Q. And let me -- I apologize, but we're trying to --

21 A. Okay.

22 Q. -- kind of dial things in here. I want to know how
23 long you were without treatment for your right knee
24 after you asked them to provide treatment for your
25 right knee?

1 A. Wow. I say like almost two years.

2 Q. Okay. Now, was Mr. Tolleson involved in that case?

3 A. Yes.

4 Q. Okay. And did he participate in the depositions of
5 your doctors?

6 A. Can I --

7 MR. BEARD: I need to object, because if he
8 participated and Al didn't turn him in as a --
9 someone practicing law without a license, number
10 one, that's wrong. But number two --

11 COMMISSIONER BECK: I think what he meant was
12 did he attend it.

13 MR. BEARD: How can that be relevant to
14 anything to do with a pattern --

15 COMMISSIONER BECK: I'm talking about your
16 unauthorized practice of law argument.

17 MR. BEARD: Right. I mean, I hear that. But
18 how can the question be relevant in any way, shape,
19 or form to a pattern about someone else's workers'
20 compensation claim, simply sitting in on a
21 deposition?

22 COMMISSIONER BECK: Mr. Martin?

23 MR. MARTIN: I don't think I've even finished
24 the question yet, Commissioner. I mean --

25 MR. BEARD: Because the question is improper.

1 That's why I'm objecting.

2 **MR. MARTIN:** I can't even get the whole
3 question out of my mouth without him objecting.
4 I'm sorry. I think what I was about to ask was, as
5 far as Mr. Tolleson participating in the
6 depositions, he was aware -- that's where we're
7 going with this -- of the case being denied, he was
8 involved in the case being denied.

9 **COMMISSIONER BECK:** But Mr. Beard makes a
10 pretty good point, they have a right to deny a
11 case.

12 **MR. MARTIN:** Yes, sir.

13 **COMMISSIONER BECK:** The claimant has the
14 burden of proving compensability of any claim --

15 **MR. MARTIN:** Yes, sir.

16 **COMMISSIONER BECK:** -- that comes before us.

17 **MR. MARTIN:** I absolutely agree.

18 **COMMISSIONER BECK:** So I'm not so sure how
19 relevant this is to your argument of this pattern.

20 **MR. MARTIN:** Well, that's why I wanted to get
21 it out. Because basically what happened in this
22 case is Mr. Tolleson attending the depositions, he
23 heard their company doctor testify under oath that
24 it was related, he received, before that, a
25 questionnaire from their company doctor that it was

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1 related, and yet they still continued to deny it.
2 And at the same time they were denying his medical
3 treatment, they refused to provide him any paid
4 leave, so his house went into foreclosure, a
5 variety of other things.

6 **MR. BEARD:** This is right exactly what you
7 told him not to do right out there in that room.
8 What he is attempting to do and what he just did is
9 make a case for something that he wanted to do that
10 we've all resolved. What he just did and what he's
11 trying to do is he's trying to disparage Kohler.
12 We all know that -- we will stipulate that Al
13 Martin hates Kohler. We will stipulate that Al
14 Martin has made a lot of money off of Kohler. But
15 what we won't stipulate to is that we don't have a
16 right to defend a case. And he can't sit here and
17 tell you, or get a witness to say, Well, he sat in
18 depositions and -- because he didn't see the case
19 get tried. That's a different trial. And I don't
20 where that case would have gone. And I don't know
21 what Rusty Infinger did, and I don't know what Hugh
22 McAngus did, I don't know what anybody else did in
23 that case, but I do know that it's improper to try
24 to use something like that in a case like this,
25 especially when a case was admitted. His case was

1 admitted, it's not denied: They denied one body
2 part, they didn't deny his case.

3 **MR. MARTIN:** They denied multiple body parts.

4 **MR. BEARD:** Was his case admitted or denied
5 from the beginning?

6 **MR. MARTIN:** His case was admitted for the
7 left knee, that's it.

8 **COMMISSIONER BECK:** Let's move on with a
9 different line of questioning.

10 **MR. MARTIN:** Commissioner, let me just make
11 sure I understand correctly your ruling. Am I not
12 allowed to ask him about Mr. Tolleson's involvement
13 in his case?

14 **COMMISSIONER BECK:** I don't think it has any
15 relevance here. I just don't.

16 **MR. MARTIN:** Even though Mr. Tolleson is
17 involved in this case?

18 **COMMISSIONER BECK:** I don't know where that
19 line of questioning was get any relevant
20 information to this case. The scenario on this one
21 appears to be wholly different than the one with
22 Mr. Lugo. You have an admitted claim here with a
23 subsequent body part or parts denied, that they
24 have an absolute right to defend against --

25 **MR. MARTIN:** Absolutely.

1 **COMMISSIONER BECK:** -- and you have a burden
2 of proving compensability.

3 **MR. MARTIN:** Yes, sir.

4 **COMMISSIONER BECK:** The fact that they denied
5 it and you subsequently -- and I may be speaking
6 out of turn -- may have subsequently prevailed on
7 that, I don't know how that correlates to a bad act
8 on the part of Kohler.

9 **MR. BEARD:** He settled the case just like I
10 settle tons of denied cases every single day of my
11 life.

12 **COMMISSIONER BECK:** This is a little bit
13 different situation than your prior witness.

14 **MR. BEARD:** Commissioner, you said Mr. Lugo,
15 but this is Mr. Valderamma.

16 **MR. MARTIN:** And let me --

17 **COMMISSIONER BECK:** No, I said he's different
18 than --

19 **MR. BEARD:** From the Lugo situation. I got
20 you.

21 **MR. MARTIN:** And, Commissioner, just so we're
22 clear on this. I didn't settle this case until
23 after Mr. Valderamma was found permanently and
24 totally disabled. And I have the Hearing Order
25 right here.

1 **MR. BEARD:** That's fine.

2 **COMMISSIONER BECK:** That's how the system
3 works.

4 **MR. MARTIN:** Yes, sir, and I know that and I'm
5 not -- I'm just responding to Grady. Grady said I
6 settled the case that was in dispute. And I didn't
7 settle a case that was in dispute. He was found
8 P&T and all the appeals were over, there was not a
9 -- there was no appeal pending.

10 **MR. BEARD:** That's the way the system works.

11 **MR. MARTIN:** That is the way the system works,
12 except I'm trying to make sure we all understand
13 that there was no settlement of this case --

14 **COMMISSIONER BECK:** I got that part.

15 **MR. BEARD:** What I would ask, though,
16 Commissioner, because it becomes relevant to our
17 defense of this attack, is why does none of this
18 stuff that he's testifying about now show up in
19 that Order, or hearing transcript, or anywhere
20 else, or does it?

21 **MR. MARTIN:** Sure it does.

22 **MR. BEARD:** So in that Order there is evidence
23 about what all you're trying to do right now?

24 **MR. MARTIN:** Absolutely.

25 **MR. BEARD:** Okay.

1 **MR. MARTIN:** And, in fact, I'll go ahead and
2 hand it up.

3 **COMMISSIONER BECK:** Mr. Beard?

4 **MR. BEARD:** It's not relevant to this case.

5 **MR. MARTIN:** We already --

6 **MR. BEARD:** Can't be relevant --

7 **MR. MARTIN:** We've already accepted -- he's
8 the one that brought it in. I mean, he's the one
9 who's complaining about this Order and wanting to
10 know if it's got anything in here about it. It
11 does, it's already been determined, it involves the
12 exact same defendant.

13 **COMMISSIONER BECK:** All right. Let's go off
14 the record for a second.

15 (Brief recess)

16 Q. Do you recall a problem with Mr. Tolleson
17 contacting your doctors regarding recommendations
18 they had made for treatment and telling them that
19 that was not to be authorized.

20 **MR. BEARD:** Commissioner, I'm going to --

21 **COMMISSIONER BECK:** That's hearsay.

22 **MR. BEARD:** It's hearsay and it's also -- that
23 has nothing to do with the pattern that he's trying
24 to show that they didn't even communicate or do
25 anything for these folks. He is -- I'll object to

1 hearsay.

2 **COMMISSIONER BECK:** And I'll sustain it.

3 Q. After you returned to work at light duty how often
4 did you have to check in with the company nurse?

5 A. Once a week.

6 Q. In September of 2011 did they -- did you have a
7 meeting with Joe Brown?

8 A. Yes.

9 Q. Who else was in that meeting?

10 A. Mr. Sid.

11 Q. Sid DeVaul?

12 A. Yes, Sid DeVaul.

13 Q. Okay. And was that about changing jobs?

14 A. Yes.

15 Q. And what did they want you to do?

16 A. They wanted me to do something else that requires
17 long periods of time stand up and I couldn't stand
18 up for eight hours, four hours straight.

19 Q. Okay. And was that requirement to stand up for
20 eight hours something that violated the
21 restrictions from your doctor?

22 **MR. BEARD:** Commissioner, again, I'm going to
23 object, because it has -- that has nothing to do
24 with the position that they're taking, as far as
25 Mr. Jimenez's case. Again, his case is different.

1 I don't know about all that because -- if we're
2 going to go into that I alt to be able to go into
3 it and do it as myself, a defense lawyer. I don't
4 know any of that and it's improper what he's asking
5 him. It's irrelevant to what they're trying to
6 claim in this case --

7 **MR. MARTIN:** Your Honor, they've had --

8 **MR. BEARD:** -- completely.

9 **MR. MARTIN:** They've had every opportunity to
10 depose these guys.

11 **MR. BEARD:** Doesn't matter, deposing would
12 have done no good, you can't ask the questions.

13 **MR. MARTIN:** I believe I can. I believe this
14 has everything to do with the current situation. I
15 mean, we're talking about work restrictions and how
16 they respond to work restrictions when you're --
17 you know, we just covered that.

18 **COMMISSIONER BECK:** What's it got -- I mean,
19 the case that you're bringing in this matter has
20 nothing to do with that.

21 **MR. MARTIN:** Well, Commissioner --

22 **COMMISSIONER BECK:** This whole matter here, at
23 least as I understand it, has to do with notice and
24 whether an injury even occurred. His situation,
25 you have an admitted injury and we're dealing with

1 whether or not they complied with restrictions that
2 a physician provided. How is that even remotely
3 relevant to the case you have here today with
4 Mr. Jimenez?

5 **MR. MARTIN:** Mr. Jimenez's case involves a
6 situation where he came in with work restrictions,
7 he was told go back and get those restrictions
8 returned to full duty, and he was terminated.

9 **MR. BEARD:** That's incorrect. And that's --

10 **MR. MARTIN:** If I'm --

11 **MR. BEARD:** I believe we're going to have a
12 deposition testimony of the Claimant that is going
13 to dispute his own lawyer.

14 **MR. MARTIN:** If I'm not mistaken, Joe Brown
15 testified today that he came in with a work
16 excuse --

17 **MR. BEARD:** No, he didn't. He said he came
18 in --

19 **MR. MARTIN:** May I finish?

20 **MR. BEARD:** No, because you're misstating the
21 record. He said he came in and said the doctor
22 said he needed light duty, he didn't come in with
23 any restrictions. And then he said, tell him he's
24 got to go back and the restrictions. That's what
25 he said.

1 **MR. MARTIN:** Tell him he's got to go back and
2 get the doctor to say he's release to full duty.

3 **COMMISSIONER BECK:** As I understand, they
4 don't accommodate light duty restrictions.

5 **MR. BEARD:** Right.

6 **MR. MARTIN:** Yes, sir. Yes, sir. My point is
7 they told him no, you have to go back to the doctor
8 and get them to release you to full duty. That's,
9 I'm pretty certain --

10 **MR. BEARD:** To return to work.

11 **MR. MARTIN:** -- what Joe Brown said.

12 **COMMISSIONER BECK:** Yes, but the difference
13 between this case and this case is one's admitted
14 and one's isn't. They either provide, in
15 Mr. Valderamma's case, light duty restrictions or
16 work within those restrictions or they pay him TTD.
17 This case is different.

18 **MR. MARTIN:** Well, in Mr. Valderamma's case
19 they terminated him, because he wouldn't take this
20 lighter duty job. That's where I'm trying to get
21 to, but.

22 **COMMISSIONER BECK:** I don't know whether that
23 was within restrictions, outside restrictions. I
24 mean, y'all litigated that case and settled it.

25 **MR. MARTIN:** Yes, sir, but we also have a

1 Hearing Order that addresses that same --

2 **COMMISSIONER BECK:** It does. It does address
3 the suspension of TTD.

4 **MR. MARTIN:** Yes, sir. And, I mean, that
5 was --

6 **COMMISSIONER BECK:** It says it was improperly
7 terminated.

8 **MR. MARTIN:** Yes, sir.

9 **MR. BEARD:** Would that go to Kohler or would
10 that go to the adjusting company? I mean, you
11 can't pin that on Kohler.

12 **MR. MARTIN:** Kohler -- the testimony we're
13 trying to illicit here --

14 **COMMISSIONER BECK:** I think they're one in the
15 same, Grady.

16 **MR. BEARD:** Well, for all intents and legal
17 purposes, probably so.

18 **MR. MARTIN:** The testimony we're trying to
19 illicit here is that he was on light duty, which I
20 think he has testified to, and that he was asked to
21 return to a job that required him to perform work
22 eight hours a day on his feet. And then I believe
23 I asked him if he had -- if those were -- if
24 returning to work eight hours a day on his feet
25 would violate the restrictions from his doctor.

1 From there I was going to ask him, what happened
2 when you told them --

3 **COMMISSIONER BECK:** Ask the question.

4 **MR. MARTIN:** Thank you.

5 Q. What happened when you told Joe Brown and Sid
6 DeVaul that the job requiring you to be on your
7 feet for eight hours violates your work
8 restrictions -- or violated your work restrictions?

9 A. They say to me that they understand my position and
10 they say that there is no work for me over there in
11 my physical position in that time. So I believe
12 they told me that it's my decision if leave or take
13 that job. And I told them that I'm not willing to
14 put my health at risk no more, I have enough in
15 that time.

16 Q. And so at that time were you no longer employed by
17 Kohler?

18 A. No.

19 Q. When were you terminated -- or maybe I
20 misunderstood you.

21 A. Okay.

22 Q. Is that when you were terminated?

23 **COMMISSIONER BECK:** I think the question is,
24 was he terminated.

25 Q. Were you terminated?

1 A. I can't remember if it's in exactly that time or
2 they call to the office. I can not remember.

3 Q. How far apart was it from then until you were
4 terminate?

5 **MR. BEARD:** Excuse me. I don't think he's
6 answered the question of whether he was terminated.
7 So for you to ask the question, when you were
8 terminated, implies -- I don't think he was
9 terminated.

10 **COMMISSIONER BECK:** His response to your
11 earlier question was I can either leave or take
12 that job.

13 **MR. MARTIN:** Okay.

14 Q. Were you eventually terminated?

15 A. When?

16 Q. Were you eventually terminated? At some point were
17 you terminated?

18 A. Okay. I need to remember. I can't remember
19 exactly how -- but I think this was the last date
20 of -- yeah, in that day I was terminated. It was
21 my last day to work when I finish --

22 **COMMISSIONER BECK:** I'm going to get a
23 clarification.

24 **MR. MARTIN:** Can we let the interpreter
25 question him? Because I feel like -- and I

1 apologize --

2 **COMMISSIONER BECK:** I'm going to ask the
3 question, if he doesn't understand then I'll get
4 the interpreter.

5 **MR. MARTIN:** Yes, sir.

6 **COMMISSIONER BECK:** Did you quit?

7 **WITNESS:** No.

8 **COMMISSIONER BECK:** Or did they fire you?

9 **WITNESS:** They fire me.

10 **COMMISSIONER BECK:** All right. Let's move on.

11 **MR. MARTIN:** Okay.

12 Q. And when they fired you were you still on light
13 duty?

14 A. Yes. Yes.

15 Q. Okay. Did they start paying you any benefits?

16 A. When they fire me?

17 Q. Yeah.

18 A. No, I believe they stop to pay me for five months,
19 I think.

20 **MR. MARTIN:** That's all the questions I have,
21 Commissioner.

22 **COMMISSIONER BECK:** Mr. Beard.

23 **CROSS-EXAMINATION**

24 BY MR. BEARD:

25 Q. Mr. Valderamma, are you legally in the United

1 States of America?

2 A. No, sir.

3 Q. How long have you been here?

4 A. Twenty years.

5 Q. How do you manage to go year to year without any
6 kind of proper, legitimate documentation in the
7 United States?

8 A. It's really hard.

9 Q. Okay.

10 A. It's really hard.

11 Q. You basically have to lie a lot, hide a lot, sneak
12 a lot, do those kind of things, misrepresent to
13 people a lot?

14 A. I never have this kind of problem before, never. I
15 can say that I'm a really good citizen. I never
16 had any kind of problems so this is completely new
17 for me.

18 Q. Okay. Did you lie to Kohler when you went to work
19 there, telling them you were a legal resident or a
20 legal citizen of the United States?

21 A. No, Kohler can hire you -- okay, I have my driver
22 license. I have my driver license with my visa
23 when I came to United State and I went to the
24 highway department -- because I came here to go to
25 school and I needed my driver license. So with my

1 driver license I went to Kohler and have a job and
2 they call me to got that job.

3 Q. Okay. Did you tell them you had a Social Security
4 Number?

5 A. I have a Social Security Number.

6 Q. Is it a legal Social Security Number?

7 A. No, it's a legal Social Security --

8 Q. Okay. So when you put a Social Security Number on
9 your employment application you lied about having a
10 valid Social Security Card, correct?

11 A. No.

12 Q. Okay. So you had a Social Security Card that was
13 valid?

14 A. Yes, sir.

15 Q. You have a legal Social Security Card?

16 A. Yes, sir.

17 Q. How did you get a legal Social Security Card if
18 you're not legally in the United States?

19 A. You can have a legal Social Security Number in
20 order to go to school.

21 Q. What's your Social Security Number, because I want
22 to go have it checked. I want to go see if you do
23 have a legal Social Security Card.

24 A. So you think I'm lying to you?

25 Q. I'm going to find out. I've never met you.

1 A. No, I'm no lie to you and --

2 Q. What's your Social Security Number?

3 WITNESS: Do I have to tell my --

4 MR. MARTIN: Commissioner, if I might --

5 MR. BEARD: No.

6 MR. MARTIN: No, I have the right to --

7 MR. BEARD: No, you don't.

8 MR. MARTIN: -- speak.

9 MR. BEARD: You don't have the right --

10 MR. MARTIN: I do have the right to speak.

11 COMMISSIONER BECK: Do you have an objection?

12 MR. MARTIN: Yes, I do.

13 COMMISSIONER BECK: What's your objection?

14 MR. MARTIN: My objection is that he has
15 testified that he came here on a Student Visa. He
16 said he had a visa and he came here for the purpose
17 of going to school. When you come to the United
18 States on a Student Visa they do give you a number,
19 okay. Now, whether or not that number is still
20 good is another issue. But at the time that he
21 came here he was provided a Social Security Number
22 and that is a legal Social Security Number that he
23 was provide.

24 COMMISSIONER BECK: For limited purposes.

25 MR. MARTIN: For limited purposes. For the

1 purposes of him obtaining his education in the
2 United States.

3 **COMMISSIONER BECK:** But not for gaining
4 employment.

5 **MR. MARTIN:** I don't know what his visa said,
6 but I'm assuming if it was a typical student visa,
7 that's true.

8 **MR. BEARD:** Well, you knew everything else,
9 why would you not know that?

10 **MR. MARTIN:** Because I don't have a copy of
11 his visa.

12 **MR. BEARD:** But you've represented him for all
13 these years, I assume you knew all that.

14 **MR. MARTIN:** I don't have to know all that,
15 okay. I never asked him, and that's not my job to
16 investigate --

17 Q. What's your Social Security Number?

18 A. 247 80 8799.

19 Q. 247 80?

20 A. Huh-huh.

21 Q. What was the last part?

22 A. Hold on. 247 87 8099.

23 Q. 87?

24 A. 247 --

25 Q. Okay.

1 A. 87 8099.

2 Q. Do you have it with you?

3 A. No.

4 Q. Why would you not have your Social Security Card

5 with you?

6 A. I don't suppose to carry it. I mean, I just needed

7 to go to school or something.

8 Q. How did you get here today, did you drive yourself?

9 A. Somebody take me over here.

10 Q. You didn't drive yourself here?

11 A. No, sir.

12 Q. Where's your drivers license?

13 A. I don't have a -- my drivers license expired.

14 Q. Okay. So you don't have any current legal

15 documentation in the United States, correct?

16 A. I don't know what you mean with legal.

17 Q. Do you have any documentation that allows you to be

18 legally in the United States of America?

19 A. My visa's expired, I don't have --

20 Q. Okay. If our Homeland Security -- you know who

21 that is, correct?

22 A. Huh-huh.

23 Q. If Homeland Security came in here right now and

24 asked you, for identification purposes, to provide

25 them with proof that you are in the United States

1 legally you can't do that, can you?

2 A. No.

3 Q. Okay. At the time you went to work for Kohler is
4 that the same Social Security Number you used?

5 A. Yes.

6 Q. Okay. At the time you went to work for Kohler did
7 that Social Security Number that you used allow you
8 to be employed in the United States of America or
9 only to be in school in the United States of
10 America?

11 A. I believe it's only to be in school.

12 Q. Okay. So when you went to work for Kohler and
13 filled out an application you were not truthful
14 about being legally in the United States for
15 employment purposes, correct? Because there's a
16 question that says are you legally allowed to be
17 employed here, it's on every application, and you
18 answered yes, correct?

19 A. I don't remember if it say something like that.
20 And I can answer I don't remember what I put over
21 there on my application.

22 Q. Okay. Have you ever lied to any government
23 official about whether you're legally here or not?

24 A. No.

25 Q. You testified you were terminated from your job.

- 1 There was a lot of --
- 2 A. Sure.
- 3 Q. You kind of sat there for a long time trying to
- 4 figure out how to answer that question.
- 5 A. Sure.
- 6 Q. I'm reading the Order that your lawyer prepared in
- 7 your case for Commissioner Lyndon on December 13,
- 8 2011. And this says you were laid off, it doesn't
- 9 say you were fired. It said you were laid off the
- 10 last time you worked at Kohler, isn't that correct,
- 11 you were part of a plant layoff, weren't you?
- 12 A. No.
- 13 Q. You were not?
- 14 A. No.
- 15 Q. Well, why did your lawyer put (As read): He has a
- 16 checkbook and all of the bills were current up
- 17 until the time of his most recent layoff? Do you
- 18 have any idea why he would have said that?
- 19 A. I believe with all these years it happened too many
- 20 things, too many happened. They give me layoffs,
- 21 they give me light duties, they send me home for
- 22 rest, I mean, it happened a lot, a lot of different
- 23 things. It's hard to me remember everything.
- 24 Q. You weren't terminated, Mr. Valderamma, you were
- 25 laid off the last time you were working there. And

1 that's what you testified to in a hearing and
2 that's what your lawyer put in an Order, isn't that
3 correct, or did your lawyer misrepresent the Order?
4 It's got to be one or the other.

5 **MR. MARTIN:** Objection.

6 **COMMISSIONER BECK:** Sustained.

7 Q. Did you testify in a hearing that your lawyer used
8 to prepare an Order that you were laid off the last
9 time you were at Kohler?

10 **MR. BEARD:** Commissioner, I'm looking at page
11 nine of the Order.

12 **MR. MARTIN:** Is that in Findings of Fact?

13 **COMMISSIONER BECK:** No, it's in your position.

14 **MR. MARTIN:** Okay.

15 **MR. BEARD:** In your Order that you drafted.
16 And I assume in your hearing transcript, which I
17 don't have available.

18 **MR. MARTIN:** Well, I think we should include a
19 copy of the hearing transcript in the documents we
20 provide to you by Friday, then, Commissioner.
21 Would that be all right, Commissioner?

22 **COMMISSIONER BECK:** Mr. Beard?

23 **MR. BEARD:** I'm sorry?

24 **COMMISSIONER BECK:** Any objection to that?

25 **MR. BEARD:** To the hearing transcript?

1 **COMMISSIONER BECK:** Yes.

2 **MR. BEARD:** I guess I would have to object to
3 the hearing transcript, because I have no clue
4 what's in it. I'd have to see it before I could
5 tell you whether it was okay to bring it in, to be
6 quite frank with you, your Honor. All I know is
7 what the Order says. The Order says layoff, and
8 there's a distinct difference between a layoff and
9 a termination.

10 **MR. MARTIN:** I believe both words are used in
11 that Order. And, Commissioner, I think the hearing
12 transcript would be the best evidence of exactly
13 what was said by who and when.

14 **COMMISSIONER BECK:** He got laid off on page
15 eight, laid off on page nine, laid off on page ten.
16 I'm not seeing anything -- laid off in the Finding
17 of Fact on page thirteen.

18 **MR. BEARD:** So that is a Finding of Fact?

19 **COMMISSIONER BECK:** It is.

20 **MR. BEARD:** Okay. I guess we would just ask
21 that you attach the Order as part of the record in
22 this case.

23 **MR. MARTIN:** I believe I've already submitted
24 it. And I would ask that the transcript of the
25 hearing, as discussed before, would also be

1 submitted.

2 **COMMISSIONER BECK:** Defendant 4. And the
3 hearing transcript in that matter submitted by
4 close of business on Friday.

5 (Whereupon, the above described Hearing
6 Order of Yuri Valderamma v. Kohler was
7 marked Defendant's Exhibit No. 4.)

8 **COMMISSIONER BECK:** Mr. Beard.

9 **MR. BEARD:** Thank you, Commissioner.

10 Q. Mr. Valderamma, I heard you say at the very
11 beginning of your testimony you started off as a
12 castor for six months, correct?

13 A. Huh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. And then you got promoted to foreman or supervisor?

17 A. Yes.

18 Q. Okay. So you were familiar with how workers' comp
19 works, weren't you? Did you not instruct people in
20 safety?

21 A. Yes.

22 Q. Okay. So you were part of the safety program at
23 Kohler, being a supervisor or foreman, correct?

24 A. Yes.

25 Q. And you knew how workers' compensation worked and

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1 how you were supposed to deal with a workers' comp
2 system, weren't you?

3 A. Sure. Yes.

4 Q. Okay. And you, I assume, had group insurance cards
5 and could go to the doctor if you need to for any
6 reason, correct?

7 A. Excuse me? Can you --

8 Q. Did you have group insurance, medical insurance?

9 A. Right now?

10 Q. No, at the time you worked. Did the company give
11 you medical insurance?

12 A. Well, we pay for that --

13 Q. You paid something for it.

14 A. Sure.

15 Q. Okay. And you had medical insurance for anytime
16 you needed to go see a doctor?

17 A. Yes.

18 Q. If you were in significant, severe pain, whether
19 the company listened to you or not, you could have
20 gone to the doctor if you needed to, correct?

21 A. Yes.

22 Q. Okay. And I assume you went to the doctor on
23 occasions.

24 A. Yes.

25 Q. Whether it was workers' comp or not, correct?

- 1 A. Yes.
- 2 Q. Used your insurance card?
- 3 A. Yes.
- 4 Q. Paid some small co-pay?
- 5 A. Sure.
- 6 Q. Okay.
- 7 A. That's right.
- 8 Q. Were you aware that Dr. Nowatka, and Dr. Cole, and
- 9 that group was the company doctors for Kohler?
- 10 A. No.
- 11 Q. Did you go to them when you -- did you have to do a
- 12 pre-employment physical?
- 13 A. Yes.
- 14 Q. Okay. Did you go to Dr. Nowatka or the First
- 15 Medical Group?
- 16 A. I'm not sure if I went to that particular doctor,
- 17 but I went to take a physical exam.
- 18 Q. Did you go to First Medical in Spartanburg -- I'm
- 19 sorry -- Family Medical Group in Spartanburg?
- 20 A. I'm not sure, but I think it's when I went.
- 21 Q. Okay. Do you have a personal family doctor?
- 22 A. Yes.
- 23 Q. Who is it?
- 24 A. Dr. Cole.
- 25 Q. Is he with that same group?

- 1 A. No.
- 2 Q. He's not with Family Medical Group?
- 3 A. I don't think it's the same Family Group.
- 4 Q. Okay. You don't know?
- 5 A. I mean, I don't know.
- 6 Q. Okay. What is Dr. Cole's first name, if you know?
- 7 A. Eric.
- 8 Q. Dr. Eric Cole?
- 9 A. Eric Cole.
- 10 Q. You're not aware that he's a workers' comp company
- 11 doctor for Kohler?
- 12 A. No, I don't know nothing about him working.
- 13 Q. Is his office at -- near Mary Black Hospital?
- 14 A. Yes.
- 15 Q. Okay. And you're not aware that he is the company
- 16 doctor for Kohler?
- 17 A. No.
- 18 Q. Okay. When you were originally injured the company
- 19 sent you to a company doctor, correct?
- 20 A. No.
- 21 Q. They didn't send you to a doctor?
- 22 A. No.
- 23 Q. Well, I thought you testified earlier that your
- 24 case was accepted and they sent you to a doctor?
- 25 A. Well, this happened after 25 days or 20 days --

1 Q. Okay. After 20 days --

2 A. Okay.

3 Q. -- when they accepted your workers' comp claim did
4 they send you to a doctor?

5 A. Yes.

6 Q. Where did they send you?

7 A. They send me with a Dr. Black -- Mary Black.

8 Q. They didn't send you to the Family Medical Group?

9 A. No, I don't think so.

10 Q. Okay.

11 A. I'm not sure, maybe I'm wrong, but I don't think
12 they send me to that doctor. I can't remember.

13 Q. Well, I'm looking -- you went to Dr. Eric Cole,
14 according to your Order that we've been provided.
15 So you went to Dr. Mary Black, Dr. Eric Cole,
16 Dr. Paul Behr, you remember those doctors?

17 A. Yes.

18 Q. Okay. And Kohler paid for those doctors, correct?

19 A. Yes.

20 Q. Okay. And according to your settlement document
21 Kohler paid all of your medical bills, correct?

22 A. Yes.

23 Q. Okay.

24 MR. MARTIN: I'm sorry, is that settlement
25 document that you referred to the clincher

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1 agreement?

2 MR. BEARD: Yeah.

3 MR. MARTIN: What's the date on it?

4 MR. BEARD: July 17, 2013.

5 MR. MARTIN: Okay. That's the one that you
6 objected to earlier?

7 MR. BEARD: I don't think I objected to this.

8 MR. MARTIN: Okay.

9 MR. BEARD: But I'm not positive.

10 COMMISSIONER BECK: The objection was to the
11 Lyndon Order, initially.

12 MR. BEARD: Yeah.

13 MR. MARTIN: I thought he objected to
14 Mr. Valderamma coming in based on the fact that the
15 clincher said that we wasn't allowed to testify,
16 then I produced a copy of the signed clincher that
17 said he was allowed to testify, because it was my
18 understanding that we didn't have a copy of it.
19 And then -- so I didn't know that Mr. Beard did
20 have a copy of it.

21 MR. BEARD: I have no idea what he's talking
22 about, to be honest with you. But I have no
23 further questions.

24 COMMISSIONER BECK: Any other questions?

25 MR. MARTIN: No, sir.

1 **COMMISSIONER BECK:** You may step down. Thank
2 you, sir.

3 Mr. Martin, your next witness.

4 **MR. BEARD:** Commissioner, what I would ask,
5 though, although I don't have any questions, is if
6 we'd be allowed to inquire from Homeland Security
7 of whether this Social Security Number was ever
8 valid for any purposes.

9 **COMMISSIONER BECK:** And for what purpose?

10 **MR. BEARD:** Because I would like to know if he
11 was truthful to you when he says he has a Social
12 Security Number. Because my instinct is that this
13 would be either a person who is deceased or someone
14 who is not this gentleman.

15 **MR. MARTIN:** Commissioner, I would ask that I
16 be allowed to provide you a copy of his visa
17 instead. I don't believe it's necessary to
18 contact --

19 **COMMISSIONER BECK:** How is that relevant to
20 determine whether that Social Security Card is
21 valid?

22 **MR. MARTIN:** Well, I think, if I'm not
23 mistaken, he's saying this is some dead person's
24 Social Security Number that he made up. His
25 testimony was that the Social Security Number came

1 off of his visa. That was his testimony. He never
2 said that his --

3 **COMMISSIONER BECK:** There's not a Social
4 Security Number on a visa, is there?

5 **MR. MARTIN:** There is, yes, sir. There's a
6 nine digit number -

7 **COMMISSIONER BECK:** But I thought he also said
8 he had a Social Security Card.

9 **MR. MARTIN:** I believe he said that the only
10 -- if I'm not mistaken, the only Social Security
11 Number he's referring to the one that was on his
12 visa. He said that was one that he -- the one that
13 was on his visa is the same one that he provided to
14 Kohler when he went to work there. That's the same
15 number, that's what his testimony was.

16 **MR. BEARD:** Then there shouldn't be any harm
17 in allowing us to inquire to find out if that's
18 correct or not.

19 **MR. MARTIN:** Commissioner, I think you're just
20 -- seems like an attempt to harass this witness to
21 contact --

22 **MR. BEARD:** Well, that's what you've been
23 doing to my client all day.

24 **MR. MARTIN:** -- to contact Homeland Security.
25 I mean, if we can establish that fact by other

1 means I don't think it's necessary to do that to
2 the witness and I don't think it's appropriate.

3 **MR. BEARD:** Well, I know why he's saying that,
4 because he's afraid that Homeland Security will
5 come and take Mr. Valderamma out of the United
6 States. I mean, that's why he's making that
7 statement. That may or may not be true --

8 **MR. MARTIN:** Mr. Valderamma said he was not
9 here legally --

10 **MR. BEARD:** Mr. Valderamma has put his
11 credibility at issue, and I think that goes to that
12 credibility. I think everything that we -- we have
13 to attack it all and that's the only way I know to
14 do it.

15 **MR. MARTIN:** Commissioner, I think we're going
16 down a slippery slope if you're allowed to
17 prosecute witnesses to workers' comp hearings.
18 It's difficult enough to get a witness to come and
19 testify. You know, in this case it's his ex-
20 employer. But, you know, people are nervous about
21 coming to testify as it is, and then to put them in
22 position where you're going to turn them in, I
23 think that's a -- I don't think that's some place
24 that the Commission wants to go. And I don't think
25 it's necessary in this situation. You know, he's

1 testified that he's not here legally, he's
2 testified that the Social Security Number came off
3 of his visa, and I think it's inappropriate.

4 **COMMISSIONER BECK:** Grady, how does that not
5 put us sort of crossways with 42-3-150? I mean,
6 he's come in here to testify, and that basically
7 provides him immunity for any crime, except
8 perjury.

9 **MR. BEARD:** Correct. Well, we don't know if
10 it's perjury until we find out about his Social
11 Security Number.

12 **COMMISSIONER BECK:** But you call Homeland
13 Security and --

14 **MR. BEARD:** I didn't put him up. I didn't
15 present my case this way. I don't know why Al
16 Martin did, but he did. And he put their
17 credibility, knowing that they were illegal here.

18 **MR. MARTIN:** I'm stuck with the witnesses that
19 I have, and these are people that have been
20 employed by Kohler. The fact that Kohler doesn't
21 hire people that are legal is hardly my issue. I
22 mean... And, Commissioner, we can skin this cat
23 another way. I mean, it's not necessary to
24 establish that through contacting Homeland
25 Security. It seems to me that, you know --

1 **COMMISSIONER BECK:** How else do we do it?

2 **MR. MARTIN:** By me providing you a copy of his
3 visa. And if his visa has that number on it and
4 that's a legitimate visa, then we've established
5 it, and if it doesn't, then you've established that
6 he wasn't telling the truth, and that's the only
7 issue that we have here. I don't think we're out
8 to prosecute or create difficulty for a witness. I
9 mean, it seems like based on Mr. Beard's comment
10 that the only thing I've done here is harass his
11 client so he's going to harass my witness and, you
12 know, have him --

13 **COMMISSIONER BECK:** I don't think that's what
14 he said, but --

15 **MR. BEARD:** That's not what I said. But I'm
16 going to represent my client vigorously and within
17 the bounds of ethics, and I've done that. And I'm
18 entitled -- I think I'm allowed, assuming your
19 Honor agrees, to have that checked.

20 **MR. MARTIN:** And I'm not objecting to it being
21 checked, Commissioner, I'm just asking for it to be
22 checked in such a way that it doesn't cause the
23 witness undue harm.

24 **COMMISSIONER BECK:** Can't do it through the
25 Social Security Office, Grady?

1 **MR. BEARD:** I don't know. I think you have to
2 go through Homeland Security to get the legitimacy
3 of a Social Security Number, because I think
4 Homeland Security is now over -- my understanding
5 is they're over that.

6 **COMMISSIONER BECK:** Why don't you do it
7 through E-Verify? Do y'all have E-Verify?

8 **MR. TOLLESON:** Yeah, we have it. And that's
9 -- when he was employed it was the I9, so all he
10 had to do was have that drivers license --

11 **COMMISSIONER BECK:** The I9 was worthless.

12 **MR. TOLLESON:** Yeah, and that's what I'm
13 saying --

14 **COMMISSIONER BECK:** But if you have an
15 E-Verify system --

16 **MR. TOLLESON:** That's now.

17 **COMMISSIONER BECK:** I understand, but what
18 precludes you from running that number through your
19 E-Verify --

20 **MR. TOLLESON:** You'd have to ask Sid DeVaul,
21 he's the HR. I don't have anything to do with that
22 part of it.

23 **MR. BEARD:** Well, if Sid can do that I don't
24 have any objection to doing it that way if --

25 **COMMISSIONER BECK:** What I don't want to is --

1 **MR. BEARD:** I don't either. I mean, I'm with
2 you on that, but I don't know any other way to
3 defend my client short of that if I don't have
4 another opportunity to do it. I mean, because,
5 what if, in fact, he's not telling the truth? What
6 if he's not telling the truth about the Social
7 Security Number?

8 **WITNESS:** I'm sorry. I'm telling the truth.

9 **MR. BEARD:** Well, I --

10 **COMMISSIONER BECK:** My point is, Grady, with
11 E-Verify -- and I don't know what --

12 **MR. TOLLESON:** I don't either. Sid would be
13 your --

14 **COMMISSIONER BECK:** Has he left?

15 **MR. BEARD:** No, he's still out here.

16 **COMMISSIONER BECK:** Go grab him.

17 (Off the record)

18 **MR. MARTIN:** Commissioner, I think that we can
19 find through -- my wife is an immigration attorney,
20 and I think that we can find through them, somehow,
21 whether or not the visa has expired without having
22 to go through contacting Homeland Security.

23 **COMMISSIONER BECK:** And without going back and
24 looking at a transcript --

25 **MR. MARTIN:** Yes, sir.

JOSE JIMENEZ,

having been first duly sworn,
was examined and testified as follows:

COMMISSIONER BECK: Mr. Martin.

MR. MARTIN: Thank you, Commissioner.

DIRECT EXAMINATION

BY MR. MARTIN:

Q. Your full name is Jose Jon Jimenez?

A. Yes.

Q. And Spanish is your first language?

A. Yes.

Q. And you are also able to speak some English, but in
a setting that we're in today you feel more
comfortable accurately responding with an
interpreter?

A. Yes.

Q. You are originally from Mexico?

A. Yes.

Q. And you currently live at 520 Riley Court in
Spartanburg, South Carolina?

A. Yes.

Q. You live there with your wife and three children,
ages five, three, and two?

A. Yes.

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1 Q. And would you clarify you are not formally married
2 in a legal sense?

3 A. Yes.

4 Q. And you're brother also lives with you?

5 A. Yes.

6 Q. Your date of birth is August 5, 1978, which makes
7 you 35 years old?

8 **TRANSLATOR:** I'm sorry, 70?

9 **MR. MARTIN:** August 5, 1978, which makes you
10 35 years old.

11 A. Yes.

12 Q. You attended school in your country through high
13 school and attended some technical college?

14 A. Yes.

15 Q. You have not attended school in the United States?

16 A. No.

17 Q. You're currently six feet and approximately 235
18 pounds?

19 A. More or less.

20 Q. Okay. And you came to the US about 14 years ago?

21 A. Yes.

22 Q. You first worked at the Blockbuster Warehouse in
23 McKinney, Texas for about 11 months, and then with
24 Delta, a food preparation company, packing food?

25 A. Yes.

1 Q. All right. You moved to South Carolina after that
2 and your next job was with Kohler beginning in
3 April of 2001?

4 A. Yes.

5 Q. You worked for Kohler until you were terminated in
6 January of 2004?

7 A. Yes.

8 Q. Then you worked for a company that made alternators
9 in, I believe it was, Cowpens for about three
10 weeks?

11 A. Yes.

12 Q. And then Kohler hired you back in February of 2004,
13 a little over a month -- or approximately a month
14 later?

15 A. Yes.

16 Q. And you continued working for Kohler until February
17 of 2013?

18 A. The last days of January.

19 Q. Okay. We're here today about two different
20 accidents, one on July 14, 2011 and one on
21 March 13, 2012. Briefly describe what happened in
22 those accidents.

23 A. Well, as others have stated, this is a difficult
24 job. And the first time I felt any kind of
25 physical problem and wear to my body was when I was

1 lifting a pan -- they call it a pan -- and it was
2 full of sleet. I felt the bothering and if first
3 occurred when I was rolling. After that I felt
4 some pain. And at that moment when you're working
5 your body is warm so you're working and you're
6 sweating, you don't feel what might happen to you.
7 So at that moment I did feel pain, but because I
8 was moving, and working, and sweating, the pain was
9 less. It was in my shoulder. And the reason I say
10 it was in my shoulder is because I was aware that
11 it was in my shoulder, I didn't have any other
12 symptoms anywhere else. This came from using a
13 machine that had been damaged and I believe that
14 because I was using that inappropriately. When I
15 told them that I was injured they told me that I
16 needed to continue to work.

17 Q. Okay. Let me ask you something else. On July 14th
18 of 2011, I believe that was the incident where you
19 talked about lifting a pan, describe that accident
20 to me. Is that when you hurt your shoulder,
21 because the machine wasn't operating right or is
22 that something different?

23 A. That was different.

24 Q. Okay. Tell me about lifting the pan, what happened
25 there?

1 A. Well, the mold -- we'll throw out any of the mix
2 that is not good and you have to clean that off
3 from the bottom -- on the floor and that might take
4 a few minutes. You have to put all of that mix
5 into a drum. And it just depends on how many
6 pieces you're doing that day that tells you how
7 much of the mix you're going to use and how much of
8 the mix you're going to get rid of. The first time
9 it was a movement like -- well, it was a different
10 kind of sound. It was like, if anyone has done
11 this, whenever you crack your fingers on your hand,
12 that's what I heard and I felt a jolt of
13 electricity go down my leg, but I continued to
14 work. It did bother me, it did hurt, and I asked
15 my co-workers for help so I was able to finish out
16 the day that way. The following day is when I
17 really felt...

18 **MR. MARTIN:** Can you ask him to continue?

19 A. I will. I first just wanted to add that I'm gong
20 to express myself as best as I can remember. I
21 don't want my words to be misinterpreted. And I'm
22 going to say this the best that I can express
23 myself as I remember, because I know that memory
24 sometimes fails.

25 What I can remember is I reported it as

1 normal, as it would be logical. They ask you
2 questions, they ask you how you're doing, you give
3 them the complaint, they give you some pills,
4 that's what was done. I'm not sure exactly how
5 everything happened, because I can't remember
6 everything, it's been so long ago. I don't want to
7 make a mistake.

8 Q. Okay. You have been present during the -- all of
9 the testimony so far in this case.

10 A. Yes.

11 Q. There was an incident that Mr. Barnwell prepared
12 from July 14th of 2011 that described your accident
13 lifting the pan, was that an accurate description
14 of the accident?

15 A. Yes, and if I'm not mistaken, but I don't want to
16 make a mistake, I think for that I also received a
17 warning.

18 Q. Okay. And did you see the nurse for that, also?

19 A. Yes, I was sent to her.

20 Q. Okay. What did she do for you?

21 A. Well, she asked me how I was doing, how did it
22 happen, she put some type of cold gel on me and
23 give some pills. She told me that if I needed any
24 more pills to let my immediate supervisor know,
25 that she would send them with him, and that he was

1 going to ask me some questions, and just that, that
2 if I needed more pills to let him know.

3 Q. Was your immediate supervisor Sam Barnwell?

4 A. Yes.

5 Q. Okay. There was another incident that occurred on
6 March of 2012, and I believe Mr. Barnwell filled
7 out an incident report for that, also, describing
8 where you felt like you injured yourself moving
9 some wares. Can you describe to us what happened
10 in that situation?

11 A. I remember that I was moving one of the wares and
12 that's when I went and informed it about the pain
13 in my arm. But the pain was -- it was coming and
14 going, it wasn't constant. But as it's been said
15 here before, it was as if -- it was just
16 commenting, talking about it, nothing more.

17 Q. Let me back up a little bit. In March of 2012, as
18 I understood what we heard before, you injured your
19 back from rolling over the wares.

20 **MR. BEARD:** And I'm not objecting, I just need
21 to ask a question. He said something about his
22 right shoulder, are you asking him to correct
23 himself, is that the way you're asking that
24 question? Because his answer was something about
25 his right shoulder.

1 **MR. MARTIN:** All I heard was arm.

2 **MR. BEARD:** Or arm.

3 **COMMISSIONER BECK:** Arm.

4 **MR. BEARD:** Arm.

5 **MR. MARTIN:** Yeah, that's what I heard. I'm
6 just asking, because I don't know if he's talking
7 about the same thing that I'm talking about.

8 **COMMISSIONER BECK:** Yes, and I'm a little
9 confused, too, because the only thing you're
10 seeking compensability for is the back and the left
11 leg.

12 **MR. MARTIN:** Right.

13 A. Forgive me, I thought we were here for both things.
14 That's when I reported it. And on the side that
15 you roll the ware, that's where you always are
16 going to feel the pain, on that side of your back.

17 Q. Okay. On that occasion, when you reported that to
18 Mr. Barnwell, he sent you to the nurse again?

19 A. I did go several times. I don't remember the exact
20 dates so I'm not going to say how many times,
21 because I don't remember, but I went several times.
22 And as has been commented here before already, you
23 talk to somebody, you comment to them about what's
24 happened to you, the only thing you get is, Well,
25 let me bring you some pills. I never though for a

1 second, I never thought for a moment that what I
2 had -- I never thought -- I always did things the
3 right way.

4 Q. Okay. On November 1st of 2012 you had a meeting in
5 the nurses office, who was present?

6 A. Joe Brown was there, Mike Tolleson, Sam Barnwell,
7 the nurse, and about halfway through, Sid DeVaul,
8 but he didn't participate, he was just listening.

9 Q. And who asked for the meeting?

10 A. I asked for it. I told Sam -- and, again, I guess
11 this is redundant, because, you know, when you go
12 to the doctor you trust in the doctor, you trust
13 the people that know what they're doing. And when
14 they tell you, Well, don't worry, you don't think
15 anything about it, you do what they ask you to do,
16 you don't think about your future at that moment.
17 But there came a moment when I was at home, I
18 arrived home, I sat down and I couldn't get back up
19 off the seat. And I told Sam about that. And I
20 told him that I needed to do something about this,
21 that I wanted to talk, and that if he didn't talk,
22 that I would. So I wanted to go to the nurse to
23 see if she could refer me to the doctor.

24 Q. Had you asked Sam before this to send you to the
25 nurse?

1 A. Yes.

2 Q. Had you told him that you were having problems with
3 your back?

4 A. Yes.

5 Q. Did you tell him it was from when you were injured
6 on the job?

7 A. I did, yes. And he told me that maybe it was an
8 old injury.

9 Q. When you met with everyone in the nurse's office on
10 November 1, 2012 did you tell them that you had
11 been injured on the job?

12 A. Yes.

13 Q. Did you tell them that you'd been to the doctor?

14 A. Yes.

15 Q. Did you ask them if they would send you to the
16 doctor or give you light duty?

17 A. Yes.

18 Q. What did they tell you?

19 A. That the doors were open if I wasn't able to do my
20 job.

21 Q. Who said that?

22 A. (Gestures.)

23 Q. I think you indicated, but if you could say that
24 out loud.

25 A. Let me breathe. Mr. Tolleson.

1 Q. Did you go to the doctor on your own before that
2 meeting?

3 A. Yes.

4 Q. And after that meeting did you continue to treat
5 with the doctor?

6 A. Yes.

7 Q. And did you tell Kohler or anyone at Kohler that
8 you were continuing to treat with the doctor?

9 A. Yes.

10 Q. Who did you tell?

11 A. I told my bossman and Mr. Joe Brown. But since at
12 Kohler they have that policy where you can't jump
13 onto the next supervisor, you have to tell your
14 supervisor, then that supervisor tells that next
15 supervisor successively. I told him, but I'd also
16 told all my co-workers, they knew about it.

17 Q. Did you tell them that the doctor had recommended a
18 MRI?

19 A. Yes.

20 Q. And did you eventually have the MRI?

21 A. Yes.

22 Q. And did you tell them -- or did you come back to
23 work after you had the MRI and speak with anyone?

24 A. Yes.

25 Q. Who was that?

1 A. With Mr. Sam Barnwell.

2 Q. Who was it that you told before that that the MRI
3 had been recommended?

4 A. I told it to several people and, in fact, I told my
5 immediate supervisor. I told several people there.

6 Q. Your immediate supervisor was Sam Barnwell?

7 A. Yes.

8 Q. Okay. When you had -- let me ask you this. Sorry.
9 Did you ever ask anyone at Kohler to provide you
10 with forms to provide your doctor related to work
11 restrictions?

12 A. Yes.

13 Q. Who did you ask?

14 A. I asked Sam and I also asked the nurse, Pat.

15 Q. And who was it that told you to ask for forms?

16 A. It was Dr. Erica Savage-Jeter.

17 Q. And when you asked for the forms what did they tell
18 you?

19 A. That I needed to go back to ask the nurse -- that I
20 needed to go back to the doctor and ask her, she
21 was the one who needed to have those forms, fill
22 them out, and then I would return with them. And
23 so I went back to the doctor or I called, I don't
24 remember now. In the best way I could I asked her
25 what papers are you talking about -- because at

1 that time I didn't know that they were called forms
2 -- what papers are you talking about. She told me,
3 Well, those papers are the ones your co-workers
4 should be giving you so that I can fill them out,
5 go ask them for them --

6 **MR. BEARD:** Commissioner, I'm going to object
7 now, because this is obviously hearsay from the
8 doctor, is what I'm now hearing. It's not proper.

9 **COMMISSIONER BECK:** Sustained.

10 **MR. MARTIN:** I believe that actually is in the
11 doctor's deposition.

12 **COMMISSIONER BECK:** If it is the deposition
13 will speak for itself, but he can't testify to it.

14 Q. Your last visit with Dr. Jeter was January 29th,
15 and after that the records indicate you began
16 seeing Dr. Rodriguez. What were you seeing
17 Dr. Rodriguez for?

18 A. I was referred to that doctor by the already
19 mentioned doctor that I was seeing, because she
20 told me that she had already done as much for me as
21 possible.

22 **MR. BEARD:** Commissioner, again, I would just
23 object to what she --

24 **COMMISSIONER BECK:** Sustained.

25 Q. So what were you seeing Dr. Rodriguez for?

- 1 A. It was for -- it was for, in this case, the
2 problems that I'm having with my back. I call it a
3 problem because I don't know exactly what's going
4 on with back, I'm not a doctor.
- 5 Q. Okay. Is Dr. Rodriguez a surgeon?
- 6 A. Yes, orthopedic.
- 7 Q. Okay. Have you had any surgery yet?
- 8 A. No.
- 9 Q. Would you like to receive surgery?
- 10 A. Yes, of course. Who doesn't want to be healthy?
- 11 Q. Have you been able to work anywhere since January
12 of 2013?
- 13 A. No.
- 14 Q. And did you receive notice that your health
15 insurance had been canceled in February of 2013?
- 16 A. When I went to the doctors office, that's when I
17 was told.
- 18 Q. And did you pay for medical treatment on your own
19 for a time?
- 20 A. Up until I could.
- 21 Q. Okay. So you paid out of your savings and money
22 that you borrowed?
- 23 A. Yes.
- 24 Q. And looks like the last time that you saw
25 Dr. Rodriguez was in November of 2013, is that

1 because you ran out of money or is it for some
2 other reason?

3 A. Because I didn't have any money. As we all know,
4 doctors here are very expensive.

5 Q. Do you currently have any income?

6 A. No.

7 Q. Does your wife work?

8 A. She sales some Avon and Tupperware.

9 Q. And does your brother work?

10 A. Yes.

11 Q. Does he help you with the bills and...

12 A. Yes.

13 Q. The job that you were moved to in November 28th of
14 2012 that involved a plat change, was that a
15 lighter job than you had been doing?

16 A. A lot more lighter. And I add that in the training
17 that I had I never was able to complete all of the
18 pieces that were required. I went from doing ten
19 pieces and I finished doing eighteen pieces,
20 because that's what was required from me, but I
21 couldn't do more than that.

22 Q. This is when you were switched to the new job?

23 A. Yes.

24 Q. At the meeting on November 1, 2012 in the nurse's
25 office had you asked them to provide you with a

1 lighter job?

2 A. All the time I would do it, yes.

3 Q. And what did they tell you at that meeting? Did
4 Mike -- or excuse me -- did Jerry Broome -- was it
5 Jerry --

6 **MR. MARTIN:** Sorry, it's late.

7 Q. -- Joe Brown -- excuse me -- did Joe Brown say
8 anything during that meeting?

9 A. Yes.

10 Q. What did he say about any jobs that were available?

11 A. To answer your question, the first part, what he
12 told me was, Jose, there is a position in another
13 area, do you want us to move you. And before I
14 could say anything Mr. Tolleson responded, No, no,
15 no, no, no, if he's not capable of doing he job
16 there the doors are open, let him leave.

17 Q. Were you concerned by those comments that you were
18 going to be terminated?

19 A. At that moment all you think about is keeping your
20 job. I wanted to have a good relationship with
21 them. I wanted to keep my job. The first thing
22 you think about when you hear something like that
23 is your family. Yes, I was very upset. I went
24 back, I started to comment about this with co-
25 workers.

1 Q. Did you agree to go back to your job that day?

2 A. To be honest with you, I didn't have another
3 option.

4 Q. Are the problems that you're having now with your
5 back from the two accidents that we've been talking
6 about, on July 14th of 2011 and March 13th of 2012?

7 MR. BEARD: I'm going to object, because I
8 think it would call for a medical opinion.

9 MR. MARTIN: I'm asking him what he thinks.

10 COMMISSIONER BECK: Try to rephrase it.

11 Q. In your opinion, are the problems that you're
12 having now the result -- or do they result from the
13 accidents you had at work on July 14th of 2011 and
14 March 13th of 2012?

15 COMMISSIONER BECK: That's the same question.
16 Exactly the same question.

17 MR. MARTIN: I asked him for an opinion, I
18 think he can provide a lay opinion.

19 COMMISSIONER BECK: Ask him for causation.

20 Q. What do you think is causing the problems you're
21 having with your back?

22 A. With all due respect to all the people in the room,
23 besides a doctor whose word carries weight because
24 he puts it on paper and has the title, I believe
25 the only other person who can say how I feel is the

1 person who's going through it, myself. The fact
2 that I don't have a title doesn't mean that I'm not
3 feeling anything. And for me this pain is
4 worsening, it's advancing. I'm not here to lie to
5 anyone. I have to say how I feel. I can't do any
6 of my personal things, it's very difficult. I
7 didn't look to be here with this.

8 Q. And what I'm trying to find out is what caused the
9 problems that you're having with your back. Are
10 you saying that it was from --

11 MR. BEARD: Commissioner, I'm going to object,
12 because he's about to lead him --

13 COMMISSIONER BECK: We're going right down the
14 same path again.

15 MR. BEARD: -- and it's the same causation
16 question.

17 COMMISSIONER BECK: There's a more artful way
18 of asking this that's admissible.

19 MR. MARTIN: Yes, sir.

20 If it was two hours ago I might be able to
21 come up with that myself.

22 COMMISSIONER BECK: And I think the answer to
23 the question that you keep trying to ask is
24 presumed by the fact that we're sitting here.

25 MR. MARTIN: That one went right over my head.

1 Sorry.

2 Q. After you had these accidents did you continue to
3 have problems with your back?

4 A. Yes.

5 Q. Did your back ever get better?

6 A. Well, I answer that in two different ways. First,
7 when you're injured you don't know how bad you're
8 injured until something happens. So the pills that
9 I was given made me feel better. They did make me
10 improve, but that doesn't mean that I didn't have a
11 problem. In fact, they allow me to continue to
12 work for a while, although I knew that I wasn't
13 physically well.

14 Since I continued to work like that until the
15 very end I continued to work until I could go no
16 longer. If I really wanted to be here and take
17 advantage of somebody -- well, I guess I won't say
18 that.

19 Q. Did you tell Dr. Rodriguez what happened to your
20 back?

21 A. Yes, I did tell him.

22 Q. And did you tell him why your back hurt?

23 A. He asked me.

24 **MR. MARTIN:** I believe that's all the
25 questions I have right now.

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1 **COMMISSIONER BECK:** Mr. Beard.

2 **MR. BEARD:** Thank you, Commissioner.

3 **CROSS-EXAMINATION**

4 BY MR. BEARD:

5 Q. Mr. Jimenez, we are here for two workers'
6 compensation claims, one on July 14, 2011 and one
7 on March 13, 2012, correct?

8 A. Yes.

9 Q. Are you aware that after July the 14th, 2011 every
10 quarter you made more money working for Kohler?

11 A. No, I was never aware of that.

12 Q. Isn't it true at Kohler the only way you could have
13 made more money is by doing more work?

14 A. Yes and no.

15 Q. Can you explain?

16 A. It depends in the area in which you're working.

17 Q. Weren't you always working in the castor area until
18 November of 2012?

19 A. No.

20 Q. Well, were else were you working?

21 A. In the section where the ovens are.

22 Q. What were you doing there?

23 A. Inspecting pieces.

24 Q. And how did you get that position?

25 A. I was transferred over there.

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1 Q. By whom?

2 A. If I remember correctly, at that time I was working
3 at floor cast and I wanted to change position so I
4 signed up for a transfer, and so I was transferred
5 late after that.

6 Q. When was the transfer?

7 A. It's difficult for me to remember exactly when.

8 Q. Was it before or after the two accidents that
9 you're here for?

10 A. No, it was a lot earlier.

11 Q. Okay. My question was did you continue to work in
12 the casting area and make more money after July of
13 2011, as the records indicate.

14 A. Well, you also have to take into consideration that
15 I think there was a raise, I don't know if that has
16 any effect on how much I made.

17 Q. Okay. Let me ask the question one more time,
18 because you're not answering my question. Did you
19 continue to work in the castor area and make more
20 money after July of 2011?

21 A. I was making more money when I started working
22 there than the last jobs I was doing, for example,
23 I was making \$900 on some checks at the beginning,
24 but lastly, the checks were \$700, maybe one or
25 another of \$800.

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1 Q. My question, again, is, from July of 2011 did
2 you continue to work in the casting area until
3 November 28, 2012 when you stayed in the casting
4 area and changed plates?

5 A. If that's what the dates say, then yes.

6 Q. Okay. Is that your signature on this document?

7 A. Yes, of course, sir.

8 Q. Is that the date that you signed the document,
9 November 28th of 2012?

10 A. Yes, sir.

11 Q. And that's the date you changed plate number from
12 4380 to 4387, correct?

13 A. Who wouldn't like to have a lighter job, of course.

14 Q. Let me ask the question again. Is that the date
15 you changed from plate number 4380 to 4387? That
16 was my question. That's a really easy answer, yes
17 or no.

18 A. Yes, that's what it says.

19 Q. Well, then I'm confused, Mr. Jimenez, because you
20 just testified that Mike Tolleson told you, There's
21 the door, on November the 1st, 2012 and four weeks
22 later you had a new, lighter duty job, that doesn't
23 make sense.

24 A. If you have medical knowledge you'll know that not
25 everyday is the same. I have a degeneration, the

1 pain isn't the same every day. And I'm not a
2 doctor. All I wanted to do was to work, not
3 nothing else.

4 Q. Again, you've avoided answering my question,
5 Mr. Jimenez. My question was you accused
6 Mr. Tolleson just a few moments ago of telling you
7 on November the 1st, 2012, There's the door if you
8 can't do your job, and then less than four weeks
9 later, 27 days later, you had a new job that two
10 people who are inferior in this company to
11 Mr. Tolleson allowed you to have, isn't that
12 correct?

13 A. Well, yes.

14 Q. Do you speak and understand English, Mr. Jimenez?

15 A. I've learned English on the street.

16 Q. In the 12 years or so that you worked at Kohler did
17 you keep an interpreter with you all the time to do
18 your job?

19 A. The ones that trained me all speak the same
20 language. In that area, in fact, we're all
21 Hispanic.

22 Q. Did you have an interpreter with you every time you
23 would communicate with Mr. Barnwell, or Mr. Brown,
24 or Mr. Tolleson, or Mr. DeVaul?

25 A. I would imagine where you're trying to get with

1 this, but the few English or little English that I
2 know are not enough terms to express myself,
3 especially when it comes medical terms or legal
4 terms. I'm not going to debate with you about how
5 much I understand or know of English, because the
6 fact is that it's one thing to ask for a
7 refreshment, some water, than to understand legal
8 and medical terminology.

9 Q. When you came to the United States did you think
10 that everyone was going to speak to you in Spanish?

11 MR. MARTIN: I object to this. I think he's
12 just harassing the witness at this point.

13 COMMISSIONER BECK: What's the point of the
14 question?

15 MR. BEARD: Because it sounds like he's asking
16 for sympathy because he speaks Spanish and doesn't
17 speak English.

18 MR. MARTIN: I don't think that's what he said
19 at all. And it's clear when he came to the United
20 States --

21 COMMISSIONER BECK: No, what he said was, I'm
22 not going to debate the issue with Mr. Beard, is
23 what he said. So I'm going to allow him to ask it.

24 MR. BEARD: Can he answer the question?

25 A. Could you repeat the question?

- 1 Q. Sure. When you came to the United States did you
2 think that everyone was going to speak to you in
3 Spanish?
- 4 A. No, sir, but I'm sure that even you who knows
5 English doesn't know a lot of medical terminology
6 either.
- 7 Q. Did you take interpreters with you when you went to
8 see all your doctors?
- 9 A. Dr. Rodriguez does know some Spanish and
10 Dr. Tercella, well, he'd speak to me signing. We'd
11 try to understand each other, he'd try to
12 understand me. He'd even ask me why they didn't
13 send me with an interpreter. But it goes back to
14 the same thing, it's not the same thing when you
15 can speak to someone directly than going around in
16 circles trying to tell them what you feel.
- 17 Q. Why didn't you take an interpreter?
- 18 A. Who would I take?
- 19 Q. Did you take an interpreter to see Dr. Savage-
20 Jeter?
- 21 A. With what little I know of English I can identify
22 where the pain is. I can signal the parts of my
23 body where I feel the pain and where I'm limited.
24 But it's not the same thing to tell someone in
25 detail what's going on and how you feel versus just

1 superficially.

2 Q. Then answer my question. Did you take an
3 interpreter with you to see the doctors since you
4 knew that that was your situation?

5 A. To see Dr. Rodriguez I didn't, because the doctor
6 had already told me that he spoke some Spanish.

7 Q. Are you aware that both Dr. Savage-Jeter and
8 Dr. Rodriguez indicated that they communicated with
9 you in English?

10 A. Yes.

11 Q. From July the 14th of 2011 until January of 2013,
12 for a period of approximately 18 months, isn't it
13 true you continued to work regular duty, full duty
14 work with no restrictions at all?

15 A. I go back to the same thing I said, that, yes, I
16 did, but whenever I didn't feel well I would say so
17 and they would send me help.

18 **COMMISSIONER BECK:** What are those dates,
19 Mr. Beard?

20 **MR. BEARD:** July the 14th, 2011 until January
21 of 2013.

22 **COMMISSIONER BECK:** Thank you.

23 Q. Mr. Jimenez, if your symptoms and complaints were
24 so severe why did you wait for that period of time
25 to file two workers' compensation files, only after

1 you were terminated?

2 **MR. MARTIN:** Objection. That is not the case.

3 **MR. BEARD:** What do you mean it's not the
4 case?

5 **MR. MARTIN:** The Form 50s were filed on
6 February 1st.

7 **MR. BEARD:** He testified he was terminated or
8 was gone at the end of January 2013.

9 **MR. MARTIN:** Your witnesses testified he was
10 terminated in February. And I have the letter from
11 Kohler.

12 **COMMISSIONER BECK:** Dated when?

13 **MR. MARTIN:** It's dated February 6 --

14 **TRANSLATOR:** I misinterpreted that with the
15 last day of work.

16 A. I understand that is two different things, the last
17 day you work versus the day you're fired.

18 Q. Isn't it true that you didn't file your workers'
19 compensation claims until the last day you worked?

20 A. But it goes back to the same thing, I wasn't trying
21 to be here, I was trying to get help and this is
22 the way that I was able to get help. .

23 Q. Did you have medical insurance from July of 2011 up
24 until January of 2013?

25 A. Yes.

1 Q. Then why did you wait until October of 2012 to go
2 see a doctor?

3 A. Because like I said before, even though I'm not a
4 doctor I think I can answer this question. Because
5 there are injuries that, you know, sometimes you're
6 good, sometimes you're bad. It's not like breaking
7 a bone, breaking your arm, that's something that
8 you feel and is not going away anytime soon. But
9 there's a lot of people who have injuries or
10 something bad happens to them where they don't know
11 what they have until something has, like cancer.

12 Q. So is it your testimony that you knew something was
13 wrong with you and you just didn't do anything
14 about it for 18 months?

15 A. No, sir, I did not know what was going on with me.
16 Had I known I would have -- it's not important for
17 me just to keep up appearances, because what good
18 is it to have money if you're not going to have the
19 health to enjoy it. What good is it for me to sell
20 my health if I'm just going to be sitting in a
21 chair for the rest of my life?

22 Q. Well, let me see if I understand what you're
23 saying, Mr. Jimenez. You said that there were
24 incidents that some days you're good and some days
25 you're bad, is that what you're saying these two

1 incidents are?

2 A. What I'm saying is that at the beginning it was
3 that way, that it wasn't every day where I felt
4 that way. I took some medicine and I can't say for
5 how long that medicine helped me, because I can't
6 remember for how long, if it was three weeks, a
7 day, a month. But this was a situation where one
8 day I would feel fine, the other I wouldn't, or if
9 I took pills or if I didn't I would feel well for a
10 day or maybe a month and then have a relapse.

11 Q. The medicine you're talking about is the over the
12 counter medicine that the nurse gave to you?

13 A. Yes, and the prescription I that got from the
14 doctor and the other doctor at Doctors Care, also
15 pills that I would buy and the pills that
16 Dr. Marcella gave me, as you guys call them, these
17 pills that you can just buy at the pharmacy if you
18 need to.

19 **MR. MARTIN:** Let me just -- I think that was
20 Dr. Tercella instead of Dr. Marcella.

21 Q. Well, the -- you couldn't have gotten a
22 prescription from a doctor until you went to a
23 doctor, and you didn't go to a doctor anywhere from
24 July 2011 before this second incident you claim in
25 March of 2012, correct?

1 A. Who needs a prescription to buy Tylenol?

2 Q. Okay. So that's what I asked you earlier. Over
3 the counter medication is all you were using during
4 that period of time, correct?

5 MR. MARTIN: I'm going to object. I think
6 he's talking about a different period of time.
7 Previously you were talking about July of 2011 to
8 January of 2013, the last thing you said was July
9 2011 through March of 2012.

10 MR. BEARD: I don't know what you're objecting
11 to, because my question's proper.

12 But can you answer the question.

13 MR. MARTIN: It's a period of time.

14 COMMISSIONER BECK: Well, I think he's defined
15 the period of time in --

16 MR. BEARD: Correct.

17 COMMISSIONER BECK: -- his question.

18 A. Could you repeat it?

19 Q. Sure. Did you get a prescription medication from a
20 doctor between July of 2011 and March of 2012?

21 A. If I remember correctly, I don't think so.

22 Q. Okay. When is the first time you got a
23 prescription from a doctor that you told the doctor
24 that you were injured on the job?

25 A. The reason I went to the doctor is because I was

1 very upset at the situation. There was a period of
2 five days in which I couldn't even tie my shoes, I
3 had to ask for help, that's when I went to the
4 doctor, because I didn't know what I had. And, as
5 I said before, there are periods of time in which
6 you don't experience anything. That's why there
7 are no records of anything in between, because I
8 never thought I had anything like this.

9 Q. And, in fact, when you went to the doctor you did
10 not tell them that it was because of a work related
11 injury when you first started going, correct?

12 A. I think what happened is that I told the young lady
13 at the counter and she said that if I didn't have a
14 referral there's no way that she could put or that
15 they could put on the forms that it was from work.

16 Q. So let me ask you again. Did you or did you not
17 tell the doctor, when you first went to the doctor,
18 that you were claiming that your problem was work
19 related?

20 A. I didn't tell him, he is the one who asked me what
21 did I do, where did I work. And after I told him
22 he said, Yes, I've heard it's very hard work.
23 That's when he sent me to do exercises and he asked
24 me about the job.

25 Q. Mr. Jimenez, isn't it true you did not tell the

1 doctor, I injured myself on the job in July of
2 2011, or, I injured myself on the job in March of
3 2012?

4 A. To which doctor?

5 Q. To any of the doctors.

6 A. Of course I commented it, of course I did. But,
7 that's what I said before, it's one thing to say
8 something to someone and it is a different thing
9 what they write on the paper.

10 Q. When you went to the doctor did you use your group
11 insurance medical from Kohler?

12 A. Yes, of course, sir. I didn't have another option.

13 Q. Are you legally or illegally in the United States?

14 **MR. MARTIN:** Objection.

15 **COMMISSIONER BECK:** What's your objection?

16 **MR. MARTIN:** We would assert his Fifth
17 Amendment right against self-incrimination.

18 **COMMISSIONER BECK:** There's no Fifth Amendment
19 here. The only thing he can be prosecuted for is
20 perjury. Refers right back to the statute that I
21 cited to Mr. Beard earlier when we were arguing
22 about whether or not he could call Homeland
23 Security.

24 **MR. BEARD:** I would also note, Commissioner,
25 that that same question was asked in his deposition

1 and no such Fifth Amendment right was raised so I
2 think it's also been waived.

3 **MR. MARTIN:** I think --

4 **COMMISSIONER BECK:** Y'all just hang on a
5 second.

6 **MR. MARTIN:** -- you need to provide the
7 deposition if that's the case.

8 **MR. BEARD:** Are you denying that that's the
9 case?

10 **MR. MARTIN:** I don't recall --

11 **COMMISSIONER BECK:** Y'all just hold on.

12 **MR. MARTIN:** Why don't you open it up and
13 let's see.

14 **COMMISSIONER BECK:** (As read): No person
15 shall be excused from attending and testifying or
16 from producing books, papers, correspondence,
17 memoranda, or other records before the Commission
18 on the ground that the testimony or evidence,
19 documentary or otherwise, required of him may tend
20 to incriminate him or subject him to a penalty or
21 forfeiture. But no individual shall be prosecuted
22 or subjected to any penalty or forfeiture for or on
23 account of any transaction, matter, or thing
24 concerning which he is compelled, after having
25 claimed his privilege against self-incrimination,

1 to testify or produce evidence, documentary or
2 otherwise, except that such individual so
3 testifying shall not be exempt from prosecution and
4 punishment for perjury.

5 The question is permissible. Ask the question
6 again, Mr. Beard..

7 Q. Are you legally or illegally in the United States
8 of America?

9 A. Illegally.

10 Q. Why then, in your deposition, when you were asked,
11 Are you an illegal resident of the United States,
12 you answered no --

13 MR. MARTIN: Objection, the deposition is not
14 in -- has not been.

15 MR. BEARD: The only reason it would be
16 offered, then, is for the purposes of --

17 COMMISSIONER BECK: Impeachment.

18 MR. BEARD: -- impeachment, and only the
19 questions that are about impeachment, nothing else
20 in the deposition's admissible.

21 COMMISSIONER BECK: Defendant 5.

22 (Whereupon, the above described
23 Deposition Transcript was marked
24 Defendant's Exhibit No. 5.)

25 MR. BEARD: If you would, Mr. Interpreter,

1 read page seven, line number nine and the answer to
2 the question on line number ten.

3 **MR. MARTIN:** Objection. The objection being
4 that I believe he just pointed out I failed to
5 object to that and I waived that at the deposition.

6 **MR. BEARD:** You failed to raise a Fifth
7 Amendment right. You must raise that at the time,
8 not just an object to the form.

9 **MR. MARTIN:** Okay.

10 Q. Would you agree that the answer you gave in your
11 deposition on April the 16th, 2013, over a year
12 ago, was a different answer than you just testified
13 to in this courtroom?

14 A. Sir, I've never lied about my status. If you want
15 to put a lie detector on me then go ahead.

16 Q. Well, you lied in your deposition on April the
17 16th, 2013 when you answer no to the question are
18 you an illegal residence of the United States.

19 A. Please excuse me, but I've never lied about that.

20 Q. You have never been in the United States legally in
21 your lifetime, is that correct?

22 A. That is correct.

23 Q. You have no green card, correct?

24 A. Correct.

25 Q. You have no legal identification in the United

1 States, correct?

2 A. Correct.

3 Q. And like your friend who testified earlier, the
4 only identification you have is an expired North
5 Carolina Drivers License, is that correct?

6 A. I had one years ago.

7 Q. You don't currently have a valid drivers license,
8 correct?

9 A. No, sir.

10 Q. And, in fact, when you drove yourself to the
11 deposition at Mr. Martin's office you were driving
12 without a drivers license, correct?

13 A. I have done it a few times, but for the most part
14 I'm driven.

15 Q. Did you drive here today?

16 A. Yes, sir.

17 Q. Drove yourself here today, didn't you?

18 A. Yes, sir, because of the need to be here.

19 Q. Have you made any attempts at all, Mr. Jimenez, to
20 work since January of 2013?

21 A. No, sir.

22 Q. And you have not applied for and been turned down a
23 job because of any physical problems that you have
24 since January 2013 either, correct?

25 A. No, sir.

1 Q. And I can tell from your answers you're a very
2 intelligent person. You've been through technical
3 college in Mexico, correct?

4 A. Yes, sir.

5 Q. In fact, you received a diploma from that college,
6 correct?

7 A. Yes, sir.

8 Q. Have you made any efforts to find a job doing
9 industrial production techniques, such as your
10 degree was in from Mexico?

11 A. No, sir.

12 Q. The reason your income is higher since July of 2011
13 is because you made more than was required in
14 production and therefore you made more money,
15 correct?

16 A. During the dates that I've always worked in those
17 areas I've always done more than the required
18 amount.

19 Q. And because you did that you made more money,
20 correct?

21 A. Yes, sir.

22 Q. Were terminated from Kohler?

23 A. When I spoke with Sid he told me that I had lost my
24 job because of points. If you call that being
25 fired then, I guess, yes.

1 Q. Why then, when you were asked that very question in
2 your deposition in April in 2013 -- the question
3 being, Were you terminated from Kohler in January
4 of this year --

5 MR. BEARD: Commissioner, that's page 17, line
6 number -- starting at line 19.

7 Q. -- you answered no to that question?

8 A. That's easily explained by the fact that the
9 question said January of 2013 and I was out a job
10 in February of 2013. When you're asked a question
11 you are thinking about those words that are said in
12 that question. If they're going to use words to
13 confuse me then... What I understood from that
14 question was if I had been terminated that day in
15 January, and I said no. I was terminated in
16 February.

17 Q. You went to a Doctors Care in Spartanburg on one
18 occasion, is that correct?

19 A. Yes.

20 Q. According to the records you submitted that would
21 be pages 103 and 106. And according to the report
22 dated April the 30th, 2012, you were, again, using
23 your group health insurance to go to that
24 particular visit, correct?

25 A. Yes, sir.

1 Q. And there's not even a co-pay that goes with -- you
2 were billed, correct?

3 A. If I'm not mistaken, I think I received the bill
4 afterwards, but at that moment I didn't pay
5 anything.

6 Q. Did you give the bill to your lawyer?

7 A. I gave him what I had, what I could remember at
8 that moment. But like I said before, if I was
9 really looking to take advantage of any situation
10 he would have had more than a ton of papers from
11 me. But since at that moment I wasn't really
12 paying attention I really can't remember if gave
13 him that one.

14 Q. What happened to you on April the 30th, 2012 that
15 sent you to the doctor?

16 A. To which doctor.

17 Q. To Doctors Care on April 30, 2012?

18 A. At that moment I explained to her that I felt my
19 back very tight, like if you have a shirt on you
20 that's very, very tight, that's what I explained to
21 her. And so at that appointment, well, one thing
22 leads to the next, you know, they ask you how are
23 you doing, how do you feel, what happened, touch
24 your toes, raise your arm. And at that moment they
25 told me, Well, looks like you have some

1 inflammation. But...

2 Q. Did you tell them, as they reported in this
3 document -- and this was on a Monday, so it would
4 have been right after the weekend, at 9:30 a.m. --
5 excuse me -- 9:50 a.m., according to the report --
6 says you told them that you had low back pain that
7 was getting worse since Wednesday, which would have
8 been five days earlier, is that what you told them?

9 A. Like I said a few moments ago, I had commented to
10 them that I had pain for several days.

11 Q. And so what did you do on that Wednesday that
12 caused you to have low back pain that made you go
13 see a doctor five days later?

14 A. Okay. So that everybody can understand me and,
15 more than anything, the Commissioner here. The job
16 at Kohler is very fast paced, you don't have time
17 even to have any breakfast, it's very fast. So
18 when you're working there you really don't know
19 what's happened until you get back home, because
20 while you're working your body is hot and when you
21 get home then your body cools down. Like I said, I
22 felt very tight in my back and I got concerned.
23 And because I didn't have an appointment to go see
24 any doctor this was the place closest to me where I
25 could go without an appointment, so that's where I

1 went.

2 Q. My question was what did you do on that Wednesday
3 that caused you to have this aggravating pain that
4 sent you to the doctor.

5 A. I really don't remember, I think it was just during
6 my regular, normal daily routine. And like I said
7 before, sometimes I feel well, sometimes I don't
8 feel well, so I really don't know what is it that I
9 did. I'm not trying to mislead you. I'm not
10 trying to lie. If I don't remember I don't want to
11 say something that can be interpreted as a lie.

12 Q. The next time you went to a doctor would have been
13 somewhere in October of 2012, six months after this
14 incident, correct?

15 A. If that's the date that's there.

16 Q. Is that when you went to Dr. Savage-Jeter or Jeter-
17 Savage?

18 A. What date? I'm sorry.

19 Q. In October of 2012.

20 A. I think so, possibly.

21 Q. Would you agree that that's seven months after the
22 second incident that we're here for, March of 2012,
23 and that's only the second time you ever went to a
24 doctor?

25 A. Yes, sir, but I'd like you to understand that my

1 condition is one in which you don't feel the same
2 thing every day. What would stop me from going to
3 the doctor immediately was that there were days
4 where I was fine and there was days where I was bad,
5 where I didn't feel good. And sometimes I would
6 think, Well, it's not anything serious, maybe it's
7 just stress, maybe it's just pressure from work,
8 maybe it's just my muscles getting tired. And the
9 proof is in the fact that my ignorance has taken me
10 to this degree. I think if we all new what we had
11 at the moment we had it that we wouldn't have so
12 many people dying of diseases that they don't know
13 about.

14 Q. Isn't it true that Sam Barnwell, your bossman,
15 would always give you help any time you needed it
16 in that plant?

17 A. What he could do within his area, yes.

18 Q. And he always helped you anytime he could, didn't
19 he?

20 A. What I'm trying to say is that he would help me up
21 to the point that his position would allow him to
22 help me. Our relationship was social at times, I
23 guess that's how I understood it. But, as I
24 mentioned before, whenever I tried to give a
25 complaint about how I felt I would leave it in his

1 hands, I would trust that he would do what he
2 needed to do. I don't know what was the next step
3 after I complained to him of what he needed to do.

4 Q. Prior to either one of these incidents that we're
5 here for, Mr. Jimenez, had you ever been to a
6 doctor for any reason in your lifetime?

7 A. I remember when that question was asked of me last
8 time and -- well, I'll just say it again. I never
9 went to the doctor for anything very serious or
10 grave, not even if I had a cold. I thought I had
11 good health up until now. Physically I was doing
12 fine.

13 Q. My question was had you been to a doctor for any
14 reason.

15 A. Before that, that I can remember, no, sir.

16 Q. You knew how to go to a doctor if you needed to go
17 to a doctor, though, correct?

18 A. Not really, because, you see, I did ask. But for
19 example, I know this is redundant, but with my
20 kids, I didn't know that going to the doctor
21 required you filling a bunch of forms, doing this,
22 doing that other thing, I had to learn. Now I know
23 that you just knock on the door and tell them, I
24 need to see the doctor.

25 Q. How did you go to the doctor at Doctors Care if you

- 1 didn't know how to go to a doctor?
- 2 A. Because in commenting with me co-workers they had
- 3 told me that at that place I could go without an
- 4 appointment.
- 5 Q. When you went to Dr. Savage-Jeter you went to her
- 6 on your own as your family doctor, is that correct?
- 7 A. I never had a family doctor, because I never chose
- 8 one on a paper. Like I said before, in commenting
- 9 how I was feeling at work my co-workers told me to
- 10 go there. They were the ones who recommended to go
- 11 there. At no moment did I know that she was the
- 12 company doctor.
- 13 Q. And neither she -- did Doctors Care give you
- 14 restrictions when you went to see them?
- 15 A. If I'm not mistaken, I think they gave me two days.
- 16 Q. But you didn't even know about that until May the
- 17 3rd, 2012 after the restrictions had already been
- 18 lifted, correct?
- 19 A. To know about the doctors excuse?
- 20 Q. No, that you were on light duty. You did not know
- 21 you were given light duty restrictions from Doctors
- 22 Care when you to see them and you didn't know about
- 23 it until May the 3rd, 2012, isn't that correct?
- 24 A. I'm sorry, but you're question is confusing me. I
- 25 don't know what to answer you.

1 Q. Well, you answered the question in your deposition
2 a little over a year ago. It's the exact same
3 question. You said they did not tell you that you
4 were on light duty until May the 3rd, 2012.

5 MR. MARTIN: Can you refer us to what --

6 MR. BEARD: Page 42.

7 A. I'm sorry, sir, but I really don't remember.

8 Q. And that's because in your deposition you were a
9 lot closer and fresher in time to what transacted
10 when you went to Doctors Care than you are now,
11 correct?

12 A. I think that happens to everyone.

13 Q. And that's why you could remember the answer over a
14 year ago and you can't remember the answer now,
15 correct?

16 A. Possibly.

17 Q. And, specially, you were asked, When you went to
18 Doctors Care about a year ago when you went on your
19 own did they give you work restrictions. And your
20 answer was no, correct?

21 A. I don't know.

22 Q. All right. You were later asked, They didn't tell
23 you that you were on light duty until May the 3rd,
24 2012. And your answer, again, was no.

25 A. Let me clear something up here. At Kohler their

1 policy is that noone can give you an excuse for a
2 doctor that has previously referred you from the
3 company. In other words, if there's something over
4 a year old they won't accept it.

5 Q. Well, you were asked on that same page at line 22,
6 Did you get a work note on that day. And your
7 answer was, No, only the prescription.

8 A. What I remember was at that day I received
9 prescriptions for three medicines. I really don't
10 remember receiving anything else.

11 Q. When you were treating with Dr. Savage-Jeter she
12 didn't give you restrictions either, did she?

13 A. She told me to get the paper from the company so
14 that she can notate what I could and what I
15 couldn't do.

16 Q. At page 43, line number 15 you were asked the
17 following question, (As read): When you were
18 treating with Dr. Savage-Jeter did she ever give
19 you a note telling you what you could or couldn't
20 do, giving you work restrictions. And your answer
21 was no. You don't recall that in your deposition?

22 A. Well, the thing is, you're talking about several
23 dates. I saw her on several dates. If you're
24 talking about the first dates that I saw her, no,
25 she didn't give me any type of paper, because how

- 1 can somebody give you some type of restriction when
2 they don't know what you have.
- 3 Q. Well, the question was pretty clear. When you were
4 treating with Dr. Savage did she ever give you a
5 note telling you what you could or couldn't do,
6 giving you work restrictions. You answered no.
7 Mr. Aviles was the interpreter at your deposition,
8 as well, isn't that correct?
- 9 A. Correct, and no, they didn't give me any. If
10 you're talking about a written note, then no.
- 11 Q. And also when you were -- apparently you were going
12 to Mary Black Hospital for physical therapy for
13 your shoulder at that time and you also did not
14 receive any restrictions from them, isn't that
15 correct?
- 16 A. No, sir, not at the physical therapy.
- 17 Q. And as a result of that, obviously, you never gave
18 any of your supervisors any kind of document
19 telling them what you could or could not do,
20 correct?
- 21 A. Up to that moment, no. Sincerely, no. I guess I
22 go back to the same thing, how am I going to give
23 them something if the doctor didn't even know what
24 I had. All I wanted to say is I understand your
25 position, but I really do need help.

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1 Q. You saw Nurse Zimmerman on July 15, 2011, you saw
2 her then again on September the 8th, 2011, you then
3 saw her again on March 14, 2012, you then,
4 apparently, didn't see her again, other than some
5 notations were made about an eye incident, and then
6 you had the meeting in November of 2012, is that
7 correct, as far as you being seen by Nurse
8 Zimmerman?

9 A. Well, yeah. How can I say this? I went over there
10 every time I was referred by my boss to go over
11 there. But there was a lot of times, also, when I
12 went over when she had stopped working and I guess
13 she's not counting those as -- what would you call
14 it -- a normal visit.

15 Q. You would agree that Nurse Zimmerman is a
16 wonderful, lovely person, wouldn't you?

17 A. I didn't have much conversation with her, but I
18 guess in her doing her job she was a kind person.
19 But at the same time, medicine does advance and you
20 have to keep up with the pace of it.

21 Q. When you went to the meeting with Nurse Zimmerman,
22 Joe Brown, Sam Barnwell, and Mike Tolleson on
23 November the 1st, 2012 did you tell the group of
24 people there that you had been to Dr. Erica Savage
25 because of your right shoulder?

- 1 A. To be honest with you, I did mention about my
2 shoulder. I guess we were there to talk about my
3 back, but when I went to the doctor I had mentioned
4 to her about my shoulder. I thought that we were
5 there about my shoulder. But it's one of those
6 moments where, you know, when you think you that
7 you won't have another moment to speak you mention
8 it.
- 9 Q. Why didn't you take an interpreter with you to the
10 meeting?
- 11 A. Because when I was going to talk to the nurse that
12 day was something simple. I thought that I could
13 express myself to her, because I wasn't going to go
14 into deep things. I wasn't going to go into any
15 details of anything major. I didn't expect to be
16 talking that much about my job. I know my job; I
17 know the tools, I know the pieces, I know the
18 parts, I know how to deal with my job.
- 19 Q. Weren't you asked whether you wanted an
20 interpreter?
- 21 A. No, sir.
- 22 Q. So you deny being asked if you wanted to have an
23 interpreter present?
- 24 A. I wasn't asked if I wanted an interpreter, I was
25 asked if I could express myself. How should I put

1 it? I was asked if I could make myself be
2 understood.

3 Q. Did you ask for an interpreter?

4 A. No.

5 Q. Did you tell the group of people you were meeting
6 with that Dr. Savage had ordered you physical
7 therapy for you shoulder and she told you that you
8 would not be a workers' compensation patient?

9 A. Yes, I did tell them that, but not with the words
10 that you're using.

11 Q. Okay. There's been a lot of communication with a
12 lot of different witnesses, Mr. Jimenez, about a
13 return to work note from Dr. Erica Savage-Jeter
14 that you've submitted into evidence at page 50 of
15 these documents. And what I want you to look at is
16 it said you were seen in her office on January the
17 29th, 2013, she gave you a diagnosis. Then it said
18 you may return to work or school on January 30,
19 2013, work limitations, light duty, and then that's
20 explained. But if you would, tell me the date that
21 the actual document was prepared.

22 A. It says February 7th of 2013.

23 Q. Thank you.

24 A. But then she would be contradicting herself if she
25 referred me to Dr. Rodriguez. She wouldn't be

- 1 doing her job well.
- 2 Q. And that's the doctor you chose to be your doctor
- 3 on your own, correct?
- 4 A. Not personally, but by need.
- 5 Q. By friends? Your friends sent you to see her?
- 6 A. They didn't send me, they commented about her.
- 7 Q. Okay. Told you that that was a good doctor to go
- 8 see?
- 9 A. No, they told me that they visited her.
- 10 Q. All right. When you first went to Dr. Savage-
- 11 Jeter, according to the records that you've
- 12 submitted into evidence dated November the 28th,
- 13 2012, she diagnosed you as having --
- 14 **MR. BEARD:** This is at page 69, Commissioner.
- 15 Q. She diagnosed you as having pain in your shoulder
- 16 region as your number one complaint. The second
- 17 complaint being a backache. And then she says you
- 18 were x-rayed and it looked like you had an old
- 19 coccyx fracture that had healed, nothing acute.
- 20 When did you break your coccyx?
- 21 A. She made that question and I told her that I didn't
- 22 remember. She asked me again and I said that I
- 23 wasn't aware of it. But there's a lot of people
- 24 who fracture their coccyx and don't even know about
- 25 it. She asked me if I remembered any other time, a

1 date, in which I had probably fallen, maybe in a
2 sitting position or fallen on my back. I told her
3 that, no, I didn't remember of that. All I told
4 her was that at work it's very common for you to
5 trip over the items that you have at work, and
6 that's just because of the nature of the area in
7 which you work in, it's very enclosed. And what
8 I'm referring to is you can hit yourself against a
9 piece, a tool, you can slip because of the mix
10 that's on the floor, or anything else. But I
11 really don't remember if I had given her a specific
12 date of anything. If there is something notated on
13 her notes then I'll try and remember whatever you
14 have there.

15 Q. So the answer is you don't know how you fractured
16 your coccyx in the past?

17 A. I don't want to say no entirely, because I don't
18 want my answer to be misinterpreted. If I told her
19 about anytime that I may have stumbled or I may
20 have fallen, or was about to fall and held on to
21 something, that's what I was referring to.

22 Q. Your lawyer's also submitted records from Mary
23 Black Health System, pages 82 -- excuse me -- 81
24 and 82 of those records are dated October 15, 2012
25 and January 16, 2013, and it consists of x-rays.

1 But under the history it says, No known injury, on
2 October 15, 2012. And then on January 16, 2013 it
3 says, Low back pain for two weeks, no known injury.
4 Can you explain that?

5 A. Because it's a process and that was the beginning
6 of a process. I don't know what I had. I didn't
7 remember any specific time in which I injured
8 myself. That was the beginning of a process to try
9 and detect a problem, just like this is a process.

10 Q. At page 91 of Dr. Savage-Jeter's records and the
11 Mary Black Health System records it says (As read):
12 On October 25, 2012 -- which would have been six
13 days before the meeting that you had with my
14 clients -- that you reported pain in your low back
15 that started a year ago. Lately it had increased,
16 causing tingling and numbness. You reported you
17 had several falls at work and that you had an old
18 coccyx fracture in your lumbosacral spine. Isn't
19 it true, Mr. Jimenez --

20 MR. BEARD: Objection, that's a
21 misinterpretation of what that says. It does not
22 say that he --

23 COMMISSIONER BECK: It is, Mr. Beard. You're
24 reading the history of the injury and the past
25 medical --

1 **MR. BEARD:** Oh, I'm sorry.

2 **COMMISSIONER BECK:** -- history in combination.

3 **MR. BEARD:** I'm sorry.

4 Q. Under the history of the injury you were reporting
5 to the doctor that you had had several falls at
6 work, isn't that correct?

7 A. Correct, I told her that in the process of doing my
8 work I had several falls, because -- in fact, you
9 can go to the floor there and see that with all of
10 the mud mix on the floor anybody can fall.

11 Q. But you didn't file a workers' compensation claim
12 and we're not here about a fall, correct?

13 A. Well, forgive my ignorance. I didn't know that I
14 had to file a workers' comp claim at that moment.
15 Had I known that this is the way to things, well, I
16 would have done that and not be suffering for all
17 this time and asking for help. All I was there for
18 was to work and I wanted to work.

19 Q. All right. What I'm asking you, Mr. Jimenez, you
20 related your problems to your doctor as being from
21 falls at work, isn't that correct?

22 A. In my coccyx.

23 Q. And that's what you said to the doctor, correct?

24 A. Yes, possibly I told her that perhaps it had been
25 from one of my falls. Actually, she was the one

1 who asked me if I had fallen, and I told her that I
 2 didn't remember and I asked her why. And she said,
 3 because you have a fracture here, but it's very
 4 old. When I asked her how old was it she said,
 5 Well, I don't know, but it is very old, could it
 6 be, perhaps, from a fall. And I answered, Well,
 7 maybe from one of the falls that I've had at work
 8 when I've slipped.

9 Q. So --

10 **COMMISSIONER BECK:** Before you go any further
 11 let's go off the record a second.

12 (Off the record)

13 ****

14 (Whereupon, the hearing was suspended at 9:10 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did hear the matter of **Jose Jimenez v. Kohler Company**, Workers' Compensation File No. 1122474 and 1219561 on Tuesday, June 3, 2014, in Greenville, South Carolina, before the Honorable T. Scott Beck;

That the witness(s) were duly sworn under pains and penalties of perjury to testify to the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand this 25nd Day of June 2014.

/s/ Christine Tatum

Christine Tatum
Notary Public For South Carolina
My Commission Expires December 29, 2021

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**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION**

Claimant,

V.

W.C.C. FILE NO: 0809520

Employer/Self Insured,

HEARING ORDER

The Hearing was held on November 2, 2011, in Spartanburg, South Carolina.

The Claimant was represented by Alton L. Martin, Jr., of Martin & Martin, P.A. in Greenville, South Carolina.

The Defendants were represented by Russell T. Infinger of Nexsen Pruet in Greenville, South Carolina.

The Hearing was set to hear issues related to Claimant's Form 50 and Motion for Penalties and Defendants' Form 51.

Commissioner G. Byran Lyndon

December 13, 2011

STIPULATIONS

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

1. The purpose of the hearing was to determine the issues set forth in the hearing notice and issues plead in the Form 50, Claimant's Motion for Penalties, and the Form 51, and any other issues which timely came before the Commissioner.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$678.01 and compensation rate is \$452.03, by stipulation of the parties.
4. Venue set in Spartanburg County is proper as agreed to by all parties.
5. Claimant seeks benefits under the SC Workers' Compensation Act based upon an accidental injury occurring on June 24, 2008, at a job site in Spartanburg while in the employ of Kohler Company, the Defendant/Employer, and therefore, the SC Workers' Compensation Commission has jurisdiction in this case.
6. The Commission's file and the Commissioner's notes are made a part of the record.

APA SUBMISSIONS

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

On Behalf of Claimant:

	Medical Provider	Dates	Page
APA #1	Dr. Robert Brabham – Psychological and Training Services, PC	10/12/11	1 – 12
APA #2	Dr. Eric Cole – Family Medical Center	8/31/10 – 10/18/11	13 – 21

APA #3	Dr. Albert Fedalei	9/29/10 – 10/17/11	22 - 39
APA #4	Dr. James Behr – Orthopaedic Associates	7/10/08 – 6/2/11	40 – 111
APA #5	Dr. John E. Keith, Jr. – Orthopaedic Specialties	4/20/09 – 9/28/10	112 – 145
APA #6	Mary Black Health System	8/31/10 – 10/1/10	146 – 149
APA #7	Dr. Luther A. Diehl – Palmetto Family Enrichment Center, PC	9/2/10	150 – 165
APA #8	Ambulatory Surgery Center of Spartanburg	4/23/09 – 4/29/10	166 – 172
APA #9	Dr. William DeVault – Orthopaedic Center of the Carolinas	3/19/09	173 – 174
APA #10	PRO Physical Therapy, Inc.	6/7/10 – 8/20/10	175 – 196
APA #11	North Grove Physical Therapy	7/14/08 – 4/8/09	197 – 244
APA #12	Surgery Center of Pelham	7/14/08 – 7/16/08	245 - 249
APA #13	Greenville Dermatology	09/14/11	250-251

Depositions of Dr. John E. Keith, Jr., MD dated January 14, 2010 and October 16, 2010.

On Behalf of Defendants:

Name of Report(s)/Physician or Other Evidence	Date of Report(s)	Pages
John E. Keith, Jr., MD (Orthopaedic Specialities of Spartanburg)	04/20/09-08/24/10	All Records Submitted

CLAIMANT BIOGRAPHICAL

Sex: Male

Age: 41 years old

Family: He is married and has four children, ages 17, 15, 14, and 10.

Education: He graduated from high school, 12 grades, in Mexico. He attended one year of college in Mexico. Came to U.S. on Student Visa and

obtained his GED. He attended one year of general studies at Spartanburg Community College.

Work History:

He has worked for Kohler for the past 10 years. Previously, worked as a Weaver for TNS Textiles for five years and worked at Universal Studios for 6 months

STATEMENT OF THE CASE

This matter was scheduled for a hearing on the Claimant's Form 50. Prior to the hearing being scheduled, the Claimant also filed a Motion for Penalties and Sanctions, based on the Defendants' failure to comply with three prior Consent Orders for medical treatment and interpreting services.

Claimant suffered an admitted accident on June 24, 2008 to his left knee. He underwent two surgeries to the left knee and one surgery to the right knee. He developed low back pain from the gait disturbance caused by his multiple knee surgeries. He was placed on narcotic pain medications, muscle relaxors and anti-inflammatories, which damaged his stomach, resulting in an ulcer and caused damage to his liver with increased liver enzymes. He was referred to a gastroenterologist for authorized care. He also developed skin problems as a result of his causally-related prescriptions and was referred for authorized care with a dermatologist. Finally, as a result of his ongoing pain, and the Employer's repeated failure to provide medical treatment in accordance with Orders of the Commission, among other things, the Claimant developed anxiety and depression.

There was a five month period in 2009 in which Defendants disputed that Claimant's right knee was causally-related. During this period the authorized surgeon, who said it was related, had the Claimant under work restrictions for his right knee. Defendants placed Claimant out-of-work on unpaid FMLA leave and refused to pay

TTD. This placed a significant hardship on the Claimant and affected him emotionally and psychologically.

After the right knee surgery was finally authorized, Claimant again returned to work. Claimant was provided with several light duty positions, but eventually was laid off in September 2011. Two weeks prior to his layoff, Defendants inexplicably terminated Temporary Partial Disability benefits. After his layoff, the Defendants have never paid Temporary Total Disability benefits. The Claimant has not applied for, nor collected Unemployment. He has only been able to survive upon the charity of family members. The loss of his job and income significantly aggravated the Claimant's anxiety and depression. Claimant has not received treatment for his depression and anxiety.

Unfortunately, Defendants have repeatedly failed to provide medical treatment recommended by the authorized treating physicians, treatment agreed to by Defendants in multiple Consent Orders. Claimant's psychological problems, physical therapy for his back, and prescription medications for multiple causally-related issues have not been provided thereby further complicating his condition. According to his authorized treating physicians, the Claimant has now reached Maximum Medical Improvement, but will require ongoing medical care for all of these problems. It was further opined by a vocational expert, that the Claimant is Permanently and Totally Disabled from a vocational standpoint.

Defendants take the position that despite their repeated failures to provide medical treatment, or pay Temporary Total Disability benefits, or comply with the prior three Orders of this Commission, that it is not credible that Claimant's psychological condition could have become worse. Defendants take the position that their starving the Claimant

for medical treatment, cutting off all income to Claimant's family of six, and repeated failure to comply with multiple Orders, would not have caused any worsening of the Claimant's psychological problems or other medical ailments for which he was denied treatment.

STATEMENT OF FACTS

Claimant was the only witness to provide testimony at the hearing. Although Mike Tollison, the Defendants Safety Manager, was in attendance at the hearing, no witnesses were called by the Defendants.

Mr. Valderamma is married with four children, two boys and two girls. The boy's ages are 17 and 14 and the girl's ages are 15 and 10. His wife does not work and he is the sole provider for his family. Mr. Valderamma initially injured his left knee at work which resulted in surgery by Dr. Mary Black. Following the surgery, Dr. Black returned him to work at light duty over his multiple objections and complaints of pain. Eventually, Dr. Black performed a second MRI which reflected that Mr. Valderamma needed surgery to the same knee. Dr. Black attempted to schedule surgery for the following week. However, Claimant objected to Dr. Black performing the second surgery in light of her disregarding his complaints, and he was referred by Defendants to Dr. Keith at Orthopaedic Associates. Dr. Keith performed the second authorized surgery to his left knee. Dr. Keith then determined Claimant needed surgery for his right knee.

Claimant testified that during the 18 month period while he was out for his three knee surgeries, he developed back pain due to using crutches and a boot. Dr. Keith prescribed numerous medications during his course of treatment for pain, inflammation, and muscle relaxation. It was subsequently determined that one of those medications,

Arthrotec, caused damage to the Claimant's liver. Additionally, the combination of medications damaged Claimant's stomach, resulting in development of an ulcer.

Claimant testified about the period he was awaiting surgery for his right knee. Dr. Keith, had placed him under restrictions for his right knee until surgery could be approved. At that time, Defendants placed him on unpaid FMLA leave, and refused to allow him to return to light duty work. Since the employer was disputing whether the right knee was causally-related, they also refused to pay any temporary benefits. On September 17, 2009, Dr. Keith provided a Medical Questionnaire confirming that the Claimant's right knee problems were causally-related. A copy of the Medical Questionnaire was immediately provided to the Defendants. On October 6, 2010, the parties took the deposition of Dr. Keith, who again confirmed that the Claimant's right knee problems were causally-related. Defendants still refused to authorize treatment or pay TTD until the day prior to the scheduled hearing on January 19, 2010. Claimant was out of work and without income from August of 2009 until January of 2010 as a result of Defendants refusal to authorize surgery, pay TTD, or allow Claimant to work at light duty. During that period of time, Claimant's house went into foreclosure and he experienced significant personal and emotional problems almost resulting in divorce.

Following his right knee surgery, Claimant was finally allowed to return to work at light duty. He was unable to perform his prior job. His light duty job was as a laboratory assistant. However, he did not perform all the same duties as other laboratory assistants. He described that "they would let me sit and walk when I was feeling good. I did the partial job, not like the others who did it completely. The hard jobs I didn't do like lifting and going upstairs." (Hrg. Tr. P. 13)

Claimant began receiving Temporary Partial checks while he was performing the temporary light duty positions provided by Defendants. His temporary partial disability amount was \$101.62 per week.

Claimant testified that he still has problems with pain in his knees and his back. He still has problems with his stomach. He is unable to stay on his feet for an extended period of time. He can stand for about 30 minutes and then he needs to sit. When he is standing, he needs to be constantly moving.

Defendants stopped paying his temporary partial benefits on September 10, 2011. This was two weeks prior to the Claimant being laid off. Claimant has not received any income since he was laid off. He has not applied for and has not received any Unemployment benefits. Since the lay off, his psychological and emotional problems have worsened. He never received the counseling and psychological care Defendants agreed to provide by prior Consent Orders. Claimant was able to rescue his house from foreclosure before after Defendants cut off his TTD in 2009. He is afraid the same thing is happening again and this time he will lose.

Claimant described speaking with his supervisor and a personnel manager on the day of his lay off. He was called to Joe Brown's office and was told they wanted to send him to a different position in the Dry Finish room. He explained to them that he was familiar with the job and it required standing 8 hours a day. The personnel manager spoke with the supervisor who confirmed that was accurate. Claimant's job restrictions prohibit him from being on his feet that long. Claimant was then told by the supervisor that he would check other jobs and see what was available and let him know something

by phone, but that he was being laid off effective immediately.

Claimant handles all of his family's finances. He has a check book and all of the bills were current up until the time of his most recent lay off. If he were allowed to receive a lump sum payment, he would be able to refinance his mortgage. His mortgage payment is currently \$1,280.00, but used to be \$800.00 before he was forced into foreclosure in 2009, due to Defendants refusal to pay temporary benefits.

Claimant testified he has been refused medical attention by the authorized treating physicians despite several Consent Orders. He has paid for medication for his stomach and his anxiety and depression out of his own pocket because the carrier continues to refuse to authorize these, despite the Consent Orders. Claimant has had to forego some causally-related prescribed medications completely because he is unable to afford them and the carrier refuses to authorize them despite the Consent Orders. Additionally, Claimant has been denied physical therapy for his back, despite repeated referrals from the authorized treating orthopaedist, Dr. Behr. The physical therapy was specifically agreed to by Consent Order.

Claimant testified that he has not received any psychological treatment or counseling. He has never been provided an appointment with Dr. Tollison, despite multiple referrals by the authorized treating doctor and specific agreement to provide treatment with Dr. Tollison by a prior Consent Order.

Claimant testified that he did not feel he would be able to return to work again because of all of his medical problems and due to his severe depression and anxiety. His physical limitations prevent him from remaining on his feet for an extended period of time. He has chronic back pain, pain in both knees, and his depression affects his ability

to concentrate. Moreover, his depression and anxiety have worsened since his lay off. He testified that he liked his job in the lab and tried hard to do a good job. He testified that he would rather have continued to work. He would like to think that he would have been able to continue working. However, since his termination, his situation has worsened all around. At this point in the hearing, the Claimant asked if he could stand. Claimant confirmed that during the time he was working in the laboratory, three separate motions had to be filed against the Defendants for failing to provide authorized medical treatment and prescriptions.

Commissioner Lyndon requested some clarification on certain issues. Specifically, he asked the Defendants if a job was available for the Claimant that meets his restrictions. Defendants' attorney asked if he could confer with the Safety Manager, to which Commissioner Lyndon responded "we can put him up". (Hrg. Tr. pg. 33) Defendants declined to have the Safety Manager, Mike Tollison, testify. However, after defense counsel conferred with him it was stipulated that the only position available was the one that had been offered to the Claimant, and that position would have required Claimant to be on his feet for an entire 8 hour shift.

FINDINGS OF FACT

Based on the facts and evidence presented at the hearing, to include: the deposition testimony of Dr. Keith; and, thorough and careful review of the medical records submitted with the Claimant's and Defendants' APA Submissions; as well as the Defendants' history of noncompliance with Orders related to medical treatment in this case, and in other cases brought to the Commission's attention, notably Jesus Lugo v. Kohler, W.C.C. No.: 0626795, in which sanctions have previously been imposed, I make

the following Findings and Conclusion:

1. Jurisdiction and Venue are proper based upon the site of the accident and stipulation of the parties.
2. Claimant's average weekly wage is \$678.01, with a compensation rate of \$452.03, based on the Form 20 and stipulation of the parties.
3. The Claimant suffered a compensable injury by accident while working at Kohler Company to his left knee on June 24, 2008, based upon prior Consent Orders and Claimant's testimony.
4. Claimant was required to undergo two surgeries to his left knee as a result of his work accident of June 24, 2008, based on the depositions of treating surgeon, Dr. Keith and APA 5, and Claimant's testimony.
5. The Claimant had pre-existing right knee problems, which were aggravated by his extended use of crutches and additional weight-bearing on his right knee following his two left knee surgeries, based on the depositions of treating surgeon, Dr. Keith and APA 5, prior Consent Orders and Claimant's testimony.
6. Claimant was required to undergo a right knee surgery for the problems aggravated by his increased weight bearing and use of crutches following his causally-related left knee surgeries, based on depositions of the treating surgeon, Dr. Keith, APA 5, and prior Consent Orders.
7. Claimant developed chronic back pain from his gait disturbance caused by three subsequent knee surgeries and the use of crutches for several months following each surgery, based on depositions of treating

surgeon, Dr. Keith, APA 5, the opinion of Dr Behr found in APA 4, Claimant's testimony and prior Consent Orders.

8. Claimant developed stomach and digestive tract issues resulting in an ulcer due to his use of causally-related narcotic pain medications, anti-inflammatories, and muscle relaxors for to his right and left knee surgeries and chronic low back pain, based on the opinions of the authorized treating physicians, Dr. Cole; Dr. Fedalei, Dr. Keith found in APAs 2, 3 and 5, and Dr. Keith's depositions.
9. Claimant's use of narcotic pain medications, anti-inflammatories, and muscle relaxors for an extended period of time affected his liver function and resulted in increased liver enzymes, based on the opinions of Dr. Cole and authorized gastroenterologist, Dr. Fedalei found in APAs 2 and 3.
10. The use of prescribed steroids resulted in Claimant developing skin problems and pigmentation changes to his legs, based on the opinions of the authorized treating physicians, Dr. Cole, and authorized dermatologist, Dr. Miller, found in APAs 2 and 13.
11. As a consequence of his work injury; specifically Claimant's chronic pain; multiple medical problems for which he was repeatedly denied authorized treatment and prescription medications; and repeated interruptions of his income by the Employer, Claimant developed problems with anxiety and depression for the first time in his life, based on the opinions of Dr. Brabham, Dr. Cole, Dr. Keith, and Dr. Diehl,

found in APAs 1, 2, 5 and 7, Dr. Keith's depositions, and Claimant's testimony.

12. Defendants illegally stopped the Claimant's Temporary Partial Disability benefits of \$101.62 per week on September 11, 2011 and placed the Claimant on layoff without pay on September 26, 2011, based on the testimony of Claimant.
13. Claimant reached Maximum Medical Improvement for his multiple causally-related medical problems on October 18, 2011, based on the opinions of Dr. Brabham and Dr. Cole, found in APA 1 and APA 2, pg. 13, and the testimony of the Claimant.
14. Claimant will require ongoing and future causally-related medical treatment for his back, both knees, stomach/digestive issues to include his ulcer, increased liver enzymes, pigmentation problems with his skin, and his anxiety and depression, based on the opinion of Dr. Cole, APA 2, p. 13, as well as APAs 3, 5, and 13 and the depositions of Dr. Keith.
15. Dr. Keith anticipated the physical restrictions of no prolonged standing or stooping and no heavy lifting would be removed as Claimant's condition improved. However, the lifting restriction was actually increased and the limitations were never removed as Claimant was repeatedly denied treatment and did not improve as anticipated, based on APA 2, pg. 15; APA 5, pg. 113-116, Claimant's testimony, Dr. Keith's depositions; and, APA 1.

16. Per Dr. Keith, Claimant has suffered 10% permanent impairment to his left knee, based on the opinions of Dr. Keith found in APA 5, pg. 126, and both depositions of Dr. Keith.
17. Per Dr. DeVault, Claimant has suffered 25% permanent impairment to his left knee and 5% to back, based on the opinion of Dr. DeVault, APA 9, pg. 174.
18. Claimant suffers significant anxiety and depression as a consequence of his admitted physical injuries from work, based on the opinions of Dr. Brabham, Dr. Cole, Dr. Keith, and Dr. Diehl found in APA 1, pgs 10-11; APA 2, pg 13; APA 5, 112, 114; and APA 7, pgs. 161-163, and Claimant's testimony.
19. A thorough vocational evaluation was performed by Dr. Robert Brabham on October 11, 2011, which concluded that Claimant was vocationally totally disabled, based on APA 1, pgs 10-11.
20. Defendants conceded that Temporary Partial Benefits were ceased on September 11, 2011, two weeks prior to the Claimant's layoff, but were unable to provide any reason for the termination of benefits at that time, based on testimony of the Claimant and stipulations of Defendants.
21. Claimant was offered another position by the Employer prior to his lay off, but that position did not comply with Claimant's work restrictions and physical capacity based on testimony of the Claimant and the permanent restrictions found in APA 5, pg. 113-116; APA 2, pg. 15, as

well as the stipulation of Defendants' attorney at the hearing, after conferring with Safety Manager, Mike Tollison, that Defendants did not have an available position which came within Claimant's restrictions (Hrg. Tr., pg. 36-38).

22. Claimant was laid off on September 26, 2011 without pay, neither the Defendant nor Claimant submitted an application for Unemployment benefits related to Claimant's layoff, and no temporary total disability benefits were initiated by the Defendants such that all Claimant's income ceased on the date of his layoff, based on testimony of the Claimant.
23. Defendants were unable to provide any reason for their failure to initiate temporary disability benefits following the Claimant's layoff, based on hearing testimony and comments of counsel.
24. Following the layoff, Claimant suffered significant aggravation of his anxiety and depression and he was again denied authorized medical treatment for his psychological problems by the Defendants, based on Claimant's testimony and the report of Dr. Brabham, APA 1.
25. Claimant's anxiety and depression alone are so severe as to render him permanently and totally disabled from earning wages, based on the Claimant's testimony, Dr. Brabham's report, APA 1, and the note of Dr. Cole, APA 2, p. 19.
26. The combination of Claimant's permanent physical injuries to his knee and back, chronic pain, limited English, history of manual labor jobs,

along with his anxiety and depression, also render him permanently and totally disabled from earning wages, based on the testimony of the Claimant, the vocational report of Dr. Brabham, APA 1, pgs. 10-11, and Dr. Cole, APA 2 along with the impairment provided by Dr. Keith in APA 5, pg. 126 and Dr. DeVault in APA 9, pgs 173-174.

27. Claimant's request for lump sum payment of an award is denied.
28. Claimant's first language is Spanish and he requires the assistance of an interpreter with his medical appointments, based on the testimony of Claimant and prior Consent Orders.

CONCLUSIONS OF LAW

Accordingly, pursuant to South Carolina Code, Ann., §42-17-40 and §1-23-320, it is the determination of this Commission:

1. Pursuant to *South Carolina Code Ann.*, §42-1-130, Claimant was a covered employee at the time in question and under §42-1-140, the Defendant was a covered employer under the Act.
2. Pursuant to *South Carolina Code Ann.*, §1-23-320, the parties received proper notice of the hearing.
3. Pursuant to *South Carolina Code Ann.* § 42-1-160, Claimant sustained a compensable injury by accident to his left knee, right knee, back, liver, stomach/digestive tract, psyche, and skin, pursuant to the terms of the South Carolina Workers' Compensation Act. An "accident" is an "unlooked for and untoward event that the person who suffered the injury did not expect, design or intentionally cause." Yates v. Life Ins.

Co., 291 S.C. 301, 304, 353 S.E.2d 297, 299 (Ct.App. 1987). . . .

4. Pursuant to *South Carolina Code Ann.* § 42-15-20, Claimant gave notice of an accident to the employer, its agent or representative within ninety (90) days after the accident.
5. Pursuant to *South Carolina Code Ann.* §42-9-260 and *South Carolina Code Reg.* 67-505, 67-506 and 67-510, Defendants illegally stopped the Claimant's Temporary Partial Disability payments on September 11, 2011.
6. Pursuant to *South Carolina Code Ann.* § 42-9-200 and *S.C. Code Reg* 67-503, Defendants owe Claimant TPD for the period from September 11, 2011 through September 26, 2011, at the weekly rate of \$101.62 and TTD for the period from September 26, 2011 through the hearing date of November 2, 2011, at the weekly rate of \$452.03.
7. Pursuant to *South Carolina Code Ann.* § 42-15-60, Claimant reached Maximum Medical Improvement for all his causally-related medical and psychological problems as of October 18, 2011.
8. Pursuant to *South Carolina Code Ann.* § 42-9-10, Kennedy v. Williamsburg County 242 SC 477, 131 SE2d 512 (1963); and Getsinger v. Owens-Corning Fiberglas Corp., 335 SC 77, 515 SE2d 104 (Ct. App 1991), Claimant's anxiety and depression which were induced by his admitted physical injury at work have rendered him Permanently and Totally Disabled.
9. Pursuant to *South Carolina Code Ann.* §42-9-10, and Wynn v. Peoples

Natural Gas Co. of S.C., 238 S.C. 1, 118 SE2d 817 (1961), Claimant's combination of physical injuries, chronic pain, limited English language skills, history of manual labor, and psychological issues render him Permanently and Totally disabled.

10. Pursuant to *South Carolina Code Ann.* § 42-9-10, Claimant is entitled to an award of permanent and total disability and lifetime medical treatment for his affected body parts, to include both knees, back, liver, stomach/digestive tract, psyche, and skin, and Defendants shall provide an interpreter for Claimant's causally-related medical appointments.
11. Pursuant to *South Carolina Code Ann.* § 42-1-40, Defendants did not offer employment suitable to Claimant's capacity on September 26, 2011 prior to his layoff.
12. Pursuant to *South Carolina Code Ann.* § 42-1-40, and by stipulation of the parties, Claimant has an average weekly wage of \$678.01, with a corresponding compensation rate of \$452.03.
13. The issue of Utica-Mohawk Mills language apportioning the award is not addressed as Claimant's request for a lump sum award is denied.

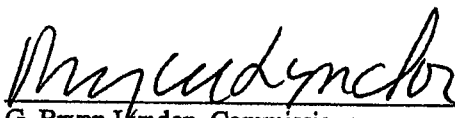
ORDER

IT IS HEREBY ORDERED that Claimant, is awarded Temporary Partial Disability at the weekly rate of \$101.62 for two weeks, is awarded Temporary Total Disability at the weekly rate of \$452.03 for five weeks; is Permanently and Totally Disabled and awarded payment of Permanent Total Disability benefits at the weekly rate of \$452.03 beginning November 3, 2011, for the remainder of 500 weeks, not to exceed \$226,015.00, is awarded lifetime medical treatment for both knees, back, liver, stomach/digestive tract, psyche, and skin, and shall be provided the services of an interpreter at his future causally-related medical appointments.

IT IS SO ORDERED

South Carolina Workers' Compensation Commission

Columbia, South Carolina



G. Bryan Lyndon, Commissioner

South Carolina Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
December 13, 2011

By: Tamara Morris, Administrative Assistant to Commissioner Lyndon

 **COPY**

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

JOSE JIMENEZ,

Employee

-VS-

KOHLER COMPANY,

Employer/Carrier

VOLUME III

WCC FILE NOS.

1122474 & 1219561

Pursuant to Notice of the Workers' Compensation
Hearing taken on the 4th day of June 2014, heard before
the Honorable T. Scott Beck, and commencing at the hour
of 12:13 p.m. in Columbia, South Carolina.

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P747

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Translator

Mike Tolleson
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INDEXJOSE JIMENEZ

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EXHIBITS

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LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[sic]	written as said

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P R O C E E D I N G S

(Whereupon, the Deposition Transcript of
Jesus Lugo was premarked Defendant's
Exhibit No. 6.)

COMMISSIONER BECK: Today's date is June 4,
2014. This is Workers' Compensation File Number
1122474. It's the matter of *Jose Jimenez versus
Kohler Company*. This is a matter that we initially
began hearings on May 23, 2014, reconvened
yesterday, on June 3, 2014, recessed at
approximately 9:30 last evening, and we are now
reconvening this matter at approximately 12:15 on
June 4th.

When we recessed yesterday, Mr. Beard, you
were in the process of cross-examination.

Mr. Jimenez, I would remind you that you are
still under oath, do you understand that?

WITNESS: Yes.

COMMISSIONER BECK: All right. Mr. Beard.

MR. BEARD: Thank you, Commissioner.

CROSS-EXAMINATION (CONT'D FROM 6/4/14)

BY MR. BEARD:

Q. Mr. Jimenez, when we last were taking testimony we
were talking about your medical treatment at Mary

1 Black Hospital physical therapy or the health
2 system back in October of 2012, do you recall that?

3 A. Yes.

4 Q. And throughout your testimony we have talked about
5 your claim of the difficulty you have communicating
6 in English and the difficulty you have -- and the
7 fact that you don't think that you can represent
8 yourself in English and that you need assistance
9 sometimes with medical treatment because of your
10 misunderstanding of our language, is that correct?

11 A. Yes.

12 Q. All right. Do you recall when you first went to
13 the Mary Health Hospital [sic] system having to
14 fill out a questionnaire that asked you questions
15 such as how you preferred or what language you
16 preferred to communicate with the physicians in, do
17 you recall that?

18 A. Yes.

19 Q. Isn't it true that you told the folks at Mary Black
20 Hospital when given the choices between English and
21 Spanish that you preferred to communicate in
22 English?

23 A. I remember that on the sheet I put English.

24 Q. Okay. So that's no consistent with everything else
25 you've told us thus far about how you communicate

1 in English and your -- the inabilities that you
2 have to deal with the English language, is it?

3 A. The thing is that's it's not the same thing to
4 signal a part of your body and talk about your body
5 than it is to sit here and be as explicit as
6 possible about what's going on.

7 Q. Well, Mr. Jimenez, if that's true and you knew, and
8 you've already testified at length about how
9 difficult it is for you to communicate in English,
10 about how difficult it is for you to understand
11 medical, and how difficult it is for all of us to
12 understand medical treatment, you were given the
13 opportunity, correct, to say that you could have a
14 Spanish interpreter with you any time you talked to
15 a doctor, yet you told them that you prefer to
16 communicate in English, correct?

17 MR. MARTIN: Can you identify what document
18 you're referring to?

19 MR. BEARD: I don't have to yet, I haven't
20 introduced a document. I'm asking him if, in fact,
21 it's true.

22 A. Well, I think so.

23 Q. Okay. You think so that, yes, you told them you
24 prefer to speak in English and you prefer to
25 communicate in English even though you feel this

1 way about medical conditions, and the legal
2 process, and all those things that you testified
3 about yesterday?

4 A. Well, it's the same thing that I said yesterday,
5 and, yes, you are partially right, but it's not the
6 same thing when you have to explain your symptoms
7 to someone in detail than when they're just asking
8 you yes and no questions. When you have to just
9 answer questions that's, obviously, easier. But in
10 a case like now, where we're trying to form a
11 conversation, I'm just not capable of doing that in
12 English.

13 Q. Well, when you were going to the doctor you knew
14 they were going to be asking you questions about
15 symptoms and you knew you were going to be
16 expressing to your doctors your symptoms, correct?

17 A. But even then, the doctor, when he asked me
18 questions, saw that I had difficulty expressing
19 those to him.

20 Q. Well, did you represent to the doctor and to the
21 hospital that you preferred and you're preferred
22 language was English?

23 A. It was question on the piece of paper, but nothing
24 that I told anybody to do.

25 Q. Did you check the box that said English or did you

1 check the box that said Spanish as your preferred
2 language?

3 **MR. MARTIN:** And, Commissioner, I would ask at
4 this point that he be --

5 **COMMISSIONER BECK:** It's been asked and
6 answered about three times now. Would you like it
7 answered one more?

8 **MR. MARTIN:** I'd ask that the document be
9 presented to the witness if --

10 **MR. BEARD:** Be glad to.

11 **MR. MARTIN:** But I'd like to see the document
12 first.

13 **MR. BEARD:** Sure.

14 **MR. MARTIN:** Where is this in your --

15 **MR. BEARD:** It's not.

16 **MR. MARTIN:** This is not in your APAs --

17 **MR. BEARD:** No.

18 **MR. MARTIN:** And this is not in the personnel
19 file?

20 **MR. BEARD:** No.

21 **MR. MARTIN:** I don't think you can use it.

22 **MR. BEARD:** I haven't offered it yet, you're
23 the one who wanted to see it.

24 **MR. MARTIN:** Well, I'm the one who said I
25 wanted you to show it to him if you're going --

1 **MR. BEARD:** Correct.

2 **MR. MARTIN:** -- cross-examine him with it.

3 **MR. BEARD:** Correct.

4 **MR. MARTIN:** I don't think he can use this
5 document if it's not in --

6 **COMMISSIONER BECK:** He haven't used it at all
7 yet, he's just asking --

8 **MR. BEARD:** Sure hadn't. You're the one who
9 wanted to see the document.

10 **MR. MARTIN:** Commissioner, he's telling him --
11 asking him if he's checked the box on this
12 document. I mean, obviously, he's referring to a
13 specific document. If he's going to use the
14 document it needs to be something that I have
15 notice of.

16 **COMMISSIONER BECK:** He hasn't offered it for
17 any evidence.

18 **MR. BEARD:** Al, the only way I'll use the
19 document is if he lies and I use it for rebuttal,
20 and I don't have to ever give that to you in
21 advance.

22 **MR. MARTIN:** I believe he does have to give --

23 **MR. BEARD:** No I don't. Not rebuttal
24 evidence, Al.

25 **COMMISSIONER BECK:** As long as he's testifying

1 in truth the document never sees the light of day.

2 **MR. BEARD:** Correct.

3 **MR. MARTIN:** So the fact that he hasn't
4 provided me this document in his pre-hearing brief,
5 it's not in the personnel file, I've never seen it
6 before, he is still allowed to use this if he's
7 using it for impeachment, is that --

8 **COMMISSIONER BECK:** Yes, sir.

9 **MR. MARTIN:** Okay.

10 Q. I just want to know --

11 **MR. MARTIN:** I object to that.

12 **COMMISSIONER BECK:** Over ruled.

13 Q. -- did you check the box English or did you check
14 the box Spanish as your preferred language when you
15 went to Mary Black Health Center?

16 A. English.

17 Q. Okay. Thank you.

18 A. I don't know if I can make a comment.

19 **MR. BEARD:** I would hope not, but I'll let you
20 decide that.

21 **COMMISSIONER BECK:** What's your next question.

22 **MR. BEARD:** Thank you.

23 **COMMISSIONER BECK:** Unless it's a
24 clarification to the response you gave to the last
25 question.

1 **WITNESS:** Yes..

2 **COMMISSIONER BECK:** I'll allow it, then.

3 A. I don't know if any of you have tried to learn
4 another language, but it's very clear to me that
5 when you're going to speak another language it's
6 not the same thing to just understand some things
7 that you hear and then try to express yourself or
8 try to write that other language. It's just not
9 the same to talk about something that you know some
10 words about than to try and talk very detailed
11 about something you have no knowledge of. I might
12 know a few words, slag words, but not, let's put it
13 this way, adequate words. What I want to do is
14 express myself in an explicit way so my words are
15 used.

16 **MR. BEARD:** Commissioner, I would --
17 obviously, we didn't know what his response was
18 going to be. I would move to strike. That is not,
19 in any way, shape, or form, in my opinion, a
20 clarification of the box checking on this document.

21 **MR. MARTIN:** Your Honor, I think he's being
22 asked about whether or not he speaks English and
23 why he doesn't communicate in English. For some
24 reason that's a major issue. And I think he -- I
25 think his response was responsive to that.

1 **COMMISSIONER BECK:** I'm going to allow the
2 response.

3 **MR. MARTIN:** And, Commissioner, I would also
4 ask if that document that objected to was shown to
5 the Claimant that it be marked and included.

6 **COMMISSIONER BECK:** It was not.

7 **MR. MARTIN:** You didn't show it to him?

8 **MR. BEARD:** No.

9 **MR. MARTIN:** Okay. Thank you.

10 **MR. BEARD:** But I'll be glad to mark it and
11 submit it. I have no objection to --

12 **MR. MARTIN:** If you didn't show it to the
13 Claimant, it's fine.

14 **MR. BEARD:** I didn't, but do you want it in or
15 not?

16 **MR. MARTIN:** No, I don't want it in if it
17 wasn't shown to him.

18 **MR. BEARD:** No, he was honest that he checked
19 the -

20 **COMMISSIONER BECK:** A question, Mr. Beard.

21 **MR. BEARD:** Thank you. May I approach?

22 **COMMISSIONER BECK:** Yes, sir.

23 Q. I'm going to show you, Mr. Jimenez, a medical
24 record -- or I'm going to show the interpreter a
25 medical record from November the 1st, 2012 at the

1 Mary Black Health System, which is page 89 of your
2 APA submissions. And November the 1st is the day
3 that you had this meeting with all the folks out at
4 Kohler, correct?

5 A. Yes.

6 Q. Was the meeting at Kohler in the morning time or
7 was the meeting at Kohler in the afternoon time?

8 A. I think in the morning.

9 Q. Okay. This appears to be a report. It says time
10 in 2:30, I assume it's p.m., to the Mary Health,
11 looks like for physical therapy. And this is what
12 it says on the form, it says, quote, I heard a big,
13 quote, pop, close quote, sound on my back, my leg's
14 still tingling, close quote. And then it says that
15 -- in the body of this, that you heard a pop sound
16 when you tried to stretch your body. Did you do
17 something on November the 1st, 2012?

18 A. I'm sorry, what was the date?

19 Q. November the 1st, 2012.

20 A. That was the day of the meeting, right?

21 Q. It's also the day that you went to the doctor.

22 A. I don't want to lie, because I don't remember. I
23 just don't. I don't remember.

24 Q. Okay. Maybe this helps, and I don't know, tell me
25 if this helps. It says you heard the pop when you

1 were trying to stretch your body during something,
2 I'm not sure, but it said before the start of work.
3 And I believe it says warm up.

4 A. Yes. Yes, I think I did mention that to my
5 bossman.

6 Q. Okay. Did you mention it to the doctor?

7 A. I don't remember.

8 Q. Okay. I'm going to show you a report dated
9 November the 9th, 2012, page 85 of your records.
10 It looks like you went to the physical therapist
11 that day telling them you were having numbness down
12 into your left leg since this week and that you'd
13 felt a big pop on your left side of the back and it
14 has hurt since. And at the bottom it says you do a
15 lot of repetitive movement at work with reaching,
16 and twisting, and lifting, and you're unable to use
17 proper body mechanics. Do you recall that?

18 A. Well, I do remember that I did speak with the two
19 people that were there, I think they were
20 therapist. And that was a conversation between me,
21 as a patient, and them, as therapist. What I
22 expressed to them is one thing, but what they have
23 written down, I don't know if those are my words, I
24 don't know if it's more or less than what I
25 actually told them.

1 Q. Do you understand that they wrote the words in
2 quotation marks, meaning that those are exactly
3 your words?

4 A. Yes.

5 Q. Okay. And you're aware that you're the one who
6 submitted these documents into evidence, not Kohler
7 Company?

8 A. Yes.

9 Q. Okay. So the reality is, you've had lots of things
10 -- as we've discovered through all these medical
11 records we talked yesterday and today -- you've had
12 lots of things happen to you since the last one of
13 the incidents that we're here for that have
14 contributed to and caused you to go see doctors for
15 various reasons, correct?

16 A. I think yes, that I have done that.

17 Q. But you didn't file or pursue any workers'
18 compensation claims for any of those events that
19 happened after March of 2012, did you?

20 A. You know, as an employee you ask for help to your
21 immediate supervisor. Your supervisor tells you to
22 go to the nurse, the nurse tells you, Either go to
23 the doctor or take care of yourself. I was only
24 doing what I was told to do. I wasn't looking to
25 be sitting here and talking about this or to obtain

1 any type of advantage in other ways. All I wanted
2 was help. Who wouldn't want to do anything for
3 their help, independently of who gives them that
4 help?

5 Q. Again, that's not an answer at all to my question.
6 My question was, have you or did you pursue any
7 workers' compensation claims or did you even notify
8 anyone after March of 2012 that you were having all
9 these other problems.

10 A. Not that I can remember.

11 Q. All right. The next document I want to show you is
12 the medical record -- the first medical record from
13 when you saw Dr. Marco Rodriguez, the orthopedic
14 doctor, which is pages 35 through 37 of your APAs,
15 dated February the 25th, 2013. Before I show you
16 the record what I want to make certain that I
17 understood is you advised that Dr. Rodriguez
18 understood and could communicate with you in
19 Spanish whenever you needed to, isn't that correct?

20 A. Dr. Rodriguez told me that he spoke little Spanish
21 after I had started to describe to him what I felt,
22 but, yes.

23 Q. According to Dr. Rodriguez's report he indicates
24 that you told him you could not remember a distinct
25 injury at work, but you believed it happened with

1 lifting continuously. Is that what you told the
2 doctor?

3 **COMMISSIONER BECK:** Where are you reading
4 from, Mr. Beard?

5 **MR. BEARD:** Up under the History of Present
6 Illness, right in the second paragraph, it looks
7 like about the forth sentence, fifth sentence,
8 maybe. (As read): He can not remember a distinct
9 injury at work.

10 A. When you go to a doctor they want to know
11 specifics. And I told him that I didn't remember
12 those specific dates, because it's not something I
13 considered important at the moment. I told him
14 that I did report them, but I didn't remember the
15 dates or what led to those injuries. I did tell
16 him that I had injured myself, but I didn't know
17 the dates.

18 Q. Well, then it makes no sense, does it Mr. Jimenez,
19 that Dr. Rodriguez would type into a report that
20 you can not remember a distinct injury at work
21 when, in fact, you're claiming that you told him
22 you had distinct injuries at work?

23 A. What Dr. Rodriguez and I spoke were less than five
24 minutes there. Yes, he did ask me and I did tell
25 him that I did do a lot of repetitive movements.

1 But how am I supposed to know exactly what
2 contributed to an injury or what didn't? I just
3 didn't remember what specific dates that was. I
4 did tell him that I thought that this was becoming
5 worse and that I did do a lot of repetitive moments
6 at work. But I go back to the same thing, I mean,
7 I could tell someone something now and three hours
8 later they're not going to remember every word that
9 I said.

10 Q. Okay. Did you also tell the doctor that you
11 started to realize you could not do what you used
12 to be able to do for 12 years and that's when you
13 came and sought medical attention?

14 A. Yes.

15 Q. So in reality, what you are claiming here today
16 before this Workers' Compensation Commission is not
17 that you injured yourself on two specific dates,
18 but you're really trying to claim that you had some
19 sort of repetitive injury while working at Kohler,
20 is that correct?

21 A. The two dates of the accidents -- let's put it this
22 way, there's always a beginning to everything, that
23 was the beginning. Everything else is just a
24 consequence of that beginning.

25 Q. Are you aware at page 37 that Dr. Rodriguez

1 indicated that the start of everything could have
2 been when you injured your coccyx and broke your
3 coccyx, that that could have been the beginning of
4 all these problems?

5 A. No, sir, I didn't know.

6 Q. All right. And noone has ever shown you or advised
7 you what this medical report says?

8 A. I received information and I've been spoken to
9 about all the evidence here, but I've never seen
10 that particular one.

11 Q. And you mention that, again, there was some
12 question about whether what you said to
13 Dr. Rodriguez is what actually ends up in the
14 report and you couldn't remember specific incidents
15 or whether you could. On page 37 Dr. Rodriguez,
16 again, stated (As read): As far as causality,
17 given the fact he does not have a specific injury
18 causing these symptoms it is more difficult to make
19 this relationship. Are you aware of that?

20 A. No, I didn't know.

21 **COMMISSIONER BECK:** Can I see Counsel up here
22 for a moment.

23 (Off the record)

24 **COMMISSIONER BECK:** Mr. Beard.

25 **MR. BEARD:** Thank you, Commissioner.

1 Q. Do you recall Dr. Rodriguez referring you to a
2 Dr. Tercella?

3 A. Yes.

4 Q. Do you recall going to Dr. Tercella on April the
5 23rd, 2013, page 30 of your APA submissions, and
6 telling Dr. Tercella that you have a prior coccyx
7 injury, which hurts you and causes you numbness
8 into your buttock?

9 MR. MARTIN: I'm going to have to voice an
10 objection at this point. And I apologize, I didn't
11 follow along where you're talking about. I don't
12 see that it says what you --

13 COMMISSIONER BECK: First paragraph under
14 History of Illness, third to the last sentence
15 starting at the end of that third line.

16 MR. MARTIN: Yes, sir. It --

17 COMMISSIONER BECK: (As read): He also has
18 a --

19 MR. BEARD: Prior coccyx injury, which hurts
20 him. He will have numbness into his buttock.

21 MR. MARTIN: Okay. I thought you said -- and
22 if I mis-heard I apologize -- but I thought you
23 said, you have a prior coccyx injury, which causes
24 you numbness into your buttock. And I don't think
25 it says causes, I think those are two separate

1 phrases. If I -- if that's not what you said --

2 **COMMISSIONER BECK:** That's what he said --

3 **MR. BEARD:** I did say it that way.

4 **COMMISSIONER BECK:** Recite it appropriately.

5 Q. Did you tell Dr. Tercella that you had a prior
6 coccyx injury which hurts you?

7 A. That I injured my coccyx before?

8 Q. Did you tell Dr. Tercella that you have a coccyx
9 injury prior, or before, that hurts you?

10 A. I took the sheet from the x-ray that Dr. Jeter had
11 done on me and he read it and gave it back to me.

12 Q. Did you tell Dr. Tercella that you have a prior
13 coccyx injury which hurts you?

14 A. I did mention to him that I had an injury to my
15 coccyx, but not that it hurt. And the proof is in
16 the fact that I spent so many years working there.
17 How is it possible that after working so many years
18 there I wouldn't have complained about that?

19 Q. So are you testifying, then, that Dr. Tercella
20 inaccurately reported what you told him?

21 A. No, what I am saying is that that proves the
22 difficulty in communicating.

23 Q. And, again, you chose to communicate in English
24 with these doctors and, in fact, put that on the
25 report when you went to the very first doctor to

1 see about any of this, isn't that correct?

2 A. Yes, sir, I did, but it's also proof that I'm
3 trying to progress in the language and I'm trying
4 to make an effort to understand others. I'm sorry
5 if that's causing me problems or anyone else here
6 problems today.

7 Q. Do you recall seeing Dr. Tercella on October the
8 14th, 2013, page four of your APA submissions, and
9 advising Dr. Tercella that because of a coughing
10 fit that you had apparently had at that time that
11 the pain returned to your body?

12 A. Yes, and I don't know if the doctor made this note
13 or perhaps you don't have that piece of paper, but
14 what is missing there is that what I told him is
15 that what returned was the pain in my neck and
16 towards my arm, we weren't talking about my back.
17 Because I had received that injection for my
18 shoulder and one, also, in my neck. And I think on
19 any report one word can change how the report is
20 understood.

21 Q. You indicated yesterday, Mr. Jimenez, that when you
22 changed jobs from plate number 4380 to 4387 it was
23 a -- I think your words were -- a significant or a
24 major light duty change in jobs; is that correct?

25 A. Yes, I believe I used significant, but what I am

1 trying to explain is that you might have the
2 weights of the molds there with you, but what you
3 don't have is how much more these molds weigh once
4 they absorb water. Once they absorb water they
5 become significantly heavier.

6 Q. Isn't it true that the molds in the first job
7 weighed 60 pounds and the molds in the second job
8 weighed 53 pounds?

9 A. Are you referring to each piece or are you
10 referring to the entire mold?

11 Q. To the piece. I'm sorry, I said mold, I meant
12 piece.

13 A. You're referring to the sides or the base?

14 Q. I'm referring to the weight of the piece.

15 A. The weight varies depending on if it's still wet or
16 if it's dry.

17 Q. I'm talking about the clay pieces that you have to
18 lift. In the first job it was 60 pounds, in the
19 second job it was 53 pounds, is that correct?

20 A. I've never known what the weights of those pieces
21 are. I don't think that anybody who works there on
22 the floor, or the majority, know what the weights
23 of those pieces are. But do you have the weights
24 of the molds themselves, which weigh more?

25 Q. Well, do this, explain the difference between the

1 job that you were doing under 43 -- under the first
2 job you were doing that had elongated bowls versus
3 the second job you were doing that had the round
4 bowls. What's the difference?

5 A. Well, to start, they are very similar processes,
6 almost the same. But I think what's being
7 misinterpreted here is the fact that there are
8 different pieces to the bowl itself, and these are
9 the molds. The final process, perhaps what you're
10 referring to, is the final piece. But what you
11 really work the most with are all the pieces to
12 make the mold. There's a piece to make the rim,
13 which is at the top of the bowl, there are four
14 pieces to make the bowl itself.

15 Q. Isn't that a two man operation, Mr. Jimenez, not a
16 one man operation?

17 A. Only to do one, two, three, four process only.

18 Q. There really is no difference in the molds you had
19 to work with in the first job and the second job,
20 is there?

21 A. You mean the weight or the job?

22 Q. The weight.

23 A. Of course there's a difference. Have you seen how
24 those molds suck up water? It's not the same when
25 you start working with a fresh new mold than two

- 1 months after the fact when they can absorb twice as
2 much of their weight.
- 3 Q. Mr. Jimenez, it seems like you can't answer a
4 single one of my questions without going off on a
5 tangent. My question is, there is no difference,
6 essentially, between the weights of the molds in
7 the first job and the second job, is that correct?
- 8 A. Perhaps not a very large difference, but there is a
9 difference.
- 10 Q. Okay. Well, your earlier testimony, when your
11 lawyer was asking you those questions, was that
12 there was a major, significant difference. Now
13 your testimony is different, is that correct?
- 14 A. Well, go back to the same thing, you're giving me
15 the weight of the bowl already made, not the weight
16 of the mold. I'm sure there's more than seven,
17 pounds of difference.
- 18 Q. After each one of these incidents that we're
19 actually here for, 2011 and 2012, isn't it true
20 that Joe Brown checked up with you for a couple of
21 days after each one of those incidents and you told
22 him that you were okay and continued to do your
23 regular job?
- 24 A. Yes, I'm aware that there were days where he would
25 -- at the beginning of the shift when he received

1 me, would ask me how I was doing and I would say I
2 was doing all right. But I go back to what I had
3 said, also, previously, with this problem there
4 were moments in which I was feeling fine and there
5 were others where the problem would come back and
6 sometimes even worsen. So I'm not a doctor to say
7 exactly what was going on with my body.

8 Q. So you acknowledge that what Mr. Brown testified to
9 in court, which you heard, that he followed up with
10 you and you told him you were fine and continued to
11 do your regular duty, that was, in fact, the truth?

12 A. It happened two or three times in the morning shift
13 where he would come by and ask how I was doing and
14 I would say that I was doing all right.

15 Q. Okay. When you told -- I think you told Joe Brown
16 -- he testified that you told him in September of
17 2012 that you were going to your own doctor for
18 medical treatment, but you never told him why you
19 were going to the doctor, isn't that true?

20 A. Yes, but they already knew that. Let's be honest
21 with each other, if I communicated to my supervisor
22 and he communicates it to the next one I'm sure
23 that they were all talking about what I had told my
24 supervisor. Let's try and be clear here, we're not
25 dumb.

1 Q. That's right, Mr. Jimenez, we're not dumb. And
2 according to all the records that have been
3 submitted in this case, the only time you said
4 anything to anyone at Kohler was on March the 12th
5 of 2012, the day after you claimed to have been
6 injured in accident number one -- excuse me -- on
7 July the 12th of -- excuse me -- July the 15th of
8 2011 you went and said something to your
9 supervisor, who sent you to the nurse, and on March
10 the 14th of 2012 you said something to your
11 supervisor, who sent you to the nurse. And both of
12 those were the dates after you claimed to have been
13 hurt, isn't that correct?

14 A. Yes, but I did tell my bossman. And, I mean, what
15 was I supposed to do? I tell him how I felt, I
16 don't know what he was going to do after that, who
17 he was going to tell after that. He gave me some
18 pills, he would ask me how I was doing, I would say
19 all right. Occasionally that would happen. But
20 what else can I do? I can't go above my bossman.
21 What was I expecting him to do? I guess what any
22 normal person would do, for him to tell his
23 supervisor about it. I wasn't going to threaten
24 him or anything like that. I did my part in
25 communicating to him what I felt. He's the one who

1 has the responsibility of passing that along.

2 Q. And he did pass it along, Mr. Jimenez, correct?

3 A. Sometimes.

4 Q. And when you did have the opportunity to make all
5 this clear by going to the doctors and telling them
6 what happened, in fact, you did not tell them any
7 of the things you've told us in this case, isn't
8 that true, based on the medical records?

9 A. What is it that you want when you go to the doctor?
10 Only to feel better.

11 Q. And, in fact, you didn't even pursue these workers'
12 compensation claims until you knew you were being
13 fired by Kohler, isn't that correct?

14 **MR. MARTIN:** And I'm going to object to that
15 as a misrepresentation of the facts he's already
16 testified to and Sid DeVaul already testified to,
17 that he was fired on February 5th and his Form 50s
18 were filed on February 1st.

19 **COMMISSIONER BECK:** Mr. Beard?

20 **MR. BEARD:** Commissioner, I think the question
21 is a proper question. I don't know that you can
22 object like he just did. I don't think that that
23 is an accurate representation of everything that's
24 been stated.

25 **COMMISSIONER BECK:** Well, if I understood from

1 yesterday -- hang on.

2 **MR. BEARD:** I think the official letter was
3 sent on February 5th or whatever it was dated, that
4 wasn't my question.

5 **MR. MARTIN:** The letter was February the 6th.
6 And it says that he was -- February 5th was the day
7 that his coverages were terminated.

8 **COMMISSIONER BECK:** What was your question,
9 again?

10 **MR. BEARD:** My question was, You did not even
11 pursue these workers' compensation claims until you
12 knew you were going to be terminated by Kohler.

13 **COMMISSIONER BECK:** I'll allow that question.

14 A. What person knows when they're going to be fired?
15 I didn't know that. I'm not a magician to know
16 anything like that. The -- and it's my belief that
17 the workers' comp claim had already been submitted.

18 Q. You knew by February the 1st, 2013 that you had
19 pointed out at Kohler, didn't you?

20 **MR. MARTIN:** I'm going to object, again. I
21 believe that conflicts with the testimony by Sid
22 DeVaul yesterday.

23 **MR. BEARD:** I'll withdraw the question.

24 Q. At the meeting on November the 1st, 2012 Mike
25 Tolleson specifically asked you if you could go and

- 1 do your regular job and you told him you could, is
2 that correct?
- 3 A. I answered him that I was going to do it as best as
4 I could, but that I was going to try and do it.
- 5 Q. All right. Are you aware that Dr. Savage-Jeter
6 testified in her deposition that she is completely
7 unaware or has no recollection of you ever
8 identifying a specific accident in either 2011 or
9 2012 as the reason that you came to see her for
10 medical treatment?
- 11 A. I'll revert to said already, I wasn't feeling well,
12 I went to the doctor, I told her my symptoms. How
13 was I supposed to know that these were due to the
14 same thing?
- 15 Q. Are you aware that Dr. Savage-Jeter testified at
16 page 18 of her deposition that as of October the
17 15th, 2012 she had no reason to believe that you
18 had any low back injuries, specific injuries to
19 your spine?
- 20 A. If I remember correctly, she took an x-ray of me,
21 she looked at it and told me I didn't have
22 anything. I told her to please continue to look.
23 I insisted. I insisted, because I wanted to know
24 why these things were happening to me. I asked
25 her, Please, help me. That's when she said that

1 this was a process, that first I would have to go
2 to physical therapy, and if that didn't improve
3 then she would see what needed to be done next.

4 Q. Well, that's not true, is it, Mr. Jimenez, because
5 she told you that your x-ray showed an old coccyx
6 fracture that possibly or probably was the
7 beginning of all of this, isn't that true?

8 MR. MARTIN: And I would object. I think that
9 misrepresents what she said. I don't believe she
10 ever said that she thought that that was the
11 beginning of this.

12 COMMISSIONER BECK: No, I think that was in a
13 medical note that Mr. Beard --

14 MR. BEARD: From her. That's her medical
15 note.

16 COMMISSIONER BECK: On one of her medical
17 notes that was in there earlier.

18 MR. MARTIN: Was that Dr. --

19 MR. BEARD: But more importantly, he's just
20 opened the door to something that was not asked,
21 but he's done it, yet again, by going into what
22 Dr. Savage-Jeter said that is not part of this
23 record about this process that he had to go
24 through. I think I'm going -- and he said that she
25 said there was nothing wrong with him, when, in

1 fact, she said that he has an old coccyx fracture
2 and that could have been the beginning of all of
3 this. Even Dr. Rodriguez says the same thing in
4 his report.

5 **MR. MARTIN:** Actually, I think Dr. Rodriguez
6 is the one that said that in his report --

7 **MR. BEARD:** I don't think so.

8 **MR. MARTIN:** Dr. Savage-Jeter never said that,
9 that's my reason --

10 **COMMISSIONER BECK:** Where's Jeter's note?
11 Rodriguez's note is the one that says, He also has
12 a prior coccyx injury that hurts him. He will have
13 numbness in his buttock.

14 **MR. BEARD:** And in the last paragraph of that
15 same report it says that could have been the
16 beginning of all of this process.

17 **COMMISSIONER BECK:** On 30?

18 **MR. BEARD:** On page three, I think, was
19 Rodriguez's. Page three, the last paragraph, I
20 think, is where he says -- no I'm looking at the
21 wrong one -- I'm sorry, it's backwards. Yeah, it
22 is page -- I think it's on page thirty-three,
23 Commissioner -- or thirty-two, I'm sorry -- no,
24 thirty-three -- no, I'm looking at the wrong one,
25 again.

1 **MR. MARTIN:** Well, these are Dr. Rodriguez's
2 notes and the question was about what Dr. Savage-
3 Jeter said.

4 **MR. BEARD:** Well, that's not what the
5 Commissioner asked. The Commissioner asked a
6 different question. You're not listening to the
7 questions that are being asked.

8 **MR. MARTIN:** I objected to your question.
9 Your question --

10 **MR. BEARD:** I'm responding to the judge.

11 **COMMISSIONER BECK:** I'm looking for the
12 reference in the medical note that said that it
13 could have been the start of all this and who said
14 that.

15 **MR. BEARD:** At page 91 is where, I think,
16 Dr. Jeter -- or Mary Black -- I don't know if it's
17 -- yeah, it says Dr. Jeter attending doctor. Talks
18 about the old -- the x-ray showed the old coccyx
19 injury.

20 **COMMISSIONER BECK:** That's still not the
21 reference I'm looking for, Mr. Beard.

22 **MR. BEARD:** I think the reference you're
23 looking for is at page 37, which is Dr. Rodriguez.

24 **COMMISSIONER BECK:** Yes, and you cited that
25 reference to Dr. Jeter.

1 **MR. BEARD:** Okay. Let me ask a different
2 question.

3 **COMMISSIONER BECK:** Yes, sir.

4 Q. You testified that Dr. Rodriguez -- excuse me --
5 Dr. Jeter said there was nothing wrong with you
6 according to the x-ray, when, in fact, her x-ray
7 said that you had an old coccyx fracture, isn't
8 that true?

9 A. Don't try to confuse me, because your previous
10 question had to do with the lower back and when you
11 asked the question that's what I was referring to,
12 I didn't realize you were referring to my coccyx.

13 Q. The only x-ray she took was of your lower back and
14 that's where she saw your coccyx fracture, isn't
15 that true?

16 A. Yes, and I'm not going to lie about that. What I
17 understood from your question was if it was
18 something else other than that. Because what she
19 told me is that she didn't see anything aside from
20 the coccyx injury.

21 Q. You never told Dr. Jeter-Savage ever about any
22 injuries on the job at Kohler Company, isn't that
23 true?

24 A. It's difficult for me to remember now.

25 Q. If Dr. Jeter-Savage testified under oath to that

1 fact would you call her a liar?

2 MR. BEARD: Commissioner, I'm referring to
3 page 19 of Dr. Jeter-Savage's deposition.

4 A. Well, I don't know her personally to be calling her
5 a liar and I wouldn't do that anyway, because that
6 would be disrespectful. But if anything, I
7 commented to her, it may have been where I told her
8 that I had a slip and fall and I fell sitting down.

9 Q. And the slip and fall has nothing to do with either
10 the 2011 or the 2012 claims that we're here for,
11 correct?

12 A. Well, in the reality is that it was one of these
13 slips and falls that really didn't have any major
14 consequences. How many times do you fall and you
15 get up and you don't have any pain?

16 Q. Once again, Mr. Jimenez, you didn't answer my
17 question. My question was, the slip and fall that
18 we're talking about now has nothing to do with
19 either the 2011 or 2012 claim which you are
20 pursuing in workers' comp, isn't that correct.

21 A. I guess I think not.

22 Q. Dr. Savage-Jeter never gave you any indication that
23 you needed to be out of work until January of 2013,
24 is that correct?

25 A. Again, like I said before, it's a process. Until

1 she explained to me what I had, because of that
2 process, she didn't know that I needed to be out of
3 work.

4 Q. My question was, Dr. Savage-Jeter never gave you
5 any indication that you needed to be out of work
6 until January of 2013, isn't that correct.

7 A. I don't remember.

8 Q. She never gave you any formal restrictions for
9 work, did she?

10 A. I don't think so.

11 Q. She never prescribed you any medications, did she?

12 A. She asked me what was I taking and I told her all
13 the names of the pills that I could buy at the
14 pharmacy. She told me to keep on using those.

15 Q. My question to you was, she never prescribed you
16 any medications, did she.

17 A. My answer was obvious, sir, that means no.

18 Q. The first two times you saw Dr. Rodriguez you also
19 could not remember any distinct or specific
20 injuries that caused you to be at his office
21 either, isn't that true?

22 A. I did not mention to him any specific dates,
23 because I wanted to be as sincere as possible. I
24 don't think I mentioned any dates to him.

25 Q. Did you ever try to find any jobs within whatever

1 restrictions that Dr. Rodriguez gave to you?

2 A. Aside from what I was offered after that meeting
3 date that I had, no, I don't think so. But I also
4 want to add that I only saw Dr. Rodriguez, I think,
5 once or twice, and then he refer me to
6 Dr. Tercella. I wasn't aware of any restrictions
7 that may have given me.

8 Q. Are you aware that Dr. Rodriguez testified under
9 oath that when you did finally come to him in July
10 of 2013 for the first time, claiming injuries that
11 we're here for today, that he felt that there had
12 been some coaching by someone to allow you to come
13 up with that information?

14 MR. BEARD: That's at page 27 of his
15 deposition.

16 A. Had I been aware that that's what he said I guess I
17 would have made a better job at saying what I said.

18 Q. Do you think this process is funny, this back and
19 forth that we're doing, Mr. Jimenez?

20 A. No, not at all, sir. Forgive me if I'm giving you
21 the wrong impression. If you're judging me as a
22 bad person that's not the case.

23 Q. Do you think these doctors, when they testified
24 under oath about your case, that they thought this
25 was funny or serious?

- 1 A. It was serious.
- 2 Q. Did you ever work with Jesus Lugo Hernandez?
- 3 A. I worked some of the years he was there also, and I
- 4 think we worked together one or two days, maybe
- 5 every now and then.
- 6 Q. Did you and Mr. Lugo Hernandez ever discuss your
- 7 workers' compensation claim or his workers'
- 8 compensation claim before any of the testimony in
- 9 this case?
- 10 A. Well, of course I've seen him several times. I've
- 11 seen him a few times, but never have we spoken
- 12 about his case, because he's a very, very reserved
- 13 person. I've never asked him about his case. I
- 14 was surprised to see that he was going to testify.
- 15 I knew that he was involved somehow, but he is a
- 16 very reserved person.
- 17 Q. Did you ever talk to him about your case?
- 18 A. No, because I understand that I have to be careful
- 19 with what I say to anybody.
- 20 Q. I'm talking about before we ever got to court.
- 21 A. No, sir.
- 22 Q. Did -- you were not working with Mr. Lugo Hernandez
- 23 in either 2011 or 2012 when these incidents
- 24 occurred, correct?
- 25 A. No, sir.

- 1 Q. You were not working with Yuri Valderamma in either
2 2011 or 2012 when the incidents that we're here for
3 occurred, correct?
- 4 A. I don't remember for sure if he was still working
5 at the company during those times. I'm not sure.
- 6 Q. Did you ever talk to Mr. Valderamma about your case
7 before we came to court?
- 8 A. I never had any type of relationship with him. The
9 only type of relationship was when he came by my
10 side and lift his hand saying hi.
- 11 Q. Were you aware that he was a supervisor or foreman
12 at Kohler at one time?
- 13 A. Yes, I'm aware that he worked, I think, in floor
14 cast or as a roller, I'm not sure. I may have been
15 working under him at some point.
- 16 Q. Mr. Jimenez, how have you lived, financially, since
17 you were terminated at Kohler?
- 18 A. Well, it's mostly been my family. My family has
19 helped me, I have a few cousins, also my brother
20 has helped with some things at home, and my wife
21 who goes out every day to try and sell her
22 products.
- 23 Q. How many children do you have?
- 24 A. Three.
- 25 Q. How old are they?

Dr. [unclear]

- 1 A. Five, three, and two.
- 2 Q. And you said in addition to them you, your wife,
3 and your brother also live in the house?
- 4 A. Yes, sir.
- 5 Q. And your testimony is that's the only way that
6 you've been able to financially support six people
7 living in the same house, is through assistance
8 from your cousins, and your brother helps, and your
9 wife goes out and tries to sell Avon?
- 10 A. Yes, sir, and, in fact, you haven't even asked me
11 when was the last time I was able to buy any
12 clothes or shoes for my children or for my wife.
- 13 Q. When did you have the MRI scan on your low back?
- 14 A. I think it was in the middle of December.
- 15 Q. December of 2012?
- 16 A. Yes.
- 17 Q. When is the first time you told anyone at Kohler
18 about that?
- 19 A. Of the MRI?
- 20 Q. Yes, sir.
- 21 A. I think it was -- I'm pretty sure it was a few days
22 before.
- 23 Q. A few days before the MRI scan?
- 24 A. Yes, because I think I was told a week ahead or two
25 weeks ahead. I can't remember very well.

1 Q. Did you tell the folks at Kohler you were going to
2 have an MRI scan because you thought you had a
3 workers' compensation claim?

4 A. No, sir. How was I going to imply that when I
5 didn't even know what I had?

6 Q. Okay. You made a comment when I asked you
7 questions about why you had not been to doctors or
8 if you ever went to doctors in the United States.
9 Under direct testimony you said that doctors are
10 expensive in Mexico -- excuse me -- are expensive
11 in the United States, do you recall making that
12 statement?

13 A. Yes, I remember I said something to that, but I
14 didn't say that I didn't go to the doctors because
15 they were expensive. What I meant to say is that
16 here in the US the doctors are expensive.

17 Q. Are the doctors expensive in Mexico, Mr. Jimenez?

18 MR. MARTIN: I object to the relevance of
19 that.

20 COMMISSIONER BECK: I'll allow it.

21 A. Not a whole lot.

22 Q. Did anything ever prohibit you from going back to
23 Mexico for medical treatment?

24 A. I had never thought about that.

25 Q. In the last year, plus, that you have not had a job

1 have you ever thought about going back to Mexico
2 for medical treatment?

3 A. No, sir.

4 **MR. BEARD:** Commissioner, I believe that's all
5 I have.

6 **COMMISSIONER BECK:** Let me note for the record
7 that yesterday there were a number of documents
8 that I had authorized Counsel to provide. One of
9 those was the deposition testimony of Mr. Lugo.
10 That has been provided prior to the commencement of
11 this proceeding today and marked as Defendant's
12 Exhibit No. 6.

13 We're going to recess for about ten minutes.

14 (Brief recess)

15 **COMMISSIONER BECK:** Mr. Martin, any redirect?

16 **MR. MARTIN:** Yes, sir. Thank you.

17 **REDIRECT EXAMINATION**

18 BY MR. MARTIN:

19 Q. Okay. Mr. Jimenez, when you were on cross-
20 examination Mr. Beard asked you if you were aware
21 that Dr. Savage-Jeter and Dr. Rodriguez testified
22 that they spoke to you in English, do you remember
23 that -- remember that question?

24 A. Yes.

25 Q. Were you also aware that Dr. Savage-Jeter testified

1 that she felt there were some barriers to
2 communication and she wasn't sure if you always
3 understood what she was trying to tell you?

4 **MR. MARTIN:** I'm referring to page 11,
5 Commissioner, of Dr. Savage-Jeter's deposition,
6 beginning at line 17.

7 A. No, I wasn't aware.

8 Q. Okay. Were you aware that Dr. Rodriguez testified
9 that he felt that he needed to speak to you in
10 Spanish just to help, because he could tell you
11 were struggling a little bit -- and that's -- with
12 your English?

13 **MR. MARTIN:** That's page eleven of his
14 deposition beginning at line ten.

15 A. No, I didn't know that.

16 Q. Okay. Mr. Beard asked you about page 18 of
17 Dr. Savage-Jeter's deposition, and he pointed out
18 that Dr. Savage-Jeter at your 10/15 visit said that
19 you had no acute injuries. Were you aware that
20 when she was asked if that was still her opinion
21 she said no?

22 **MR. BEARD:** With all due respect, that is not,
23 in fact, her answer. He only read the first word
24 of the answer.

25 **COMMISSIONER BECK:** I've got the deposition,

1 Mr. Beard.

2 A. How was the question again?

3 Q. Were you aware that when she was asked if she was
4 still of that opinion she said no?

5 MR. BEARD: Same objection. That's not the
6 answer.

7 COMMISSIONER BECK: I'll note the objection.
8 Like I said, I've got the deposition and I'll read
9 it.

10 Q. Were you aware that she testified on page 19 that
11 she felt that you could have had an acute injury,
12 but you didn't give a specific date?

13 MR. BEARD: Commissioner, again, I would
14 object. Number one, I don't know that it's proper
15 to keep just reading the deposition. But I would
16 object that possible is irrelevant to a workers'
17 compensation --

18 COMMISSIONER BECK: I'm not even sure where
19 we're at on that page.

20 MR. MARTIN: I believe on -- it's line eight
21 she talks about it potentially began as an acute
22 injury. Down at line nineteen (As read): I think
23 it was the second visit where I felt like when we
24 were discussing what was going on that he was
25 saying that, I think this is an injury from

1 something that happened to me at work. And my
2 reply was, Well, if this is workers' comp then you
3 need to get your employer involved.

4 **MR. BEARD:** That's not what your question was.

5 **MR. MARTIN:** Actually let me go to line 18 (As
6 read): But a specific date, no. He did tell me
7 that, but --

8 **COMMISSIONER BECK:** What's your question? I'm
9 with you now on the depo. What's your question?

10 **MR. MARTIN:** The question that I asked was, I
11 said -- I believe I said, Mr. Beard said that --
12 and if I didn't say this I apologize --

13 **COMMISSIONER BECK:** All right. Well, just re-
14 ask your question.

15 **MR. MARTIN:** Okay.

16 Q. I believe Mr. Beard pointed out during his cross-
17 examination that you never -- or that Dr. Savage-
18 Jeter says that you never mentioned any specific
19 injury, but were you aware that she testified that
20 you could have had an acute injury and that she
21 felt like you testified you'd gotten hurt at work,
22 you just didn't give a specific date?

23 **COMMISSIONER BECK:** Mr. Martin, I'm not sure
24 how much value we're getting out of this. I mean,
25 the deposition's going to speak for itself. Asking

1 him if he's aware of what she said in the
2 deposition, I'm not sure what that gains us from an
3 evidentiary standpoint.

4 **MR. MARTIN:** Yes, sir. And what I'm trying to
5 do is just respond to the cross-examination
6 questions that pointed out specific issues from her
7 deposition, which I believe were inaccurate.

8 **COMMISSIONER BECK:** And I'll tell you the same
9 thing I just told Mr. Beard, that document isn't
10 but about 25 or 30 pages, I assure you I will read
11 every word of it and make my own assessment of what
12 it says.

13 **MR. MARTIN:** Yes, sir.

14 Q. During your cross-examination by Mr. Beard I
15 believe he asked you if you did not receive any
16 restrictions from work until January of 2013. Were
17 you aware that at your visit on October 23rd of
18 2012, at page 96 of the APAs, that the -- I'm not
19 sure if it's the therapist or the doctor -- believe
20 that's a doctor's note.

21 **COMMISSIONER BECK:** It's a physical therapist
22 note.

23 **MR. MARTIN:** Okay.

24 Q. Physical therapy. That it was pointed out (As
25 read): Patient has some ADLs limitation and some

1 work limitation with certain motion. Were you
2 aware of that?

3 **MR. BEARD:** Commissioner, and I would object,
4 because the question, apparently, it's an attempt
5 to rehabilitate an answer that was -- Mr. Jimenez
6 was asked by me, Did Dr. Savage-Jeter ever give you
7 any restrictions before January 2013. And his
8 answer was, No, how could she, because we didn't
9 know what the process was at the time.

10 He's trying to rehabilitate something that you
11 can't --

12 **COMMISSIONER BECK:** I believe that same
13 question was asked regarding Dr. Rodriguez, as
14 well.

15 **MR. BEARD:** Correct.

16 **COMMISSIONER BECK:** And this has to do with
17 the physical therapist.

18 **MR. MARTIN:** Yes, sir. It asks -- I believe
19 he specifically asked if you had any restrictions.
20 You didn't have any restrictions at all until
21 January '13, that's what I recall. I didn't recall
22 that he --

23 **MR. BEARD:** Well, his answer was --

24 **MR. MARTIN:** -- to a specific doctor.

25 **MR. BEARD:** But his answer was, No, I didn't,

1 because how could they, because the process was
2 still going on. So how can he possibly change that
3 answer now?

4 **MR. MARTIN:** Well, I think that's a question
5 for redirect, but I don't think that's an
6 objectionable --

7 **MR. BEARD:** We're past redirect. You're
8 outside the scope of direct and redirect.

9 **MR. MARTIN:** I'm not outside the scope --

10 **MR. BEARD:** Excuse me. Outside the scope of
11 direct and cross.

12 **MR. MARTIN:** I'm not outside --

13 **MR. BEARD:** I object to outside the scope.

14 **COMMISSIONER BECK:** All right. I'm going to
15 allow it. Let's go.

16 **MR. MARTIN:** Thank you.

17 Q. You were asked by Mr. Beard if you had attempted to
18 return to work with the restrictions that
19 Dr. Savage-Jeter or Dr. Rodriguez had provided you,
20 and you testified that you had not, is that right?

21 **COMMISSIONER BECK:** Let's address that
22 question. And we just had this conversation. It's
23 my understanding from his testimony on cross that
24 Jeter and Rodriguez didn't provide him any
25 restrictions.

1 **MR. MARTIN:** I believe he was later asked in
2 the same cross, The restrictions that you have from
3 Dr. Savage-Jeter and Dr. -- because they did give
4 him restrictions in his deposition.

5 **COMMISSIONER BECK:** All right. I follow you.
6 Proceed.

7 **MR. MARTIN:** Yes, sir.

8 Q. Were you aware that Dr. Savage-Jeter and
9 Dr. Rodriguez both said you were limited to
10 sedentary duty?

11 **MR. BEARD:** Are you going to point out the
12 pages for me and the Commissioner?

13 **MR. MARTIN:** I believe it's -- hold on one
14 second. I believe it's page 27, but let me make
15 sure I've got that right.

16 **COMMISSIONER BECK:** Of Jeter?

17 **MR. MARTIN:** Jeter is page twenty-four, line
18 eight. And --

19 **MR. BEARD:** That says that he was lifting 50
20 to 70 pound toilet seats. It doesn't say anything
21 about his restrictions.

22 **MR. MARTIN:** Hold on.

23 **MR. BEARD:** No, I'm sorry, that's Rodriguez --

24 **COMMISSIONER BECK:** (As read): So mainly he
25 would need a sedentary job that didn't require --

1 **MR. MARTIN:** And Rodriguez is page twenty-
2 three on line seven.

3 **COMMISSIONER BECK:** All right. Let's go.

4 **MR. MARTIN:** Yes, sir.

5 **MR. BEARD:** Is he going to answer it?

6 A. If I knew? No, I don't remember.

7 Q. You were asked about your coccyx fracture being the
8 beginning of your problems, as indicated by one of
9 the doctors. Were you aware that Dr. Savage-Jeter,
10 in response to Mr. Hagler's questions, testified
11 that your coccyx fracture would heal, the only
12 treatment would have been for pain, and that a
13 coccyx fracture wouldn't explain radicular
14 symptoms?

15 **COMMISSIONER BECK:** What page in the depo?

16 **MR. MARTIN:** I believe that's page 18,
17 Commissioner.

18 A. No, I wasn't aware.

19 Q. You testified that you thought you had had the MRI
20 in December, but looking at the APAs it appears on
21 page 79 that you actually underwent the MRI on
22 January the 23rd of 2013.

23 A. I remember I said that I thought it was December.

24 Q. And we previously talked to Mr. Brown about what he
25 knew and when he was advised of the MRI, and I

1 believe we pointed out on Zimmerman Exhibit 1, on
2 January 25th of 2013 that there was an email from
3 Joe Brown, update on employee, see medical folder.
4 Do you remember that discussion?

5 A. I don't remember.

6 Q. Were you aware that Nurse Zimmerman testified in
7 her deposition that she had --

8 **MR. BEARD:** Commissioner, with all due
9 respect, what -- I know what Al's trying to do,
10 he's trying to guide you to certain points in a
11 deposition. His client was not at the deposition.
12 And unless Al's going to represent that he read the
13 deposition to him there's no way he's aware, since
14 he's not aware of, apparently, anything -- this is
15 just not proper. And we're going to be here, again
16 -- because if he goes into this I've got to go into
17 too, we're going to be here for *ad nauseam*.

18 **COMMISSIONER BECK:** Why don't y'all just let
19 me read the depositions?

20 **MR. MARTIN:** Yes, sir. And I understand that.
21 My only point is Grady has gone into this on cross,
22 I'm just trying to point out the accuracies and
23 inaccuracies of his cross-examination related to
24 the specific depositions. I will provide you -- if
25 it's all right with you, I will provide you

1 transcript references.

2 **COMMISSIONER BECK:** That is perfectly fine.

3 **MR. BEARD:** I have no objections. I know
4 you're going to read the entire deposition so it
5 doesn't matter.

6 Q. How did you get here today?

7 A. My cousin brought me.

8 Q. And how did you get here, to Columbia, back on
9 May 23rd?

10 A. My cousin brought me.

11 Q. And why did your cousin bring you?

12 A. Because for traveling short distances I guess I
13 can, but when it comes to long trips my back
14 becomes numb. That's why I usually leave about two
15 hours before any appointment, so that I can go
16 ahead and rest and stop and stretch about an hour
17 into the trip. And, I don't know, I guess it's
18 just difficult for me.

19 I don't know if this comes into what you're
20 asking, but I'm also having problems with
21 incontinence because of my back being so bad. For
22 example, this morning I had to go back home,
23 because I think I wet my pants. I can't hold on
24 much with this if I don't go to the bathroom.

25 Q. On page 39 of the APAs there's a diagram.

1 **MR. BEARD:** Commissioner, before the
2 question's asked I'll go ahead and object. At no
3 point have I ever gone into this document in cross-
4 examination --

5 **COMMISSIONER BECK:** It's outside of the scope
6 of redirect.

7 **MR. MARTIN:** Commissioner, the -- where I'm
8 going with this question has to do with
9 Dr. Rodriguez's testimony regarding it on page 31
10 of his deposition, which has been gone into
11 extensively.

12 **COMMISSIONER BECK:** Thirty-one of his
13 deposition?

14 **MR. MARTIN:** Yes, sir, that's where I'm going
15 to be referring to.

16 **MR. BEARD:** I will represent to this Court
17 that I never once talked about page 31 of
18 Dr. Rodriguez's deposition.

19 **MR. MARTIN:** You --

20 **MR. BEARD:** In fact, I have highlighted every
21 page that was talked about.

22 **MR. MARTIN:** I'd agree that he did not discuss
23 page 31. What I'm saying is page 31 is what I'm
24 getting ready to refer to regarding this diagram.
25 Obviously, the testimony that Dr. Rodriguez makes

1 in one part of his deposition may not necessarily
2 be contracted on that exact same page.

3 **MR. BEARD:** Commissioner, that's why you get
4 to read it all and weigh it.

5 **COMMISSIONER BECK:** Is this a chart that was
6 done in Dr. Rodriguez's office?

7 **MR. MARTIN:** According to Dr. Rodriguez this
8 is a pain chart that the Claimant would have filled
9 out, and then all of the notes on there, according
10 to line 25, page 32, would be the PA's handwriting.
11 PA being his physicians assistant.

12 **COMMISSIONER BECK:** All right. I'll allow it.
13 Go ahead.

14 Q. I'm showing you page 39 of the APAs. Do you recall
15 completing this form with Dr. Rodriguez's office?

16 A. Yes.

17 Q. And the date at the top of this is January 4, 2013.

18 A. Yes.

19 **MR. BEARD:** Then, Commissioner, I need to
20 object, because he was never seen at
21 Dr. Rodriguez's office on January the 4th of 2013.
22 In fact, the representation that that's from his
23 office, I don't believe, is accurate. He didn't
24 see Dr. Rodriguez until well after January, in
25 fact, until February of 2013, and he didn't get a

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1 referral to Dr. Rodriguez until January, at the
2 end, of 2013 by Dr. Savage-Jeter. So I don't know
3 where this came from, I don't know what it is. I
4 do know that what we're doing, again, is outside
5 the scope. And it certainly can't be a document
6 from their office.

7 **MR. MARTIN:** Commissioner --

8 **COMMISSIONER BECK:** Well, it's attached -- it
9 appears to be attached --

10 **MR. MARTIN:** Commissioner, I can shed some
11 light on that. If you look on line 16 on page 31,
12 at the time of the prior -- at the time of this
13 deposition we had APAs from a prior hearing that we
14 were going to. This page, at that time was page
15 40, now it's page 39.

16 **COMMISSIONER BECK:** All right.

17 **MR. MARTIN:** If you look beginning there on
18 line 16, page 31 of Dr. Rodriguez's deposition it
19 says (As read): First of all I'm showing you a
20 diagram, which is page 40 of our APAs, and this is
21 dated January 4th of 2013.

22 **COMMISSIONER BECK:** All right.

23 **MR. MARTIN:** This is Dr. Rodriguez's office.
24 He says on the following two pages there that this
25 is a diagram that's filled out by the patient,

1 there are notes on there, the handwriting is -- (As
2 read): This is probably my PA's handwriting --
3 that's down on the bottom of page 32.

4 **COMMISSIONER BECK:** But you can see he had
5 never seen the Claimant up to this point.

6 **MR. BEARD:** Correct.

7 **MR. MARTIN:** Well, his -- on January 4th is
8 the date on the document, that's all I've asked him
9 so far.

10 **MR. BEARD:** He was never even referred to this
11 doctor's office until January the 29th by
12 Dr. Savage-Jeter. It's impossible that that could
13 be correct.

14 **COMMISSIONER BECK:** Well, it's not impossible
15 that the PA did it.

16 **MR. BEARD:** He hadn't even been to that office
17 yet. I think he's talking about Dr. Rodriguez's
18 physicians assistant.

19 **COMMISSIONER BECK:** How can that be?

20 **MR. MARTIN:** Well, it's my understanding that
21 he was -- my understanding is he was referred there
22 before that. His -- the testimony from Dr. Savage-
23 Jeter --

24 **COMMISSIONER BECK:** Show me a doctor's note
25 that proves that.

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1 **MR. MARTIN:** The testimony from Dr. Savage-
2 Jeter was that he was referred for the MRI and was
3 supposed to go to the MRI, but there was a delay
4 because of his insurance, and he should have had
5 the MRI back in November or December, but he didn't
6 end up getting it until January.

7 **COMMISSIONER BECK:** Well, the only references
8 you have in here to Orthopedic Specialties of
9 Spartanburg, which I assume is Dr. Rodriguez --

10 **MR. MARTIN:** Yes, sir.

11 **COMMISSIONER BECK:** -- is 1/4/13 to 11/20/13.
12 And 1/4/13 is the document we're talking about.

13 **MR. MARTIN:** Yes, sir.

14 **COMMISSIONER BECK:** So there are no references
15 to any exam by Rodriguez.

16 **MR. MARTIN:** No, sir. I'm not talking about
17 an exam, I'm talking about when this form was
18 completed and what Dr. Rodriguez -- maybe I'm
19 missing something. I apologize.

20 **COMMISSIONER BECK:** Mr. Beard's objection is
21 that the Claimant hadn't even been seen by
22 Dr. Rodriguez on January 4th of 2013. I'm trying
23 to confirm whether that's correct or not correct.

24 **MR. MARTIN:** Okay. He had not been into his
25 office yet.

1 **COMMISSIONER BECK:** So how would this have
2 been done --

3 **MR. MARTIN:** Because --

4 **COMMISSIONER BECK:** -- in that office.

5 **MR. MARTIN:** -- if you read through the
6 testimony he says that he would have seen the PA, I
7 believe on -- let me see if I can point you to it.

8 **COMMISSIONER BECK:** He said that he filled it
9 out on the 4th, but he never saw Rodriguez until
10 the 25th.

11 **MR. MARTIN:** Yes, sir. And on the 25th is
12 when his PA did all the notes on it.

13 **COMMISSIONER BECK:** Well, why is it listed as
14 the 4th?

15 **MR. MARTIN:** Because that's the date that's
16 written on the document.

17 **COMMISSIONER BECK:** Well, that doesn't make
18 any sense, Al.

19 **MR. MARTIN:** Well, Commissioner, if I said
20 that I had a document from a different date and it
21 says January -- I'm sorry, what...

22 **COMMISSIONER BECK:** I'm trying to understand
23 how this could have been done by anybody in
24 Rodriguez's staff on the date it is purported to be
25 done at the top left hand corner of page 39.

1 **MR. MARTIN:** Yes, sir. On page 32 of
2 Dr. Rodriguez's deposition, line 22, he says (As
3 read): Okay. He filled it out on the 4th, but
4 that's when he saw me, on the 25th. So the
5 Claimant filled out the form on January 4th and
6 provided it to Dr. --

7 **COMMISSIONER BECK:** So when did all these
8 notes show up on it?

9 **MR. MARTIN:** When, if you read on down it says
10 (As read): Okay. So this is probably my PA's
11 handwriting, because it's not mine. And he goes
12 into all the other stuff, as far as the PA. And he
13 testified previously in this deposition -- I can
14 refer you to that back on page 12 -- that the PA is
15 the first one who saw him. Actually, at page 11,
16 beginning on line 20, Dr. Rodriguez is talking
17 about his PA, who doesn't speak Spanish, does the
18 work up and asks the specific questions.

19 **COMMISSIONER BECK:** All right. What's the
20 point that you're trying to get to with this?

21 **MR. MARTIN:** Well, I think the last question I
22 asked was the date on this is January 4, 2013,
23 that's as far as I got.

24 **COMMISSIONER BECK:** All right. Let's go.

25 **MR. MARTIN:** Thank you.

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1 **MR. BEARD:** Well, I thought you just asked him
2 what the point was, and I haven't heard him tell
3 you the point of what the question is.

4 **COMMISSIONER BECK:** I'm going to allow him to
5 examine the witness.

6 Q. Okay. In February, when you saw Dr. Rodriguez for
7 the first time, the note that he has indicates that
8 they weren't sure what was the cause of your
9 problem at that time. But on this document isn't
10 it documented injury at work?

11 **MR. BEARD:** I object, there's no word at in
12 that. It just says injury, you can't read whatever
13 that is, and then it says work. I don't believe
14 that says at.

15 **MR. MARTIN:** I think that --

16 **MR. BEARD:** If you go read the actual typed
17 report it says that he complained of a progressive
18 problem, nothing specific, and no injuries by
19 accident.

20 **COMMISSIONER BECK:** All right. What I can
21 make out is injury, some other --

22 **MR. MARTIN:** It looks like an A with a circle
23 around it, which is the short hand symptom for at.

24 **COMMISSIONER BECK:** -- and then work lifting
25 slash progressive.

1 **MR. BEARD:** Which is what, if you go read the
2 typed report, which is specific -- there's a typed
3 report that says all of what I think he's trying to
4 do. This is not the doctor's report, this is a
5 physician assistant report. I think it's not
6 proper.

7 **MR. MARTIN:** The doctor testified the
8 physicians assistant is the one who took the
9 history --

10 **MR. BEARD:** I agree, but that's not proper for
11 you to now bring this up, because the physicians
12 assistant is not here to be cross-examined.

13 **MR. MARTIN:** It is proper if --

14 **MR. BEARD:** No, it's not. I object, I think
15 it's outside of --

16 **COMMISSIONER BECK:** Mr. Beard, if that were
17 the case none of the doctors records would come in.

18 **MR. BEARD:** If what were the case?

19 **COMMISSIONER BECK:** Why isn't a physicians
20 assistant's record permissible here today? Unless
21 I'm missing your objection.

22 **MR. BEARD:** I'm not objecting to the
23 permissiveness of the document. He's now going
24 into something I can't possibly cross-examine
25 somebody on, because they're not here and never

1 were a part of this case. And we've already been
2 through direct and cross, this is new.

3 **MR. MARTIN:** It's a medical provider. And the
4 medical provider's records are in the APAs without
5 objection.

6 **COMMISSIONER BECK:** Well, I am going to go
7 back to my original question. What's the point
8 you're trying to get to in this line?

9 **MR. MARTIN:** Well, Dr. Rodriguez's note says
10 that he didn't complain of a specific injury, there
11 was -- it was very -- as Grady, I think, attempted
12 to point out, Dr. Rodriguez's note seems to
13 indicate that there wasn't a specific injury, he
14 didn't know what caused this, it wasn't any mention
15 of work --

16 **COMMISSIONER BECK:** And you deposed
17 Dr. Rodriguez and had a right to examine, and
18 cross-examine, and reexamine --

19 **MR. MARTIN:** Yes, sir, we did. And --

20 **COMMISSIONER BECK:** You didn't have that
21 opportunity with the physicians assistant and
22 neither did he.

23 **MR. MARTIN:** Well, he could have deposed the
24 physicians assistant, also. But the fact that the
25 physicians assistant -- that's like if my nurse

1 completed a form are we suppose to depose the
2 nurse, too?

3 **COMMISSIONER BECK:** No, my point is, that
4 record will speak for itself.

5 **MR. MARTIN:** Yes, sir. And all I'm doing with
6 this question is pointing out that there is a
7 discrepancy --

8 **COMMISSIONER BECK:** You have pointed it out.
9 Let's move on.

10 **MR. MARTIN:** Thank you.

11 Q. Has any doctor ever placed you at maximum medical
12 improvement?

13 A. No.

14 Q. Do you know what that means?

15 A. No.

16 Q. Okay. Has any doctor ever told you that you're as
17 good as you're going to get -

18 **MR. BEARD:** Commissioner, I would object,
19 because he's asking for hearsay. The doctor would
20 need to be here to testify to that --

21 **COMMISSIONER BECK:** No, I'm going to allow
22 that question.

23 Q. Has any doctor ever told you that you're as good as
24 you're going to get and that you're not going to
25 have any improvement with additional treatment?

1 A. No.

2 MR. MARTIN: Okay. That's all the questions I
3 have.

4 COMMISSIONER BECK: Anything further,
5 Mr. Beard?

6 RECROSS-EXAMINATION

7 BY MR. BEARD:

8 Q. Mr. Jimenez, you had every opportunity if you
9 needed to speak with Dr. Rodriguez to clarify
10 anything in Spanish, correct?

11 A. Yes, but also remember that when the doctor comes
12 in he's only going to spend with you a few moments.

13 Q. You always have an explanation for every answer you
14 give, Mr. Jimenez, why is that, why can you not
15 just answer a question yes or no?

16 A. Because a simple yes or no can be very broad, but
17 an explanation is more precise.

18 Q. Is it your testimony, as you just expressed, I
19 believe, to the Commissioner, that you had no idea
20 that the doctors who have treated you may have
21 indicated if you have restrictions. Are you
22 testifying under oath here today that your
23 attorney, who was involved in these depositions in
24 August of 2013, has never advised you that these
25 doctors have indicated that you needed some sort of

1 restrictions?

2 **MR. MARTIN:** I'm going to object to anything
3 that I communicated to my client.

4 **COMMISSIONER BECK:** I agree.

5 **MR. BEARD:** I'll ask a different question.

6 **COMMISSIONER BECK:** Thank you.

7 Q. Is it your testimony in August of 2013 when these
8 two doctors were deposed that you've never been
9 informed that you had some sort of restriction or
10 process -- or issue by anyone in the world?

11 **MR. MARTIN:** Same objection. Is that -

12 **COMMISSIONER BECK:** Ask the question again,
13 Mr. Beard.

14 **MR. BEARD:** Yes, sir.

15 Q. Is it your testimony that since August of 2013,
16 when these two doctors' depositions were taken,
17 you've never been made aware that you have two
18 doctors who've indicated that there may be some
19 restrictions that you need to follow.

20 **MR. MARTIN:** Same objection. I believe it
21 calls for the same information.

22 **COMMISSIONER BECK:** No, I think it's different
23 enough. I'm going to allow him to answer it.

24 A. I didn't talk with them about my work, I spoke with
25 them about my health, so, no, I don't think so.

1 Q. You testified earlier when I asked you questions
2 about when you had your MRI scan, you said you
3 thought it was in December and that you advised the
4 plant two weeks or so before the MRI scan. Yet,
5 when your lawyer stood up and asked you and pointed
6 out to you that your MRI scan was actually on
7 January the 23rd of 2013 he also pointed out to you
8 that you didn't tell anyone at Kohler before hand,
9 in fact, he relied on an email that said they first
10 were aware of an MRI by way of email from Joe Brown
11 on January 25, 2013. How did that answer change?

12 MR. MARTIN: Commissioner, I'd have to object,
13 because that's a complete misrepresentation of what
14 I said. In fact, I pointed out testimony from
15 Nurse Zimmerman where she said that Joe Brown sent
16 an email about the MRI being recommended. So if
17 the MRI was recommended that had to have been
18 before the MRI had occurred. That was page 27 of
19 her deposition that I pointed out. So, no, I never
20 said that he didn't tell anybody beforehand. He
21 obviously told Joe Brown beforehand and Joe Brown
22 sent an email out about it.

23 MR. BEARD: I don't remember any of that. So
24 he's now telling you something that if he said it I
25 didn't hear it that way. And that's --

1 **COMMISSIONER BECK:** All right. Ask the
2 question.

3 **MR. BEARD:** My question was, he testified
4 under cross-examination that he notified Kohler two
5 weeks or so before the MRI scan in December of --

6 **COMMISSIONER BECK:** On cross-examination?

7 **MR. BEARD:** Yes, sir.

8 **COMMISSIONER BECK:** My notes don't reflect
9 that. My notes reflect that he said he had an MRI
10 on 12/12 to the low back.

11 **MR. BEARD:** Right.

12 **COMMISSIONER BECK:** And first told Kohler a
13 few days before the MRI.

14 **MR. BEARD:** Okay. I thought he said a couple
15 of weeks subsequent to that.

16 **COMMISSIONER BECK:** That's what my notes say.

17 **MR. BEARD:** Okay.

18 **COMMISSIONER BECK:** And he didn't tell them it
19 was workers' comp related because he didn't --
20 quote, didn't know what he had.

21 **MR. BEARD:** I think the interpreter just shook
22 his head that the Claimant said what I said, with
23 all due respect.

24 **COMMISSIONER BECK:** All right.

25 **MR. BEARD:** He said it was a couple

1 before.

2 **COMMISSIONER BECK:** Okay. I'll change my note
3 then and verify it in the transcript.

4 Q. My point is, how did your testimony change when
5 Mr. Martin stood up and pointed out a different set
6 of facts, why did the testimony change?

7 A. If you remember correctly, I said that it was
8 approximately about halfway through December, and I
9 even said, if I remember correctly. Because I do
10 remember where I did tell both my co-workers and my
11 boss that it was about a week or two before I went
12 to the appointment. But if you recall, again, I
13 said, if I remember correctly. So I can't say
14 exactly when was it that I told them about that.

15 Q. When you reference your boss your referencing Sam
16 Barnwell, you're not referencing Joe Brown, are
17 you?

18 A. Well, when I say bossman I guess I'm referring to
19 all of them there. Because whenever you speak to
20 your boss their the ones who are supposed to talk
21 with each other so that they can take any action
22 needed.

23 Q. Which boss were you talking about, Mr. Jimenez?
24 You know what my question is. Which boss were you
25 talking about?

1 A. If I remember correctly it could have been Sam
2 Barnwell. I don't remember if I told Joe Brown as
3 well.

4 Q. You testified you got here today with your cousin
5 and that's also the way you got here the first time
6 we were in Columbia for your hearing, correct?

7 A. Yes.

8 Q. And you said that he brought you because of
9 something about long trips make you numb, but you
10 don't have a drivers license, correct?

11 A. Yes, but one thing doesn't have to do with the
12 other.

13 Q. Does your cousin have a drivers license?

14 MR. MARTIN: I'm going to object to the
15 relevance.

16 COMMISSIONER BECK: Sustained.

17 Q. You testified that long trips make you numb and you
18 talked about an incontinence issue a moment ago,
19 Mr. Jimenez, would you admit under oath that we
20 have now, for the last two days, been in hearings
21 that have lasted approximately nine hours and I
22 think you've only stood up three times to take
23 breaks during that period of time, is that not
24 true.

25 MR. MARTIN: I would object, Commissioner.

1 We've had more breaks than that and he's stood up
2 for every one of them. I think the record would
3 reflect how many breaks we've taken.

4 **COMMISSIONER BECK:** I'll let him answer the
5 question as best he can.

6 A. As far as the numbness is concerned. Well, I can
7 tolerate it because I don't feel it, and because I
8 don't feel it I'm not going to come here to cry
9 about it, because this is something that I'm very
10 interested in and I want to see that it's finished.

11 As far as the incontinence, I'll let you know
12 that I didn't eat or drink anything yesterday, nor
13 today, to prevent me from having any accidents.

14 Q. You didn't answer my question. My question was,
15 we've been in hearings for two days now for about
16 nine hours, you've apparently driven to Columbia
17 for a couple of hours, at no times, other than the
18 times we've taken a break, have you stood up, is
19 that correct?

20 **MR. MARTIN:** And I would just note for
21 purposes clarification, he said he's driven to
22 Columbia a couple of times. He's already testified
23 he did not drive, he rode to Columbia a couple of
24 times.

25 **MR. BEARD:** I'll, with that crack --

1 **COMMISSIONER BECK:** Thank you.

2 A. Correct.

3 Q. My last question, Mr. Jimenez. Is there a reason
4 you can't look me or anyone else in the eye when
5 you answer our questions?

6 A. There is no reason for that, sir. If it's
7 disrespectful for me not to look you in the eye
8 then I apologize. And if you think I can -- if
9 you're allowing me to look at you to your face then
10 I will do that.

11 **MR. BEARD:** That's all I have.

12 **COMMISSIONER BECK:** Anything further?

13 **MR. MARTIN:** No, sir.

14 **COMMISSIONER BECK:** Any other witnesses on
15 behalf the Claimant?

16 **MR. MARTIN:** No, sir.

17 **COMMISSIONER BECK:** Any rebuttal witnesses on
18 behalf the Defendants?

19 **MR. BEARD:** No, your Honor.

20 **COMMISSIONER BECK:** Anything else I need to
21 deal with administratively, Mr. Martin?

22 **MR. MARTIN:** I just have the transcript
23 references I'd like to hand up.

24 **COMMISSIONER BECK:** All right. You can do
25 that. And there's still the nurse records due

1 Friday close of business, the --

2 **MR. MARTIN:** Valderamma transcript.

3 **COMMISSIONER BECK:** -- Valderamma hearing
4 transcript, same thing, close of business Friday,
5 and then the validation of the Social Security
6 Number that I'm waiting on --

7 **MR. MARTIN:** Yes, sir.

8 **COMMISSIONER BECK:** And I need a report on
9 that by close of business Friday.

10 **MR. MARTIN:** A report, yes, sir. I'm going to
11 try and have that addressed and to you by then, but
12 just in case, I will definitely let you know where
13 we are on it.

14 **COMMISSIONER BECK:** All right. That will
15 conclude this proceeding.

16 *****

17 (Whereupon, the hearing was concluded at 2:40 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did hear the matter of **Jose Jimenez v. Kohler Company**, Workers' Compensation File No. 1122474 and 1219561 on Wednesday, June 4, 2014, in Columbia, South Carolina, before the Honorable T. Scott Beck;

That the witness(s) were duly sworn under pains and penalties of perjury to testify to the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand this 28th Day of June 2014.

/s/ Christine Tatum

Christine Tatum
Notary Public For South Carolina
My Commission Expires December 29, 2021

SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
COUNTY OF SPARTANBURG
WCC FILE NO. 0626795

JESUS LUGO,

Claimant,

VS.

KOHLER COMPANY,

Employer and Self-Insured.

COPY

DEPOSITION OF JESUS LUGO

DATE TAKEN: October 30, 2007
TIME BEGAN: 9:10 a.m.
TIME ENDED: 10:50 a.m.
LOCATION: Harrison, White, Smith & Coggins
Spartanburg, South Carolina

REPORTED BY:

Elaine L. Grove, RPR
Registered Professional Reporter
Notary Public for South Carolina



APPEARANCES:

JEREMY DANTIN, ESQUIRE

Harrison, White, Smith & Coggins, P.C.

178 West Main Street

Spartanburg, South Carolina 29306

..... On Behalf of the Claimant

RUSSELL T. INFINGER, ESQUIRE

Nexsen, Pruet, LLC

201 West McBee Avenue

Suite 400

P.O. Drawer 10648

Greenville, South Carolina 29603

..... On Behalf of the Employer-Insurer

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

NONWAIVER: Examination and reading of the deposition are not waived by the witness and by the parties.

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(No Exhibits Introduced)	

1 JENNY RESTREPO, Spanish interpreter, was duly sworn.
2 JESUS LUGO, being duly sworn, testified through the
3 interpreter as follows:

4 EXAMINATION BY MR. INFINGER:

5 Q Good morning, Mr. Lugo. I am Rusty Infinger, and I
6 am here to take your deposition in the workers'
7 compensation case that you filed against Kohler
8 Company. Is this your first deposition?

9 A Yes.

10 Q Okay. I know your lawyer has talked to you about
11 what a deposition is, but let me tell you a few
12 rules about what I want you to do here this morning.
13 First of all, this is sworn testimony and to be
14 treated just like you're in court, testifying. Do
15 you understand that?

16 A Yes.

17 Q And do you understand that if you lie at this
18 deposition, it's just like lying in court and you
19 could be subject to certain civil and criminal
20 penalties?

21 A Yes.

22 Q Okay. Now, while I am taking this deposition, if I
23 ask you a question that you don't understand,
24 whether it's a translation issue or you just don't
25 understand the question, you need to stop me and

1 tell me, "I don't understand."

2 A That's fine.

3 Q If you do not ask me to repeat the question or tell
4 me you don't understand it, we are going to assume,
5 for the purposes of this deposition, you do
6 understand the question and your answer will be in
7 response to that question.

8 A That's fine.

9 Q Okay. Are you still working for Kohler?

10 A Yes.

11 Q And you're working there right now?

12 A No.

13 Q When is the last time you worked there?

14 A Second of May I stopped working.

15 Q All right. After May 2, who have you worked for?

16 A No one.

17 Q Why did you leave Kohler on May 2?

18 A Because the physical therapist recommended and
19 suggested that I could not lift more than 20 pounds,
20 and also I cannot bend continuously.

21 Q Okay. Do you know the name of the therapist that
22 gave you that restriction?

23 A Finley.

24 Q And which doctor sent you to Finley for physical
25 therapy?

1 A Dr. Christian Nowatka.

2 Q And who sent you to Dr. Nowatka?

3 A He is my family doctor.

4 Q Did anybody from the plant over at Kohler tell you
5 to see Dr. Nowatka?

6 A No.

7 Q Okay. Since May 2nd, and it's now October the 30th,
8 have you not had any income?

9 A Yes.

10 Q And what income have you had since May 2nd?

11 A Short-term disability.

12 Q And how much are you receiving in short-term
13 disability?

14 A I only received it for four months, and it has been
15 two months that I haven't received anything. It's
16 about 2, \$203, \$204 per week.

17 Q So in the last two months, which would be September
18 and October, you don't have any income?

19 A No.

20 Q Okay. So how are you living?

21 A Some savings that I had.

22 Q Do you have any plans to return to work?

23 A I want to just ask a question. When you asked the
24 last question, you said how am I living, are you
25 talking moneywise?

1 Q Yes. And now my question is do you have any plans
2 to return to work?

3 A I would like to.

4 Q When was your last medical appointment either to the
5 physical therapist or the doctor?

6 A Last appointment that I had, which was surgery, was
7 the 17th of October. I haven't had an appointment
8 after that. But I do have a follow-up appointment
9 the 5th of November.

10 Q Who was the surgery with?

11 A Dr. Christopher Chittum.

12 MR. DANTIN: C-H-I-T-T-U-M.

13 MR. INFINGER: Let's go off the record.

14 (Discussion Off The Record)

15 BY MR. INFINGER:

16 Q Mr. Lugo, I want to talk with you a minute about
17 this accident. First of all, when did you get hurt
18 over at Kohler?

19 A The first one or the second one?

20 Q Let's start with the first one.

21 A August the 7th of 2005.

22 Q And when was the second one?

23 A The 3rd of October of 2006.

24 Q All right. Let's talk about the first one on
25 October 7, 2005. What day of the week was that?

1 A I was carrying some toilets and I was going to put
2 them on to a rack, and that's when my foot slipped,
3 and then I felt pain on the side of my body.

4 Q What day of the week was that?

5 A Sunday, at 1 a.m. in the morning, because I work at
6 night.

7 Q What were your hours back then? What was your
8 shift?

9 A I arrive at 5:42, but my shift start at 6:00 p.m.
10 that night and ended at 2:30 in the morning the
11 following day.

12 Q And were you a caster or what was your position?

13 A Caster.

14 Q All right. Now, on August the 7th, when you put
15 this toilet on the rack and your foot slipped, did
16 you fall?

17 A No. Actually, I was carrying the toilet, trying to
18 put it on to the rack. And then my foot slipped and
19 then I put the toilet on the rack, and that's when I
20 felt the pain.

21 Q Which foot slipped?

22 A Right (indicating).

23 Q Okay. And you pointed to your right side. Was it
24 on the side or back or where did you feel the pain?

25 A In the back.

1 Q So the only place you felt pain was in your back?

2 A In the back.

3 Q In what part of the back did you specifically feel
4 pain?

5 A A little bit above the waist.

6 Q Was it in the middle or on one side or both?

7 A One side.

8 Q And that's on the right side?

9 A Yes.

10 Q But you didn't have any pain in your leg or anywhere
11 else in your body except for the back, above the
12 waist, toward the right side?

13 A At that moment, yes. But after I started to cool
14 down, then I started to feel pain. And after I
15 started to cool down, after I started to stop
16 working, that's when I felt that I couldn't walk or
17 move.

18 Q And what was keeping you from walking and moving?

19 A I felt pain in my back.

20 Q So there wasn't pain anywhere else, just the back?

21 A Yes.

22 Q Were you able to leave the plant by walking out or
23 did someone have to carry you out on a stretcher or
24 wheelchair or what?

25 A I walked.

1 Q How did you go from you couldn't walk or move to
2 walking out of the plant?

3 A I couldn't really move, but I was able to walk.

4 Q Did anybody see this accident happen?

5 A Yes. Well, actually, a co-worker didn't see it, but
6 I told him that I had the accident.

7 Q So no one saw it.

8 A No.

9 Q Which co-worker did you tell it had occurred?

10 A I really don't know his name or what they call him,
11 but I know him as Lauro Martinez.

12 Q And what did he look like?

13 A He is short, a little chunky.

14 Q Is he Caucasian, African-American, American,
15 Hispanic?

16 A Hispanic. And he is really not dark-skinned. He is
17 more kind of white.

18 Q And I am assuming he speaks -- Mr. Martinez, he
19 speaks Spanish, so you were able to communicate with
20 him?

21 A Yes.

22 Q Did you tell anybody else about it other than your
23 co-worker, Lauro Martinez?

24 A No.

25 Q You didn't tell your supervisor?

1 A I went to go tell my supervisor but I couldn't find
2 him. Usually the supervisors would leave around
3 1:00 in the morning. They would say that they
4 worked hours, but usually they would leave at 1:00
5 in the morning and leave us by ourselves.

6 Q Who was your supervisor on this day?

7 A My supervisor, that day, was Tyrone Croon. But he
8 actually didn't go in that day, so standing in for
9 him was Neftali Sandoval.

10 Q Can you spell either or both of those names?

11 A No, I can't spell it.

12 MR. INFINGER: You're saying Neftali?

13 THE INTERPRETER: Neftali Sandoval. I can spell it for
14 you.

15 MR. INFINGER: Do you want to give it a shot?

16 THE INTERPRETER: The last name is S-A-N-D-O-V-A-L.

17 BY MR. INFINGER:

18 Q So Mr. Sandoval was there because Mr. Croon was
19 absent that day?

20 A Yes.

21 Q And your testimony is that Mr. Sandoval left at
22 1 a.m. and this accident occurred prior to that?

23 A The accident occurred -- no. The accident occurred
24 a 1:30 in the morning. And when I went to go look
25 for him at his office, he wasn't there.

1 Q Okay. Did you have somebody who was your foreman or
2 was Mr. Sandoval considered your foreman?

3 A In that moment, Mr. Sandoval was a supervisor.

4 Q I know over at Kohler they call a certain group of
5 people as supervisors and then another group of
6 people as foremen. What I am asking is who did you
7 consider your boss, the guy that was in charge of
8 you on the day that this accident occurred?

9 A I don't remember.

10 Q Well, if you went to look for Sandoval, I am
11 assuming you felt that he was the person that you
12 needed to report the accident to.

13 A In that moment, that day, yes.

14 Q Okay. So the only person that knew about the
15 accident was Mr. Martinez. You left the plant, and
16 only you and he were aware that your foot had
17 slipped and your back was painful to the point that
18 you couldn't move but you could walk.

19 A I didn't tell you actually that it was really so
20 much painful that I really couldn't actually move or

21 walk. What I said was that when I started to stop
22 working and then I got really cold, started to cool
23 down, basically my legs started to hurt but I was
24 able to walk.

25 Q The only person that knew about the accident at the

1 time you left the plant were you and Mr. Martinez?

2 A Yes.

3 Q All right. Did you ever tell anybody else about it?

4 A No.

5 Q So, to this day, the only person that knows about
6 the accident that happened on August 7, 2005 are you
7 and Mr. Martinez.

8 A My bossman also knew, because when I returned to
9 work on Monday I informed my bossman.

10 Q And who was that?

11 A Tyrone Croon.

12 Q When you told Mr. Croon, on Monday, that you had
13 hurt yourself, did you fill out or did he complete
14 any kind of accident report?

15 A No.

16 Q Did you go to the medical department?

17 A No. He actually told me that he called the
18 insurance company to report the injury, and he told
19 me that the insurance company said that they weren't
20 going to be responsible for the accident.

21 Q So you're saying, Mr. Croon called the insurance
22 company concerning the August 2005 accident?

23 MR. DANTIN: Object to form. Go ahead.

24 A That's what he told me.

25 Q All right. Did you talk to anybody else about it

1 other than that conversation with Mr. Croon, on
2 Monday after you returned to work, following the
3 accident on Sunday?

4 A I also informed a gentleman that's Colombian.

5 Q What's his name?

6 A I believe it's Mario Franco.

7 Q Is he a supervisor or co-worker?

8 A Co-worker.

9 Q Did you ever go to the doctor for this accident?

10 A Chiropractor William Field.

11 Q Did you see anybody besides Chiropractor William
12 Field for this accident?

13 A My family doctor.

14 Q And we are still on the August 5 accident. Are you
15 clear on that?

16 A The first one, yes.

17 Q So the chiropractor, Dr. William Field, and your
18 family doctor, Dr. Nowatka, are the two doctors for
19 the '05 accident?

20 A That time the doctor that attended or assisted me
21 was Dr. Eric Cole.

22 Q Is he in Dr. Nowatka's office?

23 A Yes.

24 Q And repeat that. Eric --

25 A Eric Cole.

1 Q How many times did you see Dr. Cole or go to the
2 office of Cole and Nowatka?

3 A I don't remember very well, but I did go at least
4 one time.

5 Q Did you get any kind of restriction about not being
6 able to work?

7 A No.

8 Q okay. Did you tell the doctor that you were injured
9 at work?

10 A Yes.

11 Q Do you remember how many times you went to the
12 chiropractor?

13 A I went for about four to six weeks, somewhere around
14 there.

15 Q And is William Field here, in Spartanburg?

16 A Yes.

17 Q Do you know what his address is, what street he is
18 on?

19 A No. Previously, he was kind of towards Inman, but
20 now he is towards Blackstock Road.

21 Q But still in Spartanburg, as far as you know?

22 A Yes.

23 Q Okay. So once you had the accident on that Sunday
24 did you miss any time from work concerning the
25 August 2005 accident?

1 A Yes.

2 Q How much time and from when to when?

3 A The accident occurred on the 7th. I didn't go to
4 work that 8th and 9th. I believe I was out possibly
5 six weeks. I don't remember exactly when I
6 returned. I believe it was either September 29th or
7 August the 29th.

8 Q Did you get short-term disability for that accident?

9 A Yes.

10 Q And who paid for the medical bills?

11 A I did.

12 Q So it wasn't your health insurance that paid. You
13 paid for them personally?

14 A My insurance and then I paid the co-pays.

15 Q Okay. Was there any other medical treatment besides
16 the chiropractor, Dr. Fields and the office of your
17 family physician and Dr. Cole that you saw as a
18 result of the August 7th, '05 accident?

19 A No.

20 Q All right. You said you didn't work the 8th or the
21 9th, but you did tell me earlier that your boss knew
22 because you went to work on Monday and you told him.
23 A Yes. The 8th of August I went to inform my bossman.
24 Q So you just went and told him. You didn't actually
25 work that day.

1 A I reported to work that Monday, which I believe was
2 the 8th of August, to report the injury to my
3 bossman. And that's when he told me that he called
4 the insurance company to inform them about the
5 injury, but they said they weren't going to be
6 responsible. And that's when he told me to go home
7 and bring back the doctor excuse to tell him how
8 long I was going to be out.

9 Q How did he call the insurance company about the
10 accident if you had just told him about it when you
11 got there?

12 MR. DANTIN: Object to form.

13 A I don't know.

14 Q So let me get this straight. You said, to your
15 supervisor on Monday, "I hurt myself on the job
16 Sunday," and his reply back to you was, "Well, I
17 called the insurance company and they are not going
18 to cover it?" Is that how it went?

19 A No. He actually told me to walk around the job
20 site, walk around; that he was going to make the

21 call.

22 Q So how much time were you there, total, that Monday?

23 A Around two hours. Somewhere around there.

24 Q And from what time to what time?

25 A I reported to work at 5:40, and I think I was there

1 until around 6:30, a little bit after 7.

2 Q And that's a.m.?

3 A In the evening.

4 Q So after you had your injury on August 7th, you then
5 returned to work, I believe your testimony was, on
6 September 29. Is that correct?

7 A I can't give you an exact date because I really
8 don't remember. I know I was out for about four,
9 six weeks, but I can't really give you a specific
10 date.

11 Q But when you returned to work following that
12 accident in August of 2005, you worked continuously
13 until the time you had your second accident on
14 October the 3rd of 2006. Is that correct?

15 A Yes.

16 Q And when you returned to work following that August
17 accident, did you go right back to work as a caster?

18 A Yes.

19 Q Did you have any restrictions?

20 A No.

21 Q Okay. And then when you did return to work after
22 that accident, was Mr. Tyrone Croon still your
23 supervisor?

24 A Yes.

25 Q All right. So nothing happened to you. Everything

1 was good until October the 3rd of 2006. Is that
2 right?

3 A Yes.

4 Q You were doing your job without any pain, without
5 any problems, without any complaints?

6 A Yes.

7 Q All right. Then tell me about what happened on
8 October the 3rd, 2006.

9 A Excuse me. May I get up for awhile?

10 Q Sure. Anything you need to do to be comfortable,
11 that's fine. If you need to take a break, take a
12 break. If you want to stand up or walk around, go
13 right ahead.

14 Let's talk about that October 3rd, 2006 accident.
15 What happened?

16 A I was helping a co-worker turn over the molds, and
17 then that's when I felt a sharp pain in my back.

18 Q Okay. And tell me what day of the week and what
19 time of day did this accident occur?

20 A I believe it was Tuesday. I believe the 3rd was
21 Tuesday, and it occurred around 10:00 p.m.

22 Q Okay. Now, were you still on that shift that
23 started at 6:00 p.m. to 2:30 a.m., working as a
24 caster at the time of the October '06 accident?

25 A Yes.

1 Q Who was the co-worker that you were helping when you
2 had your back injury?

3 A Francisco Rizo.

4 Q How do you spell that?

5 A R-I-Z-O.

6 Q Okay. Did Mr. Rizo see any injury when that
7 occurred?

8 A At that moment my bossman was walking by, and I
9 informed my bossman. And so since I was informing
10 my bossman, Mr. Rizo also heard.

11 Q And who was the bossman?

12 A Right then and there, at that moment, it was Neftali
13 Sandoval.

14 Q Where was Mr. Croon?

15 A They fired him. And I don't know the reason why.

16 Q So Sandoval became your supervisor and was your
17 supervisor at the time of the October 3, 2006
18 accident?

19 A Yes.

20 Q And what did you tell Mr. Sandoval?

21 MR. DANTIN: Let's go off the record for a minute.

22 (Recess in Proceedings)

23 MR. INFINGER: Go ahead and repeat the question.

24 (Thereupon, the requested portion of the record was read
25 by the court reporter)

1 A I had told him, informed him that I felt pain in my
2 back when I was turning the mold; also that I felt
3 numbness and burning in my legs, and also I felt
4 kind of a hot sensation underneath my feet.

5 Q And where, in your back, was this pain?

6 A Above the waist.

7 Q So it was about the same place that you felt pain
8 when you had the August 2005 accident?

9 A I felt that it was a little bit higher.

10 Q A little bit higher in '06?

11 A Yes, a little higher on my back.

12 Q And was it both legs or one leg that felt numb?

13 A Both.

14 Q And did both feet feel hot?

15 A Yes.

16 Q Okay. What did Mr. Sandoval do when you told him
17 this?

18 A He told me that he was going to fill out a report.
19 For me to continue working and for me to report at
20 9 a.m. the next day with the nurse.

21 Q So did you complete your shift that night?

22 A Yes.

23 Q And did you return at 9:00 the next morning to see
24 the nurse?

25 A Yes.

1 Q And tell me about -- let me back up. Was there
2 anybody else at the plant on the evening of October
3 3, '06 when you had your accident, that knows about
4 the accident, other than Mr. Rizo, your co-employee,
5 and Mr. Sandoval, your supervisor?

6 A Yes. My other co-workers.

7 Q And who were they?

8 A Lauro Martinez. I don't know the name of this
9 gentleman, but his last name is also Franco. And
10 Robert Hall, an African-American. And also several
11 co-workers that also knew about it, but I don't know
12 their names.

13 Q Tell me what happened when you saw the nurse the
14 next morning.

15 A I told her that I felt really bad; that I had back
16 pain and I also had pain in my legs. And the only
17 thing they offered or gave me was cream and also
18 pain medicine. And she told me not to shower that
19 day.

20 Q Did you tell her you had been injured on the job?

21 A Yes.

22 Q Okay. And what did she say about that?

23 A She only told me that she was going to forward the
24 report over to Neftali Sandoval and that they were
25 going to give me a couple days of light duty.

1 Q Did you ask her or did she offer to send you to a
2 doctor?

3 A I informed her that I felt really bad and that I
4 possibly needed to see a doctor, and she just
5 responded that she thought it was only the muscles.

6 Q Did anybody at Kohler ever send you over to a
7 doctor?

8 A No.

9 Q Okay. So did you end up doing light duty after
10 that?

11 A They had me create one piece, with one lid, for
12 three days. That was it.

13 Q And would you consider that light duty?

14 A Yes. For how I was at that moment, yes.

15 Q And then after three days did you not work?

16 A I returned to work again.

17 Q At regular duty or doing something different?

18 A Doing the same thing.

19 Q Light duty or regular duty?

20 A Regular duty.

21 Q And did you continue your regular duty until May
22 2nd?

23 A Yes.

24 Q Okay. And on May 2nd, if I understand it correctly,
25 that's when the physical therapist wrote you out of

1 work?

2 A Basically, what happened was, again, my physical
3 therapist recommended for me not to bend a lot and
4 also not to lift anything heavy. He sent me, asking
5 me to go see my family doctor, and that's when I
6 told my family doctor that my physical therapist
7 told me that I should not bend continuously or lift
8 anything heavy. Also, the physical therapist told
9 me to ask my doctor if he could recommend light work
10 or ask them to change my position. And so I asked
11 the doctor if he could give me an excuse or note
12 stating that and he did. He gave me an excuse, a
13 note stating that the physical therapist recommended
14 change of position due to the fact that I could not
15 bend or lift anything heavy.

16 Q All right. Now, after this occurred on October 3rd
17 of 2006 and until you went out of work on May 2nd
18 were you -- I understand that you were doing the
19 regular-duty work as a caster in that time frame.
20 Correct?

21 A Yes.

22 Q okay. Did you have any kinds of other accidents at
23 work between this event that occurred on October 3rd
24 and going out of work on May 2nd?

25 A No.

1 Q Okay. Did you have an accident or have any injury
2 outside of work, like in your home or in a car or in
3 a store or on the street?

4 A From which time to which time?

5 Q From the accident on October 3rd until being out of
6 work on May 2nd.

7 A No.

8 Q Have you had any accidents anywhere since May 2nd?

9 A No.

10 Q Have you had anymore communication or conversations
11 with Kohler since that last discussion with the
12 nurse after the injury?

13 A About three, four weeks ago I returned to report at
14 work because they asked me to drop off a doctor
15 report or doctor excuses. And that's when I saw the
16 nurse, and she asked me how I felt and I informed
17 her.

18 Q Did you ever talk to anybody in the human resources
19 department, such as Mr. Devaul or anybody else in
20 human resources about either of these accidents?

21 A Yes.

22 Q Who?

23 A Sid Devaul.

24 Q When did you speak with Sid Devaul?

25 A In regard to the first injury, I spoke with him

1 because I returned to give them my doctor's excuse.
2 For some reason, they couldn't find the doctor's
3 excuse at the office. In regards to the second
4 injury, I talked to him because I was out of work
5 the 3rd, 4th, 5th and 6th. And then on Friday,
6 which was the 6th, he e-mailed my bossman saying if
7 I was not able or capable of doing my work, then I
8 no longer had a job there. So that's when I
9 returned on Monday to talk to him.

10 Q To talk to Sid or talk to the boss?

11 A Sid.

12 Q And did you actually speak to him, Mr. Duvaul, when
13 you returned after that time frame?

14 A Yes, with Mr. Duvaul, and also Jessica. I don't
15 know her last name.

16 Q Tell me about the conversation you had with them.

17 A I actually asked him -- in regards to him trying to
18 fire me, I asked him why was he trying to fire me,
19 knowing that I was injured on the job.

20 Q And what did he say?

21 A He didn't say anything. He just told me that he had
22 already spoken to the doctor, and the doctor told
23 him that I was not able to lift anything more than
24 20 pounds and so that they didn't have a position to
25 give me. And he told me that they would call me if

1 they had a position that was easier, light duty, and
2 the only thing that they could pay me was the
3 short-term disability.

4 Q so you have not been fired or terminated, because
5 you still have medical insurance. Right?

6 A Yes.

7 Q okay. Did you ever talk to Mike Tolleson?

8 A No.

9 Q Anybody else besides Sid Devaul and Jessica, the
10 nurse, and Mr. Sandoval that would be people you
11 talked to about the accident or knew something about
12 the accident other than your co-employees?

13 A Rachael.

14 Q And where is Rachael? What department is she in?

15 A I don't know which department. I don't know if she
16 is where Mr. Pearson is. I don't know if that's the
17 department where they hire people.

18 Q Did you go to talk to her in person?

19 A Yes.

20 Q And is her office near Devaul's office in human
21 resources or somewhere else?

22 A Close.

23 Q Close to Devaul?

24 A Yes.

25 Q And all you know is her name is Rachael?

1 A Yes.

2 Q And what did y'all talk about?

3 A Basically, we talked about my surgeries, problems
4 that I had in my back. Also, she would ask me for
5 my doctor's report because she was the one that
6 basically would give me my short-term disability. I
7 would ask her when I would be able to return to work
8 or if I still had my position, and she said she
9 didn't know; that she had to talk to someone else.

10 Q Okay. And just to make sure I am clear, the doctors
11 that you have seen for the October '06 accident
12 include your family doctor, Dr. Nowatka, a referral
13 he made to Finley Physical Therapy, and then the
14 surgery you had with Dr. Chipman. Did I get that
15 right?

16 MR. DANTIN: It's Chittum.

17 A I also saw a specialist by the name of Paul Zortea.

18 Q And whose office was he in?

19 A Neurology.

20 MR. DANTIN: Zortea is Z-O-R-T-E-A, Neurology Centers
21 of the Carolinas.

22 MR. INFINGER: Is that here, in Spartanburg?

23 MR. DANTIN: I am not familiar.

24 THE WITNESS: He has an office here, near Daniel
25 Morgan.

1 BY MR. INFINGER:

2 Q Okay. So as it stands now, you had your surgery on
3 October 17th and you have a follow-up on November
4 the 5th.

5 A Yes.

6 Q Okay. And I noticed you took some medication
7 earlier. Is that something you got from
8 Dr. Chittum?

9 A Yes.

10 Q Okay. Has he got you still attending physical
11 therapy or are you just seeing him?

12 A Only him.

13 Q Okay. Now that you have had your surgery, has that
14 helped your pain or situation any?

15 A At this moment I really couldn't tell you because I
16 am taking medicine. And after the effect goes away,
17 I do feel pain. I am not quite sure if it's pain
18 from the surgery or the pain that I felt before.

19 Q Okay. Other than this appointment with Dr. Chittum
20 on November the 5th, do you have any other medical

21 appointments scheduled?

22 A With him?

23 Q With anybody.

24 A I have another appointment with Dr. Zortea. I don't
25 remember the exact date. It's either the 23rd or

1 26th of December.

2 Q Do you have any other medical problems besides the
3 problems you have arising out of the October 3rd,
4 2006 injury?

5 A No.

6 Q Okay. So I am assuming, then, prior to the October
7 3, 2006 injury, you were in excellent health. And
8 the reason you can't work and the problems you
9 currently have all stem from your back injury of
10 October 3rd of '06. Right?

11 A Yes.

12 Q And right now, Mr. Lugo, is there anything else that
13 is hurting you or giving you pain besides your low
14 back?

15 A In the leg, I still continue to feel pain in the leg
16 (indicating).

17 Q You pointed to your right leg. Is that the only leg
18 that's bothering you?

19 A Yes.

20 Q So the low back and the right leg are the only
21 things that are bothering you arising out of the
22 October 3, 2006 injury.

23 A Yes.

24 Q And correct me if I am wrong, but the only
25 medication that you're taking, that medication is

- 1 coming from Dr. Chittum. Correct?
- 2 A Yes.
- 3 Q Are you able to work right now?
- 4 A No.
- 5 Q Okay. Is your current address still 183 Arcadia
- 6 Street in Spartanburg, South Carolina, 29301?
- 7 A No.
- 8 Q Where do you live now?
- 9 A It's 193.
- 10 Q Thank you for clearing that up for me, Mr. Lugo. It
- 11 appears that the company records show 193, but there
- 12 was a document from your prior attorney showing 183.
- 13 So 193 is, in fact, your correct address on Arcadia
- 14 Street?
- 15 A Yes.
- 16 Q And just to make it clear, this was not Mr. Smith's
- 17 firm that had this. This was the prior lawyer you
- 18 had.
- 19 A Yes.
- 20 Q Okay. Are you married?
-
- 21 A Yes.
- 22 Q How long?
- 23 A Going on six years.
- 24 Q Do you have any children?
- 25 A Yes.

1 Q What are their ages?

2 A My daughter is turning four, my son is three, and my
3 wife is pregnant.

4 Q When is she due?

5 A In December. The 4th of December.

6 Q Does anybody live in the home at 193 Arcadia besides
7 you and your wife and the two children?

8 A No.

9 Q Now, I am showing your date of birth as December 24,
10 1974.

11 A Yes.

12 Q And your social security number is 539-72-1047?

13 A Yes.

14 Q Okay. Now, do you have a driver's license?

15 A Yes.

16 Q Did you drive yourself here today?

17 A No.

18 Q Why not?

19 A My doctor recommends no driving.

20 Q The doctor?

21 A Dr. Chittum.

22 Q What kind of car do you have?

23 A Saturn, '97, and Ford pickup, '99.

24 Q What color is the Saturn?

25 A Brown.

1 Q And the Ford pickup?

2 A Blue.

3 Q I see where you were hired by Kohler on August 20th
4 of 2001. Who did you work for before that?

5 A Before working there I worked for a company by the
6 name of Temp Services. They were a cleaning agency.
7 I basically would clean construction site offices,
8 stores, and they would only give us jobs day by day.

9 Q And how long did you do that cleaning service
10 temporary work?

11 A About a month.

12 Q And who did you work for before that?

13 A I worked out in the fields.

14 Q And was that here, in the Spartanburg, South
15 Carolina area?

16 A In Hendersonville.

17 Q How long have you been in the United States?

18 A Going on 12, 13 years. I arrived in '94.

19 Q And between your arrival and your job at Temp
20 Services did you always work in the field doing

21 agricultural-type work?

22 A Yes.

23 Q Okay. Have you had any educational training here,
24 in the United States?

25 A What do you mean, "educational training?"

1 Q I mean did you go to school in the US?

2 A I only went to learn a little bit of English in
3 Florida.

4 Q So you started in Florida. And when did you get to
5 South Carolina?

6 A In that same year, in 2001 I arrived here. But when
7 I arrived here, I started working in Florida.

8 Q So let's see. Where were you living before you
9 moved to the United States?

10 A In Mexico.

11 Q And did you go to school in Mexico?

12 A Yes.

13 Q How far did you go in school there?

14 A Secondary.

15 Q In other words, did you finish high school?

16 A High school, no. Middle school, yes. It was about
17 ninth grade.

18 Q Any education since the ninth grade when you were in
19 Mexico?

20 A No.

21 Q Are you able to read and write in Spanish?

22 A Yes.

23 Q Okay. How about in English?

24 A Certain words. A little.

25 Q Other than the two accidents that you described that

1 occurred while working for Kohler, have you had any
2 other accidents while you were on the job, working
3 anywhere else?

4 A Yes.

5 Q When was that?

6 A About four years ago.

7 Q Who were you working for?

8 A At that time, Kohler had let us off work for awhile
9 so I was working for a company that twists thread.

10 Q Do you know the name of the company?

11 A I believe the name is Twister Colors, Twisting
12 Colors.

13 Q And what did you injure in that accident four years
14 ago?

15 A Nothing.

16 Q You said you had an accident four years ago. How
17 did you hurt yourself? What did you hurt?

18 A What it was is that I hit a suburban from the back,
19 but I didn't suffer any injuries.

20 Q Okay. Any other accidents besides that one?

21 A No.

22 Q So you didn't have to go to the hospital or have any
23 medical treatment as a result of that automobile
24 accident four years ago?

25 A No.

1 Q How long has Dr. Nowatka been your family doctor?

2 A Since 2004, somewhere around there.

3 Q Who was it before that?

4 A I didn't have one before then because I did not
5 write down a family doctor on the form that the
6 company gives us for our health insurance.

7 Q If you needed to see a doctor, would you go to
8 Spartanburg Emergency room or something?

9 A I would go to Gaffney, but I don't remember the
10 doctor's name, because that doctor spoke Spanish.

11 Q Have you ever had to go to the emergency room?

12 A No.

13 Q Have you ever gone to any hospital in this state?

14 A I don't remember right at this moment, but I believe
15 so.

16 Q And would that have been Spartanburg Regional, Mary
17 Black or any other Spartanburg hospitals?

18 A Here. Regional.

19 Q Is that where you had your surgery?

20 A No.

21 Q Where was the surgery done?

22 A In Mary Black.

23 Q Do you have any kinds of criminal charges against
24 you?

25 A No.

1 Q Other than hiring a lawyer for this accident -- and
2 I know you had a prior lawyer, now you have this
3 firm -- have you ever had to hire a lawyer at any
4 other time?

5 A No.

6 Q Okay. Tell me something about the kinds of
7 activities you had before you were injured, like
8 hobbies, things you did before you had this accident
9 that has now taken you out of work.

10 A Things that I did before the accident?

11 Q Yes. I mean, did you play sports? Did you ride a
12 bike? What were some of the things you did when you
13 weren't working?

14 A Run.

15 Q Okay. Any other activities, besides running, as a
16 hobby?

17 A Before the accident? Before this accident occurred?

18 Q Yes.

19 A I like to help my wife around the house, play with
20 my children. That's it.

21 MR. INFINGER: Okay. That's all of my questions.

22 MR. DANTIN: No questions. He will read.

23 (DEPOSITION CONCLUDED AT 10:50 A.M.)

24

25

CERTIFICATE

I, the undersigned, Elaine L. Grove, RPR,
Notary Public, in and for the State of South Carolina,
do hereby certify that the foregoing deposition was
taken on the aforementioned date;

That the within deponent was sworn to tell the
truth, and that the foregoing is an accurate
transcription of the testimony taken under oath;

I further certify that I am neither counsel
nor solicitor to any of the parties in said suit, nor
interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 1st day of November, 2007.

COPY

Elaine L. Grove, RPR
Notary Public for South Carolina
My Commission Expires: 6-30-10

Al Martin

From: McDaniel, Alaina [amcdaniel@sowellgray.com]
Sent: Friday, June 06, 2014 3:11 PM
To: Bracy, Amy
Cc: Beard, Grady L.; Al Martin; Kelly Ware
Subject: Jose J. Jimenez v. Kohler Company - (186482859-001) - 6457/8005 & (186492343-001) - 6457/8006
Attachments: Scanned from a Xerox multifunction device.pdf

Amy,

Attached please find a copy of the nurse's notes regarding Jesus Lugo that Commissioner Beck requested in regards to the above claims.

Thank you,
Alaina



Alaina P. McDaniel v-card
Paralegal

803 231.7830
803 231.7875 (fax)
www.sowellgray.com



Supporting Green. Please print wisely.

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SSI# 539-72-1047g

Hand
8-20-01
LPS mli

MEDICAL DEPARTMENT—CASE RECORD

KOHLER CO.

DATE	REMARKS	Name
318-03	E mail from S. Silenoy on 3-17-03 @ 7:45 pm. EE was working on day fence near the 5 to foot on the 5 tent support he miss calculated his step and felt pain in his left lower back. He worked all night. He is to see me @ 9:45 am.	John
319-03	EE came to medical - left lower back in pain - saw a phys Back Drill Tal it - Jan 15 given to take 4 hrs PRN type warm soaks. Full cautions given re: back drill. Will e-mail S. Silenoy to let him do lighter duty for a couple of days. Left as is sat @ elbow no more work. Says he had a back spasm. To left am @ elbow. Return PMV EE says when urinate has pain left kidney area - Duration 3 min. To go to his RMD this.	John
3-19-03 735	E mail from J. Cagney EE said his back felt better last night and he wanted to work. J. Cagney told him to be more careful and watch where he was stepping.	John
5-7-07 302	EE saw J. Cagney at 14.00 on 5-7-07 and said he wanted out of the hospital. Had statement from PMV to move to job - done	John

K-572 (7/92)

cont

Over

3

MEDICAL DEPARTMENT—CASE RECORD

KOHLER CO.

DATE	REMARKS
8-9-25	M. Tolleson said EE came called him last night - EE came in and told him he hurt his back sat @ 1:00 a.m. He did not report - he was asked if he reported to fellow workmen and he said he didn't tell anyone. Mike tried to call to send EE home + close book when his back gets better since he didn't report. 8-11-25 EE came to medical Sarge on 8-11-25 around 1:00 a.m. work after a hard and felt low back pain - Sarge has been seen a Chiropractor and has been out 2 wks. Sarge just wants pay for 2 wks out. Sarge came across to Terone Office Sarge can come back tomorrow or Friday. Sarge brought a paper from Chiropractor to Terone stating that he was to be out 4 wks. Will ch. M. Tolleson & Kennedy and let him know decision.
11-24	M. Tolleson said EE would not be wk. - would have to go through group. H. Johnson talked 2 short term Disability in Kohler plant they said to get his doctor's statements & hear them. Mary interpreter notified by voice mail.

Name: John Tolleson
 Cast: +
 Clock No. 93679

K-372 (3/92)

—Over—

4

MEDICAL DEPARTMENT—CASE RECORD

KOHLER CO.

DATE	REMARKS	Name	Check No.
8-14-05	1035 Checked - D. Clement to see if EE worked last night. He will check & let me know.	D. Clement	
8-23-05	1100 E-mail from D. Clement - EE did not work yesterday. I wanted to know what doctor to go to as PCP - checked. Dr. Thompson he did not find a doctor when hired in 2001. He is to call companion and let a PCP. Kimberly Johnson talked to EE & interpreter and explained to him what he needed to do to cover the time he was out as he has not been placed on LHA. He worked last night but said that his back hurt. He says the doctor (Chiropractor) failed him. They are finding out we didn't receive it.		9367
8-31-05	930 Left message @ Dr. Ziller to clarify documentation.		
9-1-05	945 Dr. Ziller called after 2 left @ 2:00 PM yesterday and talked to S. De Vries. He is to see EE today (8-31-05).		
10-2-06	1125 E-mail incident report from N. Sandoval EE was rolling over partner's wheels on 9-29-06 @ 9:45 PM when he felt pain in lower back. He said that he was off and kept working. N. Sandoval advised him to slow down.		

K-372 (8/02)

Cont. Over

P862

KOHLER CO.

CLOCK NO.

K-372 1921

Continued Over-

587-5636

MEDICAL DEPARTMENT—CASE RECORD

KOHLE

DATE	REMARKS
10-25-06	Went to Chiropractor on his arm - Will check 2 M. Tolson tomorrow and let EE know what to say. Sam Chiropractor told him he could work.
10-26-06 9:15	Talked 2 M. Tolson. Since EE didn't return to SA me is doing his regular job and went to Chiropractor on his own will not send to TMC @ this point in time.
12-8-06 7:45	E-mail incident report from Heptale Sandoval on 12/2/06 @ 11:00 PM while demanding EE felt pain in lower back. He said that he will keep on working. He is to see me @ 10:00 AM on 12-8-06.
11-15	Came to medical - Bus back to law back - Back over to the 112. To the 112 of 4:45 PM. Tonight is his last scheduled night for 3 yrs. Will E-mail W. Sandoval to let him do one piece of this lighter duty. If there problem during holiday shut down call M. Tolson.
3-4-07 7:52	M. Tolson and D. Clement asked if EE said me on 5-3-07 he's back. Told them no but he will be in transporter today & if Woodward is the lobby yesterday afternoon. D. Clement said he wanted to get out of

Name: John J. Sandoval
 (last) 13676
 CHECK NO.

K-372 (4/06)

Costing of Woodward and or office today 11/3

MEDICAL DEPARTMENT—CASE RECORD

KO

DATE	REMARKS
5-7-07	cont filing & pleading - Ch 2 B. Pardon Dr. Wroblek Nurse - Physical Therapist said chronic problem with Spine maybe nerve impingement
3 rd	Dr. Chris Muehlen said 5-20 he would be considered Safe Limit - H.B. Moberg
6-1-07 1155	EE in lobby talked to J. Quackenbush said he did report incident - Spoke to M. Johnson - Since we have no record of injury He is to follow up w/ P.D.
6-27-07	E mail from J. Quackenbush & Medical Certification came back for EE He is scheduled to have surgery on 6-27-07 and is anticipated to be out of work 8 weeks giving him approximate return to work date of August 22nd.
10-17-07 130	E mail from J. Quackenbush EE scheduled for surgery per P.D. on 10-17-07. Will be in recovery/duration approx 12 wks from surgery.

K-372 (4/06)

1865

P885

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION FULL COMMISSION
WCC No. 1122474

Jose Jimenez,
Claimant/Appellant,
v.
Kohler Company,
Employer/Respondent,
and
Self-insured,
Carrier/Respondent.

COPY

FULL COMMISSION HEARING

Monday, March 16, 2015
3:07 p.m. - 3:32 p.m.

The Full Commission Hearing before Commissioner Aisha Taylor; Commissioner Susan S. Barden; and Commissioner Gene McCaskill, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 16th day of March, 2015 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

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PRLL

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1 **THE COURT REPORTER:** Today is Monday, March 16,
2 2015. This is South Carolina Workers'
3 Compensation Case Number 1122474. This is the
4 case of Jose Jimenez, Claimant, versus Kohler
5 Company, Employer, and Kohler, Carrier.

6 The Appellant is the Claimant represented by
7 Alton Martin. The Respondent is represented by
8 Grady Beard.

9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes in
11 reply. You are requested to argue the grounds
12 of exception and stay within the record.

13 **COMMISSIONER MCCASKILL:** All right. Mr. Martin?

14 **ARGUMENT BY MR. MARTIN:**

15 **MR. MARTIN:** Thank you, sir. May it please the
16 Commission.

17 This claim arose from two separate accidents at
18 Kohler. Both accidents were reported. They
19 were reported to the Claimant's supervisor the
20 day following. The Claimant's supervisor
21 filled out an incident report. The Claimant's
22 supervisor then sent him to the company nurse
23 where he complained to the company nurse about
24 his injury on the job.

25 It's an odd case because the findings that

1 we're objecting to, first finding number nine
2 says, "I find that Claimant reported
3 incidents" -- in quotes -- "following each
4 alleged date of injury; however, I find these
5 do not rise to the level of defining an injury
6 to the Employer."

7 That, I guess, begs the question: How does the
8 Claimant define an injury to the Employer if
9 not by reporting an injury by accident to his
10 supervisor and to the company nurse?

11 It's the argument of the Defendants at the
12 hearing that this was a notice case and they
13 continued on that argument throughout the case.
14 Their position was that at Kohler Company, it
15 did not rise to the level of giving notice
16 unless the Claimant was seen by the company
17 doctor. If they weren't seen by the company
18 doctor, then they didn't complain enough and
19 that wasn't an accident that was reported; lack
20 of notice.

21 The finding seems to support that argument.
22 I'm not sure how you would -- you would word
23 that otherwise. I mean, that clearly seems to
24 address notice when they say -- when the
25 finding says that it doesn't rise to the level

1 of giving the Employer proper definition of the
2 injury.

3 The APA's that were submitted, pages 102 and
4 101, provide on 7/15 of 2011 -- this is the
5 nurse's notes from the facility -- she says in
6 her notes: "On 7/14/11 at 7:00 or 7:30 a.m.
7 was draining molds, picked up slip pan, and
8 felt low back pull, is sore now."

9 That's an injury by accident on the job. He
10 gives the who, what, where, why. Everything he
11 needs to address is there.

12 The nurse testified in her deposition -- she
13 was one of the only witnesses that did not
14 testify live -- that there was nothing that
15 needed to be done in order for Mr. Jimenez --
16 nothing else for -- needed to be done in order
17 for Mr. Jimenez to put the company on notice of
18 an accident. That's her deposition at page 34,
19 35, and 36, and we cite those specific line
20 numbers in our brief.

21 I mean, she said we put him on notice. The
22 notes that she provided say we put him on
23 notice. But the finding, finding number nine
24 in the hearing order, seems to say otherwise.
25 Additionally, the -- let me make sure I'm --

1 the finding goes on to say that the Claimant's
2 actions after giving that report are the
3 reasons for the denial of the claim.

4 And I would cite you to the Defendant's brief.
5 If you look at their brief on page 9, it says,
6 last paragraph -- or there's -- not the last
7 paragraph, but the one before that, last couple
8 of sentences says: "Had the Claimant taken any
9 affirmative action during the days, weeks, or
10 months following either incident to advise his
11 Employer he was still in need of treatment as
12 alleged, he would have received the necessary
13 treatment."

14 It goes on in that paragraph prior to that to
15 say now they admit that notice was proper,
16 notice was given, but they're saying that under
17 42-1-160 an injury wasn't properly defined.

18 My question to you is: How do you explain
19 that? What did we need to do to define an
20 injury other than report an accident to the
21 Employer, go to the company nurse, and ask for
22 medical treatment?

23 Not only report an accident to the Employer,
24 but if you see in there, he gives the time, he
25 gives the place, he gives the specific incident

1 that occurred, he says what body part was
2 injured, he told his supervisor, and he told
3 the nurse. The finding does -- is just not
4 supportable.

5 In addition to that, we feel like --
6 Commissioner Beck specifically asked for the
7 nurse's notes related to Mr. Jesus Lugo
8 (phonetic). Mr. Lugo was a witness at this
9 hearing. He had been a claimant in a prior
10 case. And he testified. There's other
11 testimony. A lot of the testimony conflicted
12 with one another.

13 You'll notice that none of the live Employer
14 witnesses are referenced anywhere in the
15 hearing order. The only -- they say that the
16 credible evidence was by the one witness, the
17 nurse. She's the only one that didn't testify
18 live. All the witnesses took a beating at this
19 three-day hearing.

20 The -- excuse me. The testimony of the nurse
21 was not consistent with her own notes. Her
22 notes were not produced until following her
23 testimony. The hearing had already started.
24 She -- witnesses had already testified. Then
25 she testified by deposition. Then we get to

1 the hearing and at the conclusion of the
2 hearing, Commissioner Beck said, "In light of
3 all this conflict, I'd like to see what the
4 nurse's notes said in relation to Mr. Lugo."

5 He requested it. Those notes had never been
6 produced prior. Those notes were produced.
7 They were submitted. Those notes -- excuse
8 me -- specifically indicate that when Mr. Lugo
9 complained about a problem with his back and
10 asked to go to the company doctor, the safety
11 manager, who testified in this case, Mike
12 Tolleson, told him -- or told the nurse, "No,
13 he can't go. It's too big a gap since he asked
14 to go to the doctor and when he's -- or when he
15 got hurt and when he's asking to go."

16 It was a month; beginning of October, end of
17 October. And this gap, that means we're going
18 to deny this claim because it's been too much
19 time. He's not going to the company doctor.

20 That's exactly what Mr. Jimenez testified that
21 Mike Tolleson told him. If you look on page
22 101, I believe it is, of the APA's, that
23 references a meeting on -- I'm sorry, that's
24 page 100 of the APA's -- references a meeting
25 between the Claimant, a Mr. Brown, a

1 Mr. Barnwell, Mr. Tolleson, and the nurse where
2 he came back in November of 2012 and said he's
3 had -- he's seen a doctor with his back. "He
4 came in on 3/14/12" -- that's one of the notes
5 in the nurse's records -- "and reported that on
6 the 3/13/12 he was rolling ware over and his
7 left low back felt sore; see note card," so
8 forth and so on.

9 So, no question that he reported an accident.
10 No question that he was told things by the
11 Employer. According to the testimony at the
12 hearing, the nurse's notes that were produced
13 on Mr. Lugo cannot be reconciled with her
14 testimony that was submitted by deposition.
15 And that's the testimony that basically the
16 whole Defense case rely on. And it's our
17 position that those records of Mr. Lugo's, the
18 nurse's notes -- and I apologize for getting
19 scattered there for a second. It's our
20 position that those notes didn't get considered
21 by the Commissioner. They were submitted late.
22 They were submitted after the hearing had
23 concluded. They were submitted by e-mail.
24 There's no reference to those notes anywhere in
25 the hearing order whatsoever.

1 The nurse's testimony is said to be very
2 credible and if you compare her notes and what
3 she said in her testimony to one another --

4 **COMMISSIONER MCCASKILL:** Finish your thought.

5 **MR. MARTIN:** -- they cannot be reconciled. Thank
6 you.

7 **COMMISSIONER MCCASKILL:** All right. Mr. Beard?

8 **ARGUMENT BY MR. BEARD:**

9 **MR. BEARD:** Thank you, Commissioners. May it please
10 the Commission. This is, I would say, the
11 reason that we should start enforcing appeals
12 that are completely frivolous.
13 This is the hearing transcript in this case
14 (indicating); lasted three days. Lasted a
15 total of -- let's see; I added this up --
16 lasted a total of 11 hours and 53 minutes.
17 Every witness called in this case was called by
18 Al Martin, including all of my clients, except
19 one, the nurse, who we took her deposition, who
20 could not be at the hearing because she can't
21 be more than an hour away from her husband who
22 was about to die. And everybody agreed with
23 that. And we actually did the deposition at
24 the convenience of Mr. Martin in Spartanburg at
25 the plant.

1 In this case, they -- being Mr. Martin,
2 actually; not any Claimant in this case, but
3 Mr. Martin -- has continuously attempted to
4 destroy Kohler. Everybody in this room has
5 dealt with issues on Kohler Company for
6 whatever reason for another.

7 Whoever dealt with Kohler lawyers in the past,
8 those were Kohler lawyers in the past. This
9 case was about Jose Jimenez; we thought, except
10 for who did Mr. Al Martin bring to be his star
11 witnesses in this case? Jesus Lugo,
12 Mr. Martin's client, and Valderrama,
13 Mr. Martin's client. Those are the two star
14 witnesses.

15 Mr. Lugo never even worked with the Claimant,
16 wasn't even there. In fact, he had been
17 terminated four or five years before either one
18 of the accidents that are here before you
19 today.

20 Those are the witnesses that he brought to this
21 case. Mr. Valderrama, supervisor, safety
22 person, never once worked with Mr. Jimenez
23 according to the testimony in the case.

24 But here's what's troublesome about what he
25 just said. He has said -- he read to you this

1 Finding of Fact and the way it was written --
2 read the findings. Read all of the findings.

3 What the Commissioner said was, he didn't rule
4 on notice. He didn't touch notice. He didn't
5 come in under 42-15-20 and say notice doesn't
6 apply.

7 What he said was, based upon what happened in
8 this case, yes, your client told them about two
9 incidents, but he never even went and saw a
10 doctor, ever. For a year and almost 18 months,
11 he never went and saw a soul. That doesn't
12 rise to the level of an injury by accident.

13 Yeah, he said, "You know, I think I might have
14 strained back or I might have done something;
15 give me a pill." He took the pill, never to be
16 heard from again between accident one and
17 accident two. Never. Never heard a word.

18 He admits under oath, "I never told anybody at
19 Kohler I wanted to go to a doctor." Never did
20 anything between those two. Comes back again
21 later --

22 **COMMISSIONER BARDEN:** If we agree with you, wouldn't
23 you agree that perhaps that finding could be
24 reworded?

25 **MR. BEARD:** Sure. You could -- you could -- you

1 could fix the wording to say what I just said.
2 He gave notice of two incidents. They don't
3 arise to an injury by accident under the Act.
4 That's what the Commissioner I think said.
5 That's what he says in his conclusion, if you
6 go read the conclusion a little closer under
7 42-1-160. And then he says he didn't meet his
8 burden of proving all of those things, because
9 the doctors didn't support him. Once we took
10 their depositions, as he found as a Finding of
11 Fact, unappealed from Finding of Fact of
12 Dr. Rodriguez said, he was all over the place.
13 He started waffling and started backtracking
14 when he got all the evidence.

15 And what's more important -- and I want you to
16 hear this closely about this case --
17 Dr. Rodriguez said when the guy finally came
18 and said -- finally gave a description of a
19 work accident -- because neither doctor -- both
20 of them said he never told us he got hurt on
21 the job.

22 When he finally came and told them, guess what
23 he said? Dr. Rodriguez said, "He's obviously
24 been coached to tell me what to say in this
25 case." And what's important about that is Al

1 Martin had just been hired to be his lawyer
2 right before that, sends his client in there.
3 We think it's obvious who coached him and he
4 told him exactly what you need to say to
5 support these two Form 50's that we just filed
6 on your behalf because nothing else does.

7 Now, Commissioner Scott Beck has been accused
8 of not reading evidence in this case. We
9 submitted the documents to Commissioner Beck at
10 his request. Nobody -- in fact, Al Martin
11 objected to the documents at -- the very
12 documents he's now asking you to use against my
13 client, he objected to them coming in at the
14 hearing in front of Commissioner Beck.

15 We sent them in to Commissioner Beck. He had
16 them for four months. They don't show up in
17 the order. There's no rule that says every
18 piece of document or evidence or anything
19 that's said at a hearing has to show up in an
20 order or else this would be the order
21 (indicating), plus all the APA's, plus all the
22 exhibits, plus everything else. That would be
23 an actual order before the Commission.

24 The law says -- and we cited this in our
25 brief -- it is presumed that when the

1 Commissioner has the documents, that they
2 review them unless someone can prove to the
3 contrary. It is the burden of Mr. Martin to
4 prove to you that Commissioner Beck did not
5 read the very documents.

6 But here's the other thing that he didn't talk
7 about. We submitted to him the proposed order,
8 well in advance of giving it to the
9 Commissioner, a week in advance. Mr. Martin
10 never once complained, "Where are those medical
11 notes that you sent to the Commissioner and
12 where are these kinds of things and" -- not
13 once. In fact, they said, "We've reviewed the
14 order and we got the order," and they never
15 complained about a single thing.

16 **MR. MARTIN:** I'm going to have to --

17 **MR. BEARD:** The law --

18 **MR. MARTIN:** -- object to --

19 **MR. BEARD:** Sure.

20 **MR. MARTIN:** -- on a variety of things outside the
21 record at this point. I'm not sure that the
22 submission of the order after the fact has
23 anything to do with what's on appeal here.

24 **MR. BEARD:** Sure it does. He's arguing that the
25 very records that came in after the -- after

1 the record was closed are what he's arguing to
2 you about, even though --

3 **COMMISSIONER BARDEN:** He did say that.

4 **COMMISSIONER MCCASKILL:** Yeah, that's what you
5 brought up, Mr. Martin.

6 **MR. MARTIN:** That's fine.

7 **MR. BEARD:** That's the entire case. That's his
8 whole issue. He wants you to rule in a case on
9 Jimenez about some nurses records from a guy
10 who had not worked at Kohler for six years or
11 five years from the time that the first
12 accident in this case occurred. That's his
13 whole case.

14 But what he ignores, and he didn't appeal, are
15 the following Findings of Fact: I find that
16 the Claimant is not credible. He is evasive,
17 elusive, and generally unreliably. Claimant
18 unable to look at anyone during the testimony
19 and his reported attempts to banter with
20 Defense counsel on questions requiring little
21 contemplation, I find him not credible.

22 That's the Hearing Commissioner said that. He
23 found Mr. Lugo and Mr. Valderrama not credible.
24 They are not credible because Mr. Lugo
25 point-blank lied through his teeth and the

1 Commissioner caught it.

2 And in his -- there is a five-page diatribe
3 between the Commissioner and the lawyers and
4 Mr. Lugo where Mr. Lugo lied about having a
5 driver's license and told the Commissioner a
6 story about the license.

7 Somehow when he was fumbling through his wallet
8 to find things, the license falls out and the
9 Commissioner saw it and called him out on it
10 and said, "You just testified under oath to
11 Mr. Beard and to me that you did not have that
12 document with you and, in fact, you do." And
13 he ultimately admitted he lied and did not tell
14 the truth during that testimony.

15 Mr. Lugo is not a truthful person. I don't
16 care what happened to Mr. Lugo before me. I
17 wasn't involved in that workers' comp case.
18 You can't try workers' comp cases based on
19 other of your clients in the past because you
20 have such a hatred from an employer in this
21 state.

22 Everybody knows Mr. Martin has that feeling.
23 Everybody. I assume every one of you who have
24 dealt with him on Kohler cases know that to be
25 fact; if you don't, I just ask you to go read

1 those records.

2 I didn't -- I don't know why he has made this
3 his -- whatever it is he's making it to do to
4 Kohler. I know he doesn't like them. That is
5 his -- he's entitled to that opinion. He can
6 keep it for the remainder of his career, if
7 that's what he wants to do.

8 But I think as I heard Mr. -- or, excuse me,
9 Commissioner McCaskill say earlier, "You know,
10 you win some; you lose some; you just move on."
11 He's won most of his cases against Kohler. He
12 lost this one because the witnesses he relied
13 upon are not credible, the Commissioner found
14 they weren't credible, and if you read this
15 record and it requires you to not just listen
16 to the two of us and read through these briefs.
17 If you really want to get into the meat of this
18 case and the medical records, he went from
19 accident number one to accident number two
20 without ever seeing a doctor. Not one single
21 time. He had group insurance the whole time.
22 He could have gone.

23 The second accident, he never went to a doctor
24 on his own. Or when he did go to a doctor, he
25 gave a story about something about slipping and

1 falling at the plant, which has nothing to do
2 with any of this case and he admitted under
3 oath when he went to Doctors Care in April of
4 2012, he didn't tell them anything about a
5 work-related accident.

6 And then he goes to a doctor in -- somewhere in
7 September or October of 2012, which is
8 literally a year and a half almost after the
9 first accident, but he went for his shoulder.
10 And he was getting physical therapy for his
11 shoulder, which is not even a part of this
12 case.

13 And then he said, "Well, why can't I bring in
14 my back while I'm here, as well?" And that's
15 the first time he goes and has a meeting with
16 all these plant officials and tells them, "You
17 know, I think I need to go back and try to
18 bring this as a workers' comp claim all the way
19 back from the beginning of time." And they
20 said, "No, you can't do that now. You haven't
21 even been to a doctor and you've complained of
22 all these other things in between here. You
23 got outside jobs that you do. There's no way
24 we're going to accept this a workers' comp
25 claim based on what you're telling us at this

1 point." And that's how the case proceeded.
2 There is zero, not one single bit of credible
3 evidence to support their case. The last
4 Finding of Fact that I want you to look to is
5 Commissioner Beck found the nurse to be
6 credible in this case. And if you --

7 **COMMISSIONER MCCASKILL:** Finish your thought.

8 **MR. BEARD:** -- read Nurse Zimmerman's deposition,
9 you will see that she is absolutely credible
10 and she didn't say what Mr. Martin just told
11 you she said.

12 What she said was, "I don't always send them to
13 the doctor. I usually tell them 'Try light
14 duty, let me put some of this salve on you, and
15 if you need to go to the doctor then, come back
16 and see me.'"

17 Never happened in this case. He never once
18 came back to her for any kind of treatment
19 thereafter. Thank you.

20 **COMMISSIONER MCCASKILL:** All right. Mr. Martin, you
21 have three minutes.

22 **REPLY STATEMENT BY MR. MARTIN:**

23 **MR. MARTIN:** Thank you, Commissioner. If I hadn't
24 been there, I would feel bad about everything
25 that Mr. Beard had to say about me. But having

1 been there and being aware of what the facts
2 were, I would go back to what I said
3 previously.

4 For one thing, I think there was the suggestion
5 that Mr. Jimenez did not seek any medical
6 treatment for over a year, I think is what I
7 heard. Page 103 of the APA is his appointment
8 on April of 2012, one month after the accident
9 in March of 2012. Specifically talks about in
10 that note heavy lifting at Kohler. Page 70 of
11 the APA's is when he went in October of 2012,
12 again about his back. Actually --

13 **COMMISSIONER BARDEN:** How about in 2011? Did he go
14 in 2011?

15 **MR. MARTIN:** There are records from 2011. I'm not
16 prepared to address that right this second,
17 Commissioner. I didn't cite those when I was
18 going back through.

19 **COMMISSIONER BARDEN:** Okay. Go ahead.

20 **MR. MARTIN:** Page 70, 10/15 of 2012, he was seen at
21 the Family Medical Center, which is the same
22 doctor that Kohler uses as their company
23 doctor. This was in October. He was seen for
24 his back. He had films done for his back at
25 that time. He went to Kohler for this meeting

1 in November.

2 Now, what I just understood to be said was,
3 they said, "No way we're going to accept this
4 as a workers' comp case now." That's not what
5 they testified at the hearing. At the hearing,
6 they testified, "This isn't something that we
7 remember him ever mentioning anything about
8 getting hurt at work at," you know.

9 Now, he didn't -- he wasn't trying to report an
10 accident when we had this meeting in November.
11 That's -- that's not true. And their safety
12 manager testified -- several things.

13 One, he testified that he wasn't the person who
14 was responsible for saying "yea" or "nay" to
15 going to the doctor, the company doctor. He
16 didn't have anything to do with that.

17 The nurse's notes, Mr. Lugo's case,
18 specifically reference Mr. Tolleson, safety
19 manager, saying he can't go to the doctor
20 because -- and he's the one who's making the
21 decision, okay?

22 Everything Mr. Tolleson -- Mr. Tolleson said,
23 "It's company policy, Kohler policy, that we
24 don't allow a claim to be considered notice
25 given until they go to the company doctor."

1 Company nurse testifies, "No, there's no such
2 policy." He says there's a -- there's no
3 specific document that an employee has to take
4 with them when they go to the company doctor.
5 I don't know what you're talking about.
6 Mr. Jimenez claims he was trying to go to the
7 company doctor and he said there was a form.
8 He went to the doctor and the doctor told him
9 you have to have the Kohler form. He went back
10 and asked for it. They said, "No, no such
11 form."

12 **COMMISSIONER MCCASKILL:** Finish your thought.

13 **MR. MARTIN:** The nurse testified that there is a
14 form specifically used by Kohler that has to go
15 with the employee if they're going to get it
16 covered under workers' comp.

17 **COMMISSIONER MCCASKILL:** All right. Thank you,
18 gentlemen.

19 **MR. MARTIN:** Thank you.

20 **COMMISSIONER MCCASKILL:** Good to see you both.

21 **MR. BEARD:** You, too. Thank you.

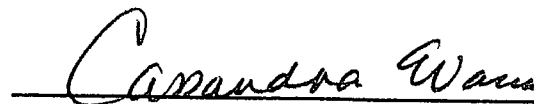
22 (There being nothing further, the hearing concluded
23 at 3:32 p.m.)
24
25

CERTIFICATE

This is to certify that the within hearing consisting of twenty three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 28, 2015.



Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

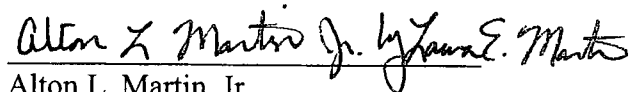
Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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P890

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

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SC Court of Appeals

Jose Juan Jimenez, Employee, ...Appellant,

v.

Kohler Company, Self-Insured Employer, ...Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Workers' Compensation Commission erred in finding Mr. Jimenez did not carry his burden of establishing a compensable injury, based on the substantial evidence and applicable law.
2. Whether the Workers' Compensation Commission erred in providing conclusory findings and conclusions lacking sufficient specific for appellate review.

STATEMENT OF THE CASE

This is an Appeal by Jose Jimenez, Appellant, from a decision of the South Carolina Workers' Compensation Commission finding that he did not sustain an "injury by accident" on July 14, 2011 or March 13, 2012, per 42-1-160. Mr. Jimenez contends the Commission erred in determining that both of his work accidents were not an "injury by accident". This finding was made despite the fact that both accidents were reported to Appellant's supervisor; his supervisor documented the accidents; and the company nurse treated him for both reported injuries. Mr. Jimenez further contends the Commission did not correctly apply the law related to the determination of an "injury by accident" on either date. Alternatively, Mr. Jimenez, contends the Commission's Findings and Conclusions are conclusory and do not provide sufficient grounds for the Court to conduct appellate review.

Mr. Jimenez injured his back on July 14, 2011, when he was emptying drain pans at Kohler where he worked as a caster. (R. p. 230, lines 6-22; p. 476; p. 674, lines 19-25; p. 675, lines 1-4) Mr. Jimenez reported the accident to his supervisor, Sam Barnwell, the following day. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 677, lines 11-15). His supervisor completed an incident report and referred him to the plant nurse, Pat Zimmerman. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-

10; p. 476). The nurse documented his visit and provided treatment. (R. p. 174, p. 485, lines 11-24; p. 512, lines 4-11; p. 532).

On March 13, 2012, Claimant injured his back and legs while picking up molds from the floor while performing his job at Kohler. (R. p. 678, lines 5-10; p. 679, lines 13-16). He reported the incident to the same supervisor, Sam Barnwell, the following day March 14, 2012. (R. p. 402, lines 18-25; p. 403, lines 1-10; p. 475). His supervisor completed a second accident report and again referred him to the plant nurse. (R. p. 402, lines 18-15; p. 403, lines 1-10; p. 475; p. 679, lines 17-19). The nurse again documented his visit and provided treatment. (R. p. 173; p. 488, lines 17-25; p. 489, lines 1-2; p. 512, lines 12-21; p. 533).

Mr. Jimenez asked his supervisor several times about the company providing further medical treatment with a doctor. (R. p. 240, lines 5-10; p. 241, lines 9-19). When he received no response from his supervisor, Mr. Jimenez sought medical treatment on his own in April 2012 and October 2012 for problems related to his back. (R. p. 175; pp. 145-148). These back problems began after he was injured at work.

A meeting was scheduled by his supervisor on November 1, 2012, for Mr. Jimenez to speak with the nurse. (R. p. 406, lines 15-24).

On November 1, 2012, Mr. Jimenez went to the nurse's station for the meeting. (R. p. 427, lines 22-25; p. 530; p. 759, lines 2-5). He expected to meet with the nurse to request treatment by a doctor for his work injury. Instead, in addition to the plant nurse; his supervisor; his manager, and, the Safety Director, were waiting for him in the nurse's station. (R. p. 172; p. 530; p. 680, lines 4-8). At the meeting, Mr. Jimenez asked to see the company doctor about his back. (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450,

lines 9-25; p. 451, lines 1-10; p. 681, lines 15-17). He said it was still bothering him from the March 2012 work accident. (R. p. 431, lines 1-12; p. 681, lines 9-12). Mike Tolleson, the Safety Director, told him he would not be sent to the company doctor because he had waited too long to ask for treatment. (R. p. 431, lines 18-20; p. 452, lines 19-25; p. 453, lines 1-8; p. 439, lines 22-25; p. 440, lines 1-25; p. 681, lines 18-25). Mr. Jimenez returned to work. (R. p. 687, lines 11-25; p. 688, lines 1-3).

Mr. Jimenez continued to seek medical care on his own. (R. p. 432, lines 1-24; p. 682, lines 1-9). Dr. Erica Savage-Jeter at Family Medical Center (FMC) referred him for an MRI and surgical consult with Dr. Rodriguez at Orthopaedic Specialties of Spartanburg. (R. p. 244, lines 15-23; p. 311, lines 19-25; p. 312, lines 1-2, lines 8-9; and lines 13-14; p. 313, lines 3-8). FMC was the same medical group Respondent-Kohler used as its company doctor. (R. p. 494, lines 14-18; p. 380, lines 8-10; p. 316, lines 7-10). Dr. Savage-Jeter placed Mr. Jimenez on light duty until he could be seen for the orthopaedic surgery evaluation. (R. p. 312, lines 8-9, lines 13-14; p. 313, lines 3-8). Dr. Savage-Jeter advised Mr. Jimenez he would need a special form used by Respondent-Kohler for workers' compensation in order to address work restrictions. (R. p. 313, lines 23-25; p. 314, lines 1-8, lines 23-24; p. 316, lines 14-25; p. 317, lines 1-14; p. 245, lines 2-7; p. 683, lines 15-16). She told him to bring her a copy of the Kohler form so that she could document his work restrictions. Mr. Jimenez met with his supervisor, Sam Barnwell and David Lee on January 30, 2013 and requested the special Kohler form that the doctor told him was required for light duty. (R. p. 245, lines 8-18; p. 432, lines 19-25; p. 433, lines 1-5). Mr. Barnwell and Mr. Lee told him they didn't know what he was talking about. They told him he must get a note from the doctor allowing him to return to

work without restrictions. (R. p. 433, lines 5-25; p. 434, lines 1-25; p. 435, lines 1-8; p. 458, lines 3-22; p. 463, lines 14-25; p. 464, lines 8-22; p. 540, lines 12-25; p. 541, lines 15-25; p. 542, lines 1-6; p. 683, lines 8-22).

Dr. Savage-Jeter testified in her deposition, Respondent Kohler uses a special form for work restrictions. (R. p. 316, lines 11-25; p. 317, lines 1-9).

The plant nurse testified in her deposition that Respondent Kohler requires a special form be completed by its company doctor regarding work restrictions for light duty for employees injured on-the-job. (R. p. 515, lines 22-25; p. 516, lines 1-25; p. 517, lines 1-25; p. 518, lines 1-15).

Mr. Jimenez returned to Dr. Savage-Jeter and asked her to provide him with a note addressing his restrictions. The doctor wrote the note and he provided it to Kohler (R. p. 122; p. 542, lines 7-20).

Form 50 Hearing Requests were filed on February 1, 2013 for both dates of accident. (R. pp. 38 – 43).

Mr. Jimenez was terminated on February 5, 2013 for having accrued too many points. He accrued the excess points due to his not being allowed to work light duty by Kohler. (R. p. 571, lines 8-24). Had Mr. Jimenez been given the special Kohler form he requested from his supervisor, (the one he was told did not exist) he would not have accrued the additional points that resulted in his termination. (R. p. 543, lines 6-25; p. 544, lines 1-9).

Mr. Jimenez was deposed on April 16, 2013. (R. p. 205).

A Hearing was scheduled for May 8, 2013. Pre-Hearing Briefs were timely filed by both parties. However, the hearing was postponed on Motion of Respondent-Kohler

in order to conduct additional discovery. Specifically, Respondent-Kohler's wanted to depose witnesses, Jesus Lugo and Yuri Valderamma, who had been identified by Appellant, in his Pre-Hearing Brief.

In Respondent's Pre-Hearing Brief, Respondent-Kohler disclosed the existence of surveillance video. After obtaining and reviewing a copy of the video, Appellant filed a Motion seeking to exclude evidence and hold Kohler in Contempt. (R. pp. 52-66). The basis for the Motion was that Respondent-Kohler had sent a team of private investigators to Mr. Jimenez's home on April 22, 2013. The investigators, posing as AT & T contractors came onto Mr. Jimenez's property wearing hard hats and vests. They asked him why he wasn't working. They told him he needed to move a pile of gravel out of the right-of-way. This resulted in Mr. Jimenez calling the trailer park maintenance man to come and move the gravel. One of the investigators then asked Mr. Jimenez to help him lift the other side of a chair. (R. pp. 57-59; pp. 62-63; p. 65). While none of the video showed Mr. Jimenez performing anything that violated his restrictions, Appellant's attorney sought sanctions for Kohler's investigators directly communicating with his client when Kohler was aware he was represented. (R. p. 54) The surveillance was conducted 6 days after Respondent-Kohler had taken Mr. Jimenez's deposition. (R. p. 205).

A motion hearing was scheduled and then postponed by the hearing Commissioner to allow the parties to submit briefs. Respondent-Kohler subsequently agreed the surveillance report and video were inadmissible and their investigators would not be called as witnesses. The parties were directed to mediate.

After mediation was held, a hearing was rescheduled for May 23, 2014 on the still pending Form 50 filed on February 1, 2013. Respondent-Kohler never deposed Mr. Lugo and Mr. Valderamma, as requested in their Motion for additional discovery prior to the hearing.

The hearing took place over the course of three (3) days, May 23, 2014; June 3, 2014; and June 4, 2014.

Sam Barnwell, the supervisor that completed both incident reports, testified at the hearing. Although his recollection was extremely limited, he admitted Mr. Jimenez reported both work accidents to him. He testified that he completed both incident reports and referred Mr. Jimenez to the plant nurse. (R. p. 398, line 14-25; p. 399, lines 1-25; p. 400, lines 1-20; p. 402, lines 18-25; p. 403, lines 1-15; p. 404, lines 3-12) Mr. Barnwell provided no testimony suggesting the accidents were staged or that Mr. Jimenez feigned injury. Nor did he provide any testimony that Mr. Jimenez's reported injuries of July 15, 2011 and March 14, 2012 were not caused from the reported accidents of July 14, 2011 and March 14, 2012.

The plant nurse, Pat Zimmerman, was deposed at the Kohler plant on May 30, 2014, between hearing dates. Nurse Zimmerman had worked as Kohler's only plant nurse for forty-six and a half years prior to her retirement on February 1, 2014. (R. p. 482, lines 2-15). She was eighty-four years old at the time of her deposition. (R. p. 519, lines 24-25; p. 520, lines 1-4). She also confirmed that Mr. Jimenez reported to her office for treatment of injuries on July 15, 2011 and March 14, 2012 related to the work accidents that he had reported to Mr. Barnwell. (R. p. 484, lines 12-21; p. 485, lines 11-22; p. 488, lines 17-25, p. 489, lines 1-4). She confirmed her notes accurately

documented his treatment on those dates. (R. p. 173; p. 174; p. 488, lines 12-14; p. 497, lines 19-25; p. 498, lines 1-9; p. 532; p. 533). She testified Mr. Jimenez had done everything necessary to report an injury. (R. p. 512, lines 4-25, p. 513, lines 1-22).

Respondents provided no other evidence about the events of these two accidents. In particular, there was no suggestion that Mr. Jimenez did not actually suffer the accidents as he claimed, or that the complaints of back pain he made to the nurse the day following each accident were not attributable to his work accidents. Rather, Respondents witnesses testimony dealt with Mr. Jimenez's actions after each reported accident. Specifically: returning to work after reporting each accident; continuing to perform his job after treating with the nurse; allegedly failing to return to the nurse for follow up after his initial treatment for the reported injuries; and, alleged delay in seeking additional medical treatment for several months after each reported accident. Respondents argued this evidence addressed the issues of notice and whether an injury by accident occurred. This remained Respondents position throughout the hearing¹. In fact, the Hearing Commissioner noted several times that the issues were notice of an injury, and injury by accident. (R. p. 326, lines 19-25, p. 327, lines 1-20; p.587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14).

The hearing Order was issued on October 24, 2014. Of note, Finding 9 of the Order held:

9. I find that claimant reported "incidents" following each alleged date of injury, however, **I find these do not rise to the level of defining an injury to the employer.** This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.

¹ Respondents also later raised an intervening accident argument.. (R. p. 389, lines 5-25; p. 390, lines 1-20).

(R. p. 28).

A Form 30 was timely filed by Appellant. (R. pp. 190-192). The Full Commission hearing was held on March 16, 2015. Appellant argued Mr. Jimenez provided notice to his supervisor and the plant nurse. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2). His alleged delay in seeking treatment or follow-up actions, after he provided Notice, could not undo the fact he had given notice.

The Full Commission issued its Order on May 22, 2015 finding “the Decision and Order of the Hearing Commissioner must be affirmed with an Amendment, specifically, the clarification of Finding of Fact 9.” (R. p. 37).

The Commission attempted to correct the Hearing Order’s unsupportable ruling on Notice, but in modifying Finding 9, Finding 13, and Conclusion 3, created new and different error.

This Appeal followed.

STATEMENT OF THE FACTS

It was undisputed that the Appellant, Jose Jimenez, was in need of medical treatment for his back at the time of the May 23-June 4, 2014 hearing. (R. p. 281, lines 21-25, p. 282, lines 1-2). He was seeking authorization of the surgery recommended by the treating orthopaedic surgeon, Dr. Rodriguez, and payment of temporary total benefits for his time out of work. (R. p. 68; p. 69; p. 325, lines 24-25; p. 326, lines 1-18).

Mr. Jimenez was referred to the treating orthopaedic surgeons, Dr. Rodriguez and Dr. Terzella, by Dr. Erica Savage-Jeter with Family Medical Center. (R. pp. 127-128; p. 313, lines 6-10). Family Medical Center (FMC) is the same group used by Respondent Kohler as its company doctor for workers’ compensation claims. (R. p. 316, lines 7-10; p.

380, lines 4-10; p. 494, lines 14-18; p. 495, lines 2-9).

According to Dr. Savage-Jeter, Dr. Rodriguez, and Dr. Terzella, Mr. Jimenez's back problems were the result of his injuries from his work accidents at Respondent-Kohler. (R. p. 79; p. 289, lines 14-25; p. 290, lines 1-2; p. 317, lines 16-25; p. 318 lines 1-20). Respondents did not provide an IME or any medical evidence disputing the opinions of the three treating doctors.

Mr. Jimenez reported an injury by accident to his supervisor, Sam Barnwell, on July 14, 2011. (R. p. 398, lines 14-25; p. 399, lines 1-20). The incident report provided:

Associate reported to me at 5:00 a.m. on Friday July 15, 2011, that during the process of emptying his drain pans on his floor at 6:30 on Thursday, July 14, 2011, he felt something in the lower middle part of his back. Associate stated there was no pain, only a little tightness. Associate stated that he could cast his floor, as he continued to do all the procedures that day before he reported this to me, and felt fine. Had associates cast production and send associates to the reinstated associate. All accidents must be reported as soon as they happen on the same day, which he is aware of. Reinstated the associate proper lifting techniques and how to bend his knees while keeping his back straight and let the legs do the lifting.

(R. p. 476).

Mr. Jimenez was sent by his supervisor to the plant nurse, Pat Zimmerman. (R. p. 400, lines 8-10.) The nurse's records of July 15, 2011, reflect "on 7-14-11 @ 7:00 or 7:30 am was draining molds picked up a slip pan and felt low back pull is sore now." (R. p. 174; p. 532). She applied Bio Freeze to Mr. Jimenez's low back. She provided him with Back Quell tablets and advised him to use warm soaks over the weekend. (R. p. 174; p. 532; p. 485, lines 16-22; p. 488, lines 18-25; p. 489, lines 1-2).

Mr. Jimenez reported another injury by accident to his supervisor, Sam Barnwell, on March 14, 2012. (R. p. 402, lines 18-25; p. 403, lines 1 - 10). Again, an incident report was prepared by Sam Barnwell. His supervisor's report provided:

On Tuesday morning, March 13, 2012, associates told me as I was passing by him that his back was sore and asked me if he could get some pills from the nurse. I asked the associates if he was okay and he said yes. Wherein, I got him three packs of back pills from Sid DeVaul. The associate finished his work for the day at 13:30 and went home with no more complaints. On Wednesday morning at 4:50 a.m. associate came to me and stated that his left leg felt like it was asleep or numb and that this came from rolling the molds over on his floor on Tuesday around 9:00 a.m.. When I asked the associates why he did not report this he said this is why his back was sore and needed pills. I asked the associate if he could work and he stated that he had no problem casting today and is running production. Talked to the associate about the correct procedures and rolling over bowls and how important it was to work with his partner and make sure both castors were rolling over together and that one not getting ahead of the other in order to keep the weight distributed evenly. Also, to never rush while doing this procedure. Associate will also be required to do double exercise for the week in order to keep back muscles loose"

(R. p. 475).

Mr. Jimenez was again referred to Nurse Zimmerman for treatment by his supervisor. (R. p. 402, lines 11-15). The nurse saw Mr. Jimenez on March 14, 2012, and noted "EE says was rolling ware over yesterday and left low back felt sore. Today area feels like electric shock down leg." She applied Bio Freeze and gave him medication.

(R. p. 173; p. 533).

Mr. Jimenez repeatedly asked his supervisor to be sent for further medical treatment with a doctor. (R. p. 240, lines 5-10; p. 241, lines 9-19). On April 30, 2012, Mr. Jimenez sought medical treatment at Doctor's Care for back pain and shoulder pain from lifting at work. (R. p. 175). He was given a light duty note. (R. p. 176). He provided a copy of his medical note to his supervisor, Sam Barnwell. (R. p. 405, lines 13-25). A copy of the light duty note was later produced by Respondent Kohler, in

response to a subpoena for Mr. Jimenez's personnel file and employment records. (R. p. 383, lines 13-25; pp. 384-387).

On October 15, 2012, Mr. Jimenez sought medical treatment at the Family Medical Center (FMC) for his back and shoulder. (R. pp. 145 - 148). Dr. Savage-Jeter recommended he discuss his problem with his employer. (R. p. 310, lines 23-24; p. 311, lines 1-6). Mr. Jimenez insisted his supervisor, Sam Barnwell, schedule a meeting with the plant nurse. (R. p. 406, lines 15-24; p. 680, lines 9-10).

There was a meeting on November 1, 2012 in the nurse's office with Mike Tolleson, the Safety Manager; Sam Barnwell, Appellant's supervisor; Joe Brown, Appellant's manager; Pat Zimmerman, the plant nurse; and, Mr. Jimenez. (R. p. 406, lines 1-6; p. 427, lines 22-25; p. 759, lines 2-5). The nurse's notes from that meeting reflect:

Meeting with J. Brown, S. Barnwell and M. Tolleson.... EE says that he has seen a doctor with his back. EE came in on 3-14-12 and reported that on 3-13-12 he was rolling ware over and his left low back felt sore (see note in card dated 3-14-12 @ 8:55 a.m.) Was treated here on 3-14-12 was supposed to be rechecked on 3-15-12 but did not return.

(R. p. 172; p. 530).

Mr. Jimenez wanted a referral to the company doctor for his work-related back injury, but Safety Manager, Mike Tolleson, told him that he had waited too long and there was too big of a gap between his March accident and his seeking medical treatment now, (November 1, 2012) (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 9-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18; p. 681, lines 9-17). He told Mr. Jimenez "if he could not do his job, there's the door." (R. p. 681, lines 18-25; p. 687, lines 3-16; p. 241, lines 22-25; p. 242, lines 1-16).

Following the meeting at the nurse's station, Mr. Jimenez was moved to slightly lighter job by Joe Brown on November 28, 2012. (R. p. 455, lines 15-25; p. 456, lines 1-21; p. 548, lines 5-12; p. 686, lines 13-23; p. 461, lines 12-21; p. 462, lines 1-9). Mr. Jimenez returned to FMC on his own. (R. p. 682 lines 4-6). Dr. Savage-Jeter referred him for an MRI and surgical consult. (R. p. 244, lines 15-25; p. 245, ln 1; p. 311, lines 15-25; p. 312, lines 1-2, lines 13-25; p. 313, lines 1-10). He told his supervisor that he had undergone an MRI. (R. p. 682, lines 20-25; p. 683, ln. 1; p. 503, lines 22-25, p. 504, lines 1-20; p. 542, lines 17-20). The MRI showed spinal stenosis at L4-5 and L5-S-1, as well as a herniation at the L5-S1 level. (R. pp. 151-152; p. 263; lines 16-20). Dr. Savage-Jeter directed him to obtain a special form from Kohler which was required whenever one of Kohler's employees was given work restrictions for an on-the-job injury. (R. p. 245, lines 4-7; p. 313, lines 23-25; p. 314, lines 1-8). When Mr. Jimenez requested the form, Kohler refused to give him one. (R. p. 245, lines 8-12; p. 464, lines 16-22; p. 683 lines 8-22). Instead, he was told to get a note from the doctor releasing him to work at full duty, and until then he could not work. (R. p. 540, lines 15-25; p. 541, ln. 1; lines 15-25; p. 542, lines 1-6). Mr. Jimenez returned to FMC and obtained a light duty excuse that he provided to Kohler. (R. p. 122; p. 458, lines 3-22; p. 463, lines 14-25; p. 464, lines 8-15). However, he was terminated for accruing too many points due to absences while out of work on light duty. (R. p. 571, lines 8-25; p. 572, lines 1-12; p. 708, lines 22-25). Had he been given the special form by Kohler for the doctor to complete, he would not have accrued points for these absences.

Nurse Zimmerman testified in her deposition that Respondent-Kohler requires its injured workers take a special form to the company doctor for completion regarding work restrictions in workers compensation cases. (R. p. 515, lines 22-25; p. 516, lines 1-25; p.

517, lines 1-20).

Dr. Savage-Jeter also testified in her deposition, Respondent-Kohler uses a special form for light duty that she completes when an employee is being seen for workers' compensation. (R. p. 316, lines 11-25; p. 317, lines 1-9).

At the hearing, Respondents did not dispute that two incidents occurred on July 14, 2011 and March 13, 2012. (R. p. 349, lines 5-25, p. 350, lines 1-25; p. 351, lines 1-22; p. 354, lines 14-25; p. 355, lines 1-25; p. 356, lines 1-5). Instead, Respondents position was that Mr. Jimenez failed to provide adequate notice, and he did not suffer an injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20). Respondents relied on these positions throughout the hearing.² (R. p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) While arguing that Mr. Jimenez: 1) continued to work his regular job after reporting each accident; 2) failed to return for follow-up care with the nurse after her initial treatment following each accident; and 3) allegedly did not request to see a doctor for several months after the reported injuries.

The self-insured Respondent-Kohler presented several witnesses at the hearing, all of whom provided contradicting testimony.

Mike Tolleson, the company Safety Manager, was the first witness. Mr. Tollenson had been with Kohler for eighteen years. (R. p. 330, lines 11-13). The majority of his testimony proved to be false. He testified that he never knew about Mr. Jimenez claiming any work accidents until the Form 50 was filed in February 2013 and he was deposed.³ (R. p. 335, lines 17-25; p. 336, lines 1-25; p. 337, lines 1-25; p. 338, lines 1-25; p. 339, lines 1-13). He said Kohler company policy required that Mr. Jimenez must request to see a doctor,

² Respondents also later added Intervening Accident as a defense. (R. p. 389, ln. 5-25; p. 390, ln. 1-20).

³ False Joe Brown, Sam Barnwell and Nurse Zimmerman testified he was in the meeting November 1, 2012. (R. 491, lines 2-4; p. 427, lines 21-25; p. 430, lines 7-17; p. 499, lines 15-17).

in order to sufficiently give notice of a workers' compensation claim.⁴ (R. p. 358, lines 2-23) Until an injured employee asks for a doctor's visit it's not workers' compensation.⁵ (R. p. 359, lines 12-19). An injured employee must follow up with the plant nurse every day until released without restrictions.⁶ (R. p. 333, lines 5-8; p. 352, lines 7-11). He claimed Mr. Jimenez never asked to be seen by a doctor⁷ and if Mr. Jimenez had asked, he would have been sent.⁸ (R. p. 359, lines 3-11, lines 20-25; p. 360, lines 1-5, ln 23-25; p. 379, lines 12-23). According to Mr. Tolleson, while Mr. Jimenez would have been sent, Mr. Tolleson has nothing to do with deciding whether an injured employee could see the company doctor.⁹ (R. p. 365, lines 23-25; p. 366, line 1). He testified he never told Mr. Jimenez he could not go to the doctor.¹⁰ At the meeting on November 1, 2012, Mr. Jimenez did not say he was injured on the job,¹¹ nor did he ask to see a doctor.¹² (R. p. 337, lines 12-25; p. 338, lines 1-25; p. 339, lines 1-15). Kohler does not have a special form for the company doctor to complete regarding light duty in workers' compensation cases.¹³ Mr. Tolleson also testified he was not involved with Jesus Lugo's case. (R. p. 363, lines 12-16; p. 365, lines 6-25; p. 366, line 1). Mr. Lugo was an ex-employee that testified for Mr. Jimenez at the

⁴ False (Joe Brown and Nurse Zimmerman confirmed he had given notice) (R. p. 451, lines 19-25; p. 512, lines 4-25; p. 513, lines 1-22).

⁵ False (Nurse Zimmerman testified a request for a doctor is not required) (R. p. 514, lines 9-12).

⁶ False (Yuri Valderamma testified he was not required to do this) (R. p. 641, lines 3-5).

⁷ False (Joe Brown testified Mr. Jimenez asked Mike Tolleson to send him to the company doctor) (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18).

⁸ False (Joe Brown testified Mr. Jimenez asked Mike Tolleson to send him to the company doctor) (R. p. 452, lines 19-25; p. 453, lines 1-8).

⁹ False (Joe Brown and Nurse Zimmerman testified Mike Tolleson decided who went to doctor.) (R. p. 440, lines 3-7, p. 451, lines 19-25; p. 452, lines 1-10; p. 511, lines 7-17).

¹⁰ False (Joe Brown testified Mike Tolleson told Mr. Jimenez he could not go to the doctor. (R. p. 431, lines 18-20, and see footnote 7 above).

¹¹ False (Joe Brown testified Mr. Jimenez said he was injured on the job during the November 1, 2012 meeting.) (R. p. 430, lines 24-25; p. 431, lines 1-17; p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18).

¹² False (Joe Brown testified Mr. Jimenez asked to see the company doctor during the November 1, 2012 meeting) (R. p. 452, lines 19-25; p. 453, lines 1-18).

¹³ False (R. p. 515, lines 22-25; p. 516, lines 1-24) Nurse Zimmerman testified Kohler required a special form".

hearing. Mr. Tollseon admitted Mr. Jimenez reported both accidents to his supervisor and was returned to the nurse. (R. p. 351, lines 15-22; p. 354, lines 14-25; p. 355, lines 1-25; p. 356, lines 1-5).

Sam Barnwell testified Mr. Jimenez reported both incidents to him. He confirmed the incident reports, were the ones he completed (R. p. 398, lines 14-25; p. 339, lines 1-11; p. 402, lines 18-25; p. 403, lines 1-10; p. 475, p. 476). He confirmed that he referred Mr. Jimenez to the plant nurse for both accidents. (R. p. 399, lines 15-25; p. 400, lines 1-10; p. 403, lines 11-15; p. 173, p. 174). He stated, reporting the accident to your supervisor and going to the nurse are the standard procedure at Kohler to report an injury. (R. p. 400, lines 11-16; p. 402 lines 14-15). He did not recall giving Mr. Jimenez any pills (R. p. 401, lines 17-25). He did not recall Mr. Jimenez giving him a light duty note from Doctor's Care, but admitted it would have been placed in his personnel file if he had. (R. p. 405, lines 13-25). He did not suggest Mr. Jimenez had staged his accidents. He did not suggest Mr. Jimenez was feigning the injuries he reported after each accident. Joe Brown was Mr. Barnwell's immediate supervisor. (R. p. 410, lines 24-25).

Joe Brown was a manager for Respondent-Kohler. He recalled that Mr. Jimenez asked about seeing the company doctor during the 11/1/12 meeting. (R. p. 430, lines 24-25; p. 431, lines 1-20; p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452; lines 19-25; p. 453, lines 1-18) He testified that Mike Tolleson told Mr. Jimenez he would not be allowed to go to the doctor. Mr. Tolleson said Mr. Jimenez hadn't complained and was working production and there was too big a gap between his reported accident in March 2012 and his request to go to the doctor now (November 1, 2012). (R. p. 452, lines 19-25; p. 453, lines 1-18) During the meeting on November 1, 2012, Mr.

Jimenez said his back hurt from his injury on-the-job in March 2012 and he didn't understand why he couldn't claim it under workers' compensation. (R. p. 450, lines 9-25; p. 451, lines 1-10) During the November 1, 2012 meeting, Nurse Zimmerman told Mr. Jimenez "if you did hurt your back and you still had soreness in your back how come you never came back and saw me in six months. (R. p. 546, lines 22-25, p. 547, lines 1-6). Mr. Brown testified normal procedure was to send an injured worker back to the plant nurse, and then the nurse and Mike Tolleson would decide whether to send the worker to the company doctor. (R. p. 451, lines 19-25; p. 452, lines 1-10). In January of 2013, Mr. Jimenez brought by a note that he had an MRI and they wanted to put him on light duty. (R. p. 542, lines 7-20). We told him we would not honor that because we didn't consider it work-related. He had waited six months since his accident in March. (R. p. 434, lines 20-25; p. 435, lines 1-21; p. 543, lines 18-25; p. 544, lines 1-11). Kohler does not accommodate non-work-related injuries. (R. p. 458, lines 18-22). Mr. Jimenez was told he needed to go back to his doctor and get a full duty release (R. p. 434, lines 20-25; p. 435, lines 1-21; p. 540, lines 18-25; p. 541, line 1). He did not know how the 4/30/12 light duty note from Doctor's Care could have gotten into Mr. Jimenez's personnel file, in light of Kohler not allowing light duty notes from the doctors for non-work-related injuries. (R. p. 442, lines 12-25; p. 443, lines 1-11). He was not aware of any special form to address work restrictions that Kohler provided to its company doctor in workers' compensation cases. (R. p. 434, lines 8-14). He admitted the job he moved Mr. Jimenez to in November was lighter. (R. p. 455, lines 15-25; p. 456, lines 1-21; p. 548, lines 5-12; p. 461, lines 12-17). This was the first job change for Mr. Jimenez in eight years. (R. p. 462, lines 1-9).

Company Nurse, Pat Zimmerman did not appear at the hearing. Her testimony was

submitted by deposition only. Her deposition was taken between hearing dates on May 30, 2014. The Hearing Commissioner never laid eyes on her. (R. p. 327, lines 8-14). Nurse Zimmerman was eighty-four years old at the time of her deposition. (R. p. 519, lines 24-25, p. 520, lines 1-4). She was Kohler's only plant nurse for forty-six and a half years until her retirement in 2014. (R. p. 482, lines 2-15). She testified that if an employee requested to be seen by a doctor, he would be sent. (R. p. 497, lines 11-15; p. 506, lines 19-25; p. 507, lines 1-6). She reiterated "if they specifically ask, they are sent" (R. p. 507, lines 8-9). Mr. Jimenez did not ask her to be referred to a doctor. (R. p. 492, lines 2-11; p. 497, lines 11-15; p. 522, lines 11-12). However, she could not recall if he had asked the Safety Director, Mike Tolleson, to send him to the company doctor during the November 1, 2012 meeting.¹⁴ (R. p. 499, lines 18-25; p. 500, lines 1-4; p. 530). Additionally, she could not recall if Mike Tolleson told Mr. Jimenez there had been too big a gap between his March accident and his request for medical treatment on November 1, 2012.¹⁵ (R. p. 499, lines 18-25; p. 500, lines 1-10). She did not recall ex-employee, Jesus Lugo, ever requesting to be seen by a doctor for his work injury.¹⁶ (R. p. 508, lines 14-25; p. 509, line 1). She did admit that Kohler uses a specific form which it requires injured workers to have completed at FMC. (R. p. 515, lines 22-25; p. 516, lines 1-24). However, she said if Mr. Jimenez had requested a copy of the form from someone at Kohler, it would not have been given to him because Kohler did not

¹⁴Joe Brown testified Mr. Jimenez asked to be sent to the company doctor at the 11/1/12 meeting and was refused by Mike Tolleson. (R. p. 452, lines 19-25; p. 453, lines 1-8).

¹⁵ Joe Brown confirmed that Mr. Tolleson told Mr. Jimenez this. Joe Brown also testified about Nurse Zimmerman's similar comments. (R. p. 440, lines 5-17; p. 451, lines 1-10; p. 546; lines 22-25; p. 547, lines 1-6).

¹⁶ At the conclusion of the hearing, the Commissioner requested the nurse's notes related to Jesus Lugo. (R. p. 817, lines 25; p. 818, line 1). In her notes that were produced after the hearing, the nurse documented Mr. Lugo's request to see the company doctor and Mike Tolleson's refusal. The documented reason for the refusal ... Mr. Lugo didn't return to the nurse after his initial medical treatment. The nurse's notes reflected Mr. Lugo's accident was reported on October 2, 2006 and his request for treatment was denied on October 26, 2006 a total of 22 days later. (R. pp. 862-864).

consider his injuries work-related. (R. p. 516, line 25; p. 517, lines 1-25; p. 518, lines 1-15). This was despite the 11/1/12 nurse's note in which she documented, in her own hand, that Mr. Jimenez attributed his back problems to his March 2012 work accident. (R. p. 497, lines 19-25; p. 498, lines 1-9; p. 530). Finally, she admitted Mr. Jimenez had done everything necessary to report an accident. (R. p. 512, lines 4-25; p. 513, lines 1-25; p. 514, lines 1-14).

Sid DeVaul was the Human Resources Manager for Respondent-Kohler. He had that position at the plant for eighteen years. (R. p. 568, lines 3-7). He occasionally provided pills to workers. (R. p. 569, lines 2-6). He also provided pills to supervisors to give to employees. (R. p. 569, lines 7-10).

Two witnesses testified in support of Mr. Jimenez. The first witness for Appellant was ex-Kohler employee, Jesus Lugo. A Spanish interpreter was required for Mr. Lugo. He worked at Kohler in the same department as Mr. Jimenez. Mr. Lugo testified that he was injured on the job at Kohler in 2005 and again in 2006. (R. p. 585, lines 11-13). When he was injured his supervisor completed an incident report and he was referred to the same plant nurse. Despite specifically requesting to see a doctor, the plant nurse refused. (R. p. 592, lines 21-24; p. 593, lines 1-3). Mr. Lugo was told he could seek medical treatment with his private doctor. (R. p. 593, lines 4-11). Mr. Lugo continued to work for several months after his accident and eventually paid for his first back surgery himself. (R. p. 595, lines 3-18; p. 601, lines 13-23). His claim was also initially denied. (R. p. 601, lines 8-12). He was found to be permanently and totally disabled with incomplete paraplegia by the Commission.

Ex-employee, Yuri Valderamma testified that he was also injured on the job at Respondent-Kohler. (R. p. 630, lines 6-24). He worked at Kohler in casting, later as a rover

and in the lab. He testified about Kohler's repeated denial of medical treatment and failure to pay temporary benefits in his case. (R. p. 633, lines 22-25; p. 634, line 1; p. 648, lines 12-19). He testified he was not required to follow-up with the plant nurse every day while on light duty. (R. p. 642, lines 3-5). He was released from employment by Kohler after he refused to perform a job that violated his light duty work restrictions. (R. p. 646, lines 5-25; p. 647, lines 1-25; p. 648, lines 1-9). He too was eventually found permanently and totally disabled by the Commission. (R. pp. 728-746) Respondent-Kohler's attorney also cross-examined Mr. Valderamma on his legal status and sought the Commission's permission to contact Homeland Security to verify his Social Security Number. (R. p. 664, line 4- p. 668, line 23).

Jose Jimenez was the last person to testify. A Spanish interpreter was provided for Mr. Jimenez. (R. p. 672, lines 11-17). He worked at Kohler from April 2001 to January 2004. (R. p. 674, lines 1-7). He was terminated, but then rehired one month later in February 2004 and continued to work there in the casting department until he was terminated again in February 2013. (R. p. 674, lines 12-18). He reported both accidents to Sam Barnwell, his supervisor, the day after each accident occurred. (R. p. 677, lines 11-15; p. 678, lines 3-19; p. 679, lines 13-16). Mr. Barnwell completed an incident report each time and referred Mr. Jimenez to the plant nurse. (R. p. 677, lines 11-25; p. 678, lines. 1-9; p. 679, lines 17-21). The plant nurse treated him with Bio-Freeze and back pills. (R. pp. 173-174). He complained to Sam Barnwell on several other occasions about continuing problems with his back. (R. p. 680, lines 24-25; p. 681, lines 1-7). Mr. Barnwell would provide him with pills for his back. Mr. Jimenez went to Doctor's Care, on his own, for his work-related back problems in April 2012. (R. pp. 175-178; p. 709, lines 17-25). He

provided a light duty work note from Doctor's Care to Mr. Barnwell. (R. p. 176; p. 405, lines 13-25). Later he went to FMC as his back pain continued to worsen. (R. p. 138; p. 148). He was referred to physical therapy. (R. p. 145; p. 161; p. 163). His medical provider at FMC recommended he speak with his employer about his problems since it was work-related. (R. p. 310, lines 19-25). He told Mr. Barnwell he needed to see the plant nurse about sending him to the doctor. (R. p. 406, lines 15-24; p. 680, lines 9-10, lines 19-25; p. 681, lines 1-4). Mr. Barnwell set up a meeting with the nurse on November 1, 2012. (R. p. 530; p. 172). Mr. Jimenez was surprised to see several of his superiors waiting for him in the nurse's office. Mike Tolleson, Joe Brown, Sam Barnwell, and Pat Zimmerman were in the meeting. (R. p. 172; p. 530; p. 680, lines 4-8). He told them he had seen the doctor about his back. (R. p. 681, lines 13-14). He told them his back was still bothering him from when he injured it at work in March 2012. (R. p. 681 lines 2-12). He asked for medical treatment with a doctor or at least a lighter job. (R. p. 681, lines 15-17). Joe Brown asked what kind of lighter job. Mike Tolleson interrupted and said "no, no, no, if you can't do the job, there's the door." (R. p. 687, lines 6-16). Mike Tolleson said his injury could not be covered under workers' compensation because there had been too big a gap between March 2012 and now (November 1, 2012). Mr. Tolleson said he had been working his regular job all this time and had waited too long to request treatment. Mike Tolleson asked if he would be able to get back to work. He felt if he didn't return to work he would be fired. (R. p. 681, lines 18-25; p. 687, lines 17-25; p. 688, lines 1-3). He returned to work and continued to treat with the doctor at FMC on his own. (R. p. 682, lines 4-6). He was referred for an MRI and surgical consult. (R. pp. 127-128; pp. 131-134). He told his supervisor, Sam Barnwell, about the referral for an MRI. (R. p. 683, lines 2-7). He

completed paperwork provided by the orthopaedic surgeon's office for his upcoming appointment. (R. pp. 82-85; p. 806, lines 9-25). After finally getting approval from his health insurance for the MRI, he returned to FMC. The FMC doctor told him to get a special form from Kohler for her to complete regarding light duty. (R. p. 683, lines 9-16). He requested the form from Sam Barnwell, but was told no. (R. p. 683, lines 17-21). Instead, he would need to get a note from his doctor releasing him to full duty. He went back to Dr. Savage-Jeter and told her Kohler would not give him the form. He was provided a light duty note. (R. p. 122). Shortly thereafter, he was fired for the points he had accrued from being out of work, because Kohler would not provide the form for the company doctor to complete. (R. p. 708, lines 22-25). After that his health insurance was cut off. (R. p. 685, lines 14-17). He could not afford to follow-up with a surgeon because he was out of work and had to rely on his brother and wife for income. (R. p. 685, lines 24-25; p. 686, lines 1-12). He is not working and remains under physical restrictions.

Before the hearing concluded, the Commissioner directed Defendants to produce the plant nurse's notes related to Jesus Lugo, in order to determine whether the records supported Mr. Lugo's testimony. (R. p. 625, line 25; p. 626, lines 1-14; p. 817, lines 24-25; p. 818, line 1). Defendant's counsel submitted these records to the Commissioner by e-mail on June 6, 2014. (R. pp. 858-865). The nurse's notes concerning Jesus Lugo reflect on October 2, 2006, Mr. Lugo's supervisor e-mailed her an incident report:

EE was rolling over partner's molds on 9-26-06 @ 9:45 A.M.
when he felt pain in lower back...

10:40 EE came to medical -Bio freez to rt. Low back - says
pain radiates down back of rt. leg...

10/25/06 EE came in w interpreter says is seeing a
Chiropractor since last week...asked if he could see specialist
10/25/06 will check with M Tolleson tomorrow....

10/26/06 Talked w M. Tolleson since EE didn't return to

see me, is doing his regular job and went to Chiropractor on his own will not send to FMC @ this point in time.

(R. pp. 862-864).

Throughout the hearing, the Commissioner made references to Respondent's defenses of Notice and injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20; p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) The hearing Commissioner issued his Order on October 24, 2014 finding, in effect, that Mr. Jimenez failed to provide adequate Notice of an injury by accident to the employer. (R. p. 28).

The Hearing Order of October 24, 2014 made no reference to the nurse's notes regarding Jesus Lugo that were submitted by e-mail at the direction of the Commissioner. (R. p. 1-29; p. 625, lines 25; p. 626, lines 1-14; p. 817, lines 24-25; p. 818, line 1; pp. 858-865).

A Form 30 was timely filed. (R. pp. 190-192). Before the Full Commission, Appellant argued that timely Notice was given after each accident; and, that Respondent-Kohler's allegations of Mr. Jimenez failing to follow-up or seek additional treatment for several months after he provided notice was irrelevant to such a finding. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2, lines 21-25; p. 871, lines 1-3, lines 17-22). Moreover, had the Commissioner reviewed these notes, it is difficult to believe he would have found Nurse Zimmerman "very credible." (R. p. 872, lines 20-25; p. 873, lines 1-4; p. 874, lines 19-25; p. 875, lines 1-6).

The Full Commission apparently recognized Finding 9 of the Hearing Order regarding lack of Notice was not accurate. During Oral argument, in response to Appellant's argument that Finding 9 found insufficient notice, Respondent-Kohler's

attorney argued:

What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we agree with you, wouldn't you agree that perhaps that finding could be reworded?" (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

Sure. You could – you could – you could fix the wording to say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things...

(R. p. 877, line 25; p. 878, lines 1-8).

Unfortunately, the Commission, "Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9." (R. p. 37). The Commission modified Finding 9, Finding 13, and Conclusion 3 from the Hearing Order. (R. pp. 28-29, pp. 36-37). However, these modifications created new and different error.

This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act (“APA”) provides the standard for judicial review of decisions by the Commission. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133-34, 276 S.E.2d 304, 306 (1981). Under the APA, the Appellate Court can reverse or modify the decision of the Commission if the substantial rights of the appellant 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. S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2011).

“[T]he guiding principle undergirding our workers’ compensation system [is] that the Act is to be liberally construed in favor of the claimant. The second is equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation Hutson v. S.C. State Ports Authority, 399 S.C. 381 732 S.E.2d 500 (2012). The Commission’s decision “must be founded on evidence of sufficient substance to afford a reasonable basis for it.” Wynn v. People’s Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

The Commission is permitted to disregard medical evidence only when there is other competent evidence in the records to support their conclusion. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011). Where a finding is based on “the medical opinion of the single commissioner, adopted by the Commission,” rather than on the opinion of a medical provider, the finding must be reversed as unsupported by substantial evidence. Burnette v. City of Greenville, 737 S.E. 2d 200, 401 S.C. 417 (Ct. App. 2012). A conclusion by the Commission “based on rank speculation...cannot now

be used as the basis for denying [an injured worker's] claim for lost wages." Hutson, 732 S.E 2d at 504

I. THE COMMISSION ERRED IN FINDING THE INJURIES MR. JIMENEZ REPORTED AT WORK DID NOT ESTABLISH AN "INJURY BY ACCIDENT."

The Commission was operating under a misunderstanding of the law when it incorrectly found Mr. Jimenez did not suffer an "injury by accident" and its findings are not supported by substantial evidence. This was error.

At the hearing, Respondents primary positions were that Mr. Jimenez did not provide adequate notice of an accident, and that he did not suffer an injury by accident. This strategy continued throughout the Hearing, while Respondents based these arguments on Mr. Jimenez returning to work after reporting each accident; continuing to work his regular job after receiving treatment from the nurse; allegedly failing to follow-up with the nurse after the initial treatment when he reported the injuries; and alleged delay in seeking additional medical treatment for several months after each reported accident.

During the course of the hearing, the Commissioner noted on the record several times that Respondent-Kohler was disputing notice and injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20; p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) .

Despite the unequivocal evidence that Mr. Jimenez reported two "injuries by accident" to his supervisor and the plant nurse, the Hearing Commissioner mistakenly accepted Respondent's Notice defense, ruling:

9. I find that claimant reported "incidents" following each alleged date of injury, however, **I find these do not rise to the level of defining an injury to the employer.** This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.

Emphasis added (R. p. 28).

This Finding was appealed. Before the Full Commission, Appellant argued Mr. Jimenez's actions of reporting an accident to his supervisor and the plant nurse one day after the accident occurred, satisfied the notice requirement, per S.C. Code Ann. §42-15-20 and Bass v. Isochem, 365 S.C. 454, 617 SE 2d 369 (Ct. App. 2005); Mize v. Sangamo Elec. Co., 251 S.C. 250, 161 SE 2d 846 (1968); Buggs v. U.S. Rubber Co., Winnsboro Mills 201 S.C. 281, 22 SE 2d 881(1942) . Once given, Notice cannot be taken back by a Claimant's subsequent actions.

The Full Commission apparently recognized a problem. During oral argument, in response to Appellant's argument that Finding 9 found Insufficient Notice, Respondent-Kohler's attorney argued:

What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we

agree with you, wouldn't you agree that perhaps that finding could be reworded? (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

Sure. You could – you could – you could fix the wording to say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things,

(R. p. 877, line 25; p. 878, lines 1-8).

Unfortunately, the Full Commission "Affirmed with an Amendment, specifically the clarification of Finding of Fact number 9." (R. p. 37).

Rather than fixing the erroneous Hearing Order, the Full Commission's alterations to Finding 9, Finding 13, and Conclusion 3, created new and different error.

(R. pp. 28-29; pp. 36-37) . Finding of Fact 9 was changed to:

We find that Claimant reported "incidents" following each alleged date of injury, however, **we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents"**. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

Emphasis added to reflect the change made from Hearing Order. (R. p. 36).

Finding of Fact 13 and Conclusions of Law 3 were changed to expressly provide the basis for each to be the Commission's new Finding of Fact 9.

Finding of Fact 13 provides:

We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back

of left leg on either alleged dates of injury. This finding is based upon the greater weight of the evidence in the record and **moreover, Finding of Fact # 9 above.**

Emphasis added to reflect the change made from Hearing Order. (R. p. 36).

Conclusion of Law 3 holds:

Pursuant to §42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, **for the reasons specifically stated in Finding of Fact #9, and based on the greater weight of the evidence.** The claimant is therefore not entitled to any benefits under the Act.

Emphasis added to reflect change from Hearing Order. (R. p. 37).

According to Pee v. AVM, Inc., 543 S.E.2d 232, 344 S.C. 162 (Ct. App. 2001):

The question of whether a claimant asserts an "injury by accident" within the meaning of the Act is a question of law. *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995). This Court may review the Commission's legal conclusion to determine if it is affected by an error of law.

Id.; S.C. Code Ann. § 1-23-380(A)(6) (Supp.1999). Notwithstanding the scope of review on this legal question, this Court must affirm the Commission's factual findings if they are supported by substantial evidence and not controlled by legal error. *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 513 S.E.2d 843 (1999)

An "injury by accident" is defined by S.C. Code Ann. § 42-1-160 "Injury" and "personal injury":

(A) "Injury" and "personal injury" mean only **injury by accident** arising out of and in the course of employment . . .

This issue has been the subject of much case law. According to Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753,758 (Ct. App. 2007):

To be compensable, an injury by accident must be one "arising out of and in the course of employment." S.C. Code Ann. § 42-1-160 (Supp.2006); *Grant v. Grant*

Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007); *Broughton v. South of the Border*, 336 S.C. 488, 496, 520 S.E.2d 634, 638 (Ct.App.1999).

The phrase "arising out of" refers to the injury's origin and cause; whereas, "in the course of" refers to the time, place, and circumstances under which the injury occurred. *Baggett v. Southern Music, Inc.*, 330 S.C. 1, 4, 496 S.E.2d 852, 854 (1998); *Owings v. Anderson County Sheriffs Dep't*, 315 S.C. 297, 300, 433 S.E.2d 869, 871 (1993); *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 138, 417 S.E.2d 538, 541 (1992). Although the requirements are somewhat overlapping, they are not synonymous and both must exist simultaneously to allow the claimant to recover workers' compensation benefits, *Osteen v. Greenville County School Dist.*, 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998); *Broughton*, 336 S.C. at 496, 520 S.E.2d at 638.

According to *Douglas v. Spartan Mills, Startex Division*, 245 S.C. 265, 140

S.E.2d 173 (1965):

There are numerous decisions interpreting the words 'arising out of' and 'in the course of employment'. . . It is well established, at least in this jurisdiction, that these phrases are used conjunctively and that an accident, in order to be compensable, must both 'arise out of' and 'in the course of' the employment. In *Eagle v. South Carolina Electric & Gas Co.*, 205 S.C. 423, 32 S.E.2d 240, this court said:

'The two elements must co-exist. They must be concurrent and simultaneous. One without the other will not sustain an award; yet the two are so entwined that they are usually considered together in the reported cases; and a discussion of one of them involves the other. * * *

'As is generally held, the words 'arising out of' refer to the origin of the cause of the accident, while the words 'in the course of employment,' have reference to the time, place and circumstances under which the accident occurs.'

In that case the court then went on to quote with approval from *Re Employers' Liability Assurance Corporation*, 215 Mass. 497, 102 N.E. 697, L.R.A.1916A, 306, the following language:

"It (the injury) arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment.

Whether an accident arises out of and is in the course and scope of employment is largely a question of fact for the Appellate Panel. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 518, 526 S.E.2d 725, 729 (Ct. App. 2000). The claimant has the burden of proving facts sufficient to allow recovery under the Act. West v. Alliance Capital, 368 S.C. 246, 252, 628 S.E.2d 279, 282 (Ct.App.2006). Sharp v. Case Produce, Inc., 336 S.C. 154 at 160, 519 S.E.2d 102 (1999), (where evidence supported claimant “staged” an accident and was not injured on the job.) However, when the facts are undisputed, whether an accident is compensable is a question of law. Shuler v. Gregory Elec., 366 S.C. 435, 622 S.E.2d 569 (Ct.App.2005); Gibson, 338 S.C. at 518, 526 S.E.2d at 729.

In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances. Lanford v. Clinton Cotton Mills, 204 S.C. 423, 425, 30 S.E.2d 36, 41 (1944). The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant. Davis v. S.C. Dep't of Corr., 289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986).

Finding an accident arises out of and in the course of employment does not require a determination that a claimant's current physical problems are causally related to the work injury. Anderson v. Campbell Tile Co., 202 S.C. 54 24 S.E.2d 104 (1943), Lawson v. Hanson Brick America, Inc. 393 SC 87, 710 S.E.2d 711 (Ct. App. 2011). Note, this differs from a mental-mental injury, in which a causal relationship must be shown to establish an “injury by accident” per S.C. Code Ann. §42-1-160 (B)(2) and Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 at 300 (2012).

As noted above, Finding 9 addresses Mr. Jimenez's alleged behavior after his work accident. Like Notice, once an "Injury by Accident" occurs, any alleged failure to request follow-up or seek medical treatment cannot alter that fact. The use of the word "incidents" in quotes and the phrase "alleged dates of injury" in new Finding of Fact 9 show the Commission was still operating under a misunderstanding of the law related to an "injury by accident." Clearly, an "injury by accident" occurred on both reported dates. Mr. Jimenez was injured while performing his job at Kohler as a caster. He immediately reported both accidents to his supervisor and was subsequently sent to the plant nurse per Kohler procedure. (R. p. 475-476, p. 173-174). These actions alone constitute an "injury by accident" under S.C. Workers' Compensation Law. We need go no further to show a work injury occurred. When and how the Claimant requested further treatment has no impact on the fact that Claimant was injured while performing his job and immediately reported the injury to his supervisor.

Finding 9 provides no support to either Finding 13 or Conclusion 3. Assuming *arguendo* that Mr. Jimenez failed to request follow-up or seek medical treatment for several months following each reported accident, this has no bearing on whether Mr. Jimenez suffered an "injury by accident" on the reported dates.

When an employee suffers an "injury by accident" and requests medical treatment, the employer shall provide treatment, per S.C. Code Ann. §42-15-60(A). Respondent-Kohler should have sent Mr. Jimenez to the company doctor, a doctor it is allowed to select. It was Respondent-Kohler's right to ask its company doctor to address whether Mr. Jimenez's "injuries by accident" were casually-related to his current physical problems, per S.C. Code Ann. §42-15-80. The company doctor is expressly

allowed to discuss causation with the employer, per S.C. Code Ann. §42-15-95(B). Had this occurred, the company doctor could then opine whether there was a causal relationship between Mr. Jimenez's current physical problems and his "injuries by accident" on July 14, 2011 and March 13, 2012. If there was no causal relationship found by the company doctor, Respondent-Kohler could have denied further medical treatment on that basis.

Consider the following hypothetical: On Monday, January 1st, 2014, a clerk trips while retrieving a brief at work and lands hard on her knee. It hurts. The following day, she tells her supervisor that yesterday she injured her knee when she fell while retrieving a brief. Her supervisor documents the incident. She is sent to Human Resources where she is provided an ibuprofen and asked if she needs anything else. She tells the HR manager "I think I'll be alright" and returns to her job researching and writing briefs. Neither her supervisor, nor the HR manager dispute that she reported an accident and complained she was hurt. There is no suggestion she staged an accident or feigned her injury. Six months later, she returns and tells the HR Manager that her knee is still bothering her and she would like to see a doctor.

Indisputably, the clerk suffered a "compensable injury by accident" at work, as that term is defined under the law. The accident arose out of her employment as a clerk and occurred when she tripped injuring her knee while performing her job. Her delay in asking for medical treatment does not change the fact that she was injured on the job on January 1, 2014.

Now suppose, the same clerk ran a marathon and was involved in three car accidents during the intervening months between her work accident and her request for medical treatment. Her employer may well question whether her current problems are causally-related to her work injury several months earlier. However, the clerk's actions or inactions after the work accident cannot change the fact that she fell at work and hurt her knee, therefore suffering an "injury by accident." Whether her current physical problems are causally related to her accident, is a separate and distinct issue from whether she suffered a compensable injury by accident on January 1, 2014. She suffered a compensable "injury by accident" and is entitled to medical treatment. Now, her employer may want to ask the company doctor whether her current problems are causally-related to her "injury by accident" of January 1, 2014. S.C. Code Ann. §42-15-60 (A), 42-15-80 (A), 42-15-95 (B).

In Anderson v. Campbell Tile, 202 S.C. 54, 24 S.E.2d 104 (S.C. 1943), the employer admitted Mr. Anderson was involved in an accident arising out of his work and suffered a strain in the course of his employment. However, the employer disputed that his injury (the strain) resulted in his death several weeks later. The court, in affirming the award of death benefits, did not question the employer's admission of an "injury by accident," while at the same time disputing Claimant's death was causally-related to his previous injury.

In the present case, Mr. Jimenez suffered two accidents while at work. Each time, he reported to his supervisor the following day that he had injured himself as a result of a work accident. He reported an injury to his back following the first accident and an injury to his back and legs following the second accident. Each time, his supervisor

completed an incident report and sent him to the plant nurse. (R. pp. 475-476). Each time, the nurse documented that he was injured the previous day as a result of an accident at work. (R. pp. 173-174).

The supervisor and nurse both testified that Mr. Jimenez reported two work accidents. (R. p. 398, lines 24-25; 399, lines 1-20; p. 402, lines 21-25; p. 403, lines 1-10; p. 512, lines 4-25; p. 513, lines 1-25; p. 514, lines 1-12). His supervisor completed an incident report for each accident and referred him to the nurse. (R. pp. 475-476). The nurse documented his physical complaints from his injuries by accident. (R. pp. 173-174). The Nurse provided treatment. She confirmed both of these facts in her deposition. (R. p. 485, lines 16-24; p. 488, lines 20-25; p. 489, lines 1-2). Respondent-Kohler's manager, Joe Brown, testified that medical treatment was refused to Mr. Jimenez because there was too great a gap in time between Mr. Jimenez reporting his injuries and his seeking medical treatment. (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18; p. 687, lines 10-16). Respondents improperly refused Mr. Jimenez's request for medical treatment in violation of S.C. Code Ann. §42-15-60 (A). Although two injuries by accident had been reported, Respondents sought to rely on the lack of medical treatment caused by their improper refusal to authorize a visit to the company doctor, as a defense to Mr. Jimenez's claims.

There was no evidence that Mr. Jimenez "staged" an accident. No witness suggested that Mr. Jimenez was faking an injury when he saw the nurse the day after each accident. This would have been the only type of evidence that could have supported the Commission finding Mr. Jimenez did not suffer an "injury by accident" Sharp v. Case

Produce, Inc., 336 S.C. 154 at 160, 519 S.E.2d 102 (1999). No such evidence is in the record.

Instead, Respondents argued 1) Mr. Jimenez did not give sufficient notice of his accidents; 2) after reporting accidents and treating with the nurse for his work injuries, Mr. Jimenez returned to his regular work; allegedly failed to follow-up with the nurse after his initial treatment; and, allegedly delayed seeking treatment for several months after the reported accidents, and 3) the reason he allegedly did not seek care for several months was because his current injuries were from an intervening cause. These arguments are simply not relevant to the issue of whether Mr. Jimenez suffered a “compensable injury by accident” on July 14, 2011 and March 13, 2012. An injury by accident involves the origin and cause of the injury, and is date and time specific, it cannot be changed by circumstances arising after the injury occurred. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d at 758. The Commission’s finding that Mr. Jimenez did not suffer “injuries by accident” because he allegedly failed to seek medical treatment after the accident at work and after being treated by the nurse for his injuries, is not supported by substantial evidence and reflects a misunderstanding of the applicable law by the Commission. Hutson v. S.C. State Ports Authority, 399 S.C 381 732 S.E.2d at 504; Wynn v. People’s Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961); Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995).

The substantial evidence established Mr. Jimenez suffered an “injury by accident” on July 14, 2011 and March 12, 2012. These accidents were duly recorded by Mr. Jimenez’s supervisor and the plant nurse. (R. pp. 475-476; pp. 173-174).

Accepting that Mr. Jimenez did suffer "injuries by accident" on July 14, 2011 and March 13, 2012, the remaining issue to be addressed is whether Mr. Jimenez's "compensable injuries by accident" are causally-related to his current back and left leg problems. The Commission never reached this issue. The use of the word "incidents" in quotes and the phrase "alleged date of injury" in Finding 9 reflect the Commission continued to operate under a misunderstanding of the law regarding Mr. Jimenez's injuries by accident. (R. p. 36). Finding 9 incorrectly found Mr. Jimenez's current problems were not causally-related because he failed to establish he was hurt at work on July 14, 2011 and March 12, 2012. Again, the issue that should have been addressed was whether his "compensable injuries by accident" were causally-related to his current physical problems. However, when the evidence is susceptible of but one reasonable inference, the question becomes a matter of law. Mullinax v. Winn Dixie Stores, Inc., 318 S.C. 431, 437, 458 S.E.2d 76, 80 (Ct.App.1995). Respondents lay witnesses testified about Mr. Jimenez continuing to work after the accidents, and allegedly delaying to seek medical care. Yet, the Order found "defendant's argument of an intervening accident is not dispositive." (R. p. 36). While the Order found Dr. Savage-Jeter and Dr. Rodriguez's deposition testimony was not dispositive on the issue of compensability (R. p. 36, Findings 10 and 11). Both doctor's testimony was compelling on causation. (R. p. 318; p. 289, lines 14-24). For that matter, all of the expert medical opinion established Mr. Jimenez's current need for back surgery is causally-related to his work accidents. (R. p. 289, lines 14-24). Terzella's medical questionnaire stated to a reasonable degree of medical certainty, that Mr. Jimenez's low back problems are most probably causally-related to his work accident while emptying drain pans on or about July 14, 2011. (R. p.

79). The MRI provides objective medical evidence of his current back problems. (R. pp. 151-152). The only substantial evidence in the record regarding causation established Mr. Jimenez's current physical problems are causally-related to the "injuries by accident" he suffered on July 14, 2011 and March 13, 2012.

In light of Mr. Jimenez: having suffered "compensable injuries by accident" in satisfaction of S.C. Code Ann. §42-1-160; there being no intervening cause between his accidents and request for medical treatment (R. p. 36, Finding 12); and, the only substantial evidence on causation establishing that Mr. Jimenez's current back and left leg problems are causally-related to his work accidents (R. p. 289, lines 14-24; p. 79) the only reasonable inference supported by the evidence is that the claim is compensable. The Commission's findings 9 and 13 and Conclusion 3 amount to error. The Order should be REVERSED. Respondents should be ordered to provide medical treatment, per S.C. Code Ann. §42-15-60 (A) and Dodge v. Brucoli, 514 S.E.2d 593, 334 S.C. 574 (Ct. App. 1999) Per, S.C. Code Ann. §42-9-200, Mr. Jimenez is entitled to temporary benefits for the time he has been written out of work, until such time as his benefits may be suspended or terminated in accordance with the Act.

II. THE COMMISSION FAILED TO PROVIDE SUFFICIENT FINDINGS OF FACT AND CONCLUSIONS OF LAW TO ALLOW APPELLATE REVIEW.

The Commission's findings are conclusory and lack sufficient specificity to allow proper Appellate review, in violation of the statutory and case law of South Carolina.

The Hearing Commissioner's Finding of Fact 9 indicated that Mr. Jimenez's "reported 'incidents' did not rise to the level of defining an injury to the Employer. . ."

The basis for this finding was Mr. Jimenez's "lack of requested follow-up and lack of medical treatment for several months following each alleged date of injury." (R. p. 28).

On appeal to the Full Commission, Mr. Jimenez argued that this Finding represented a misunderstanding of the law applicable to Notice. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2 and lines 21-25; p. 871, lines 1-3 and lines 17-22) Once Mr. Jimenez reported the work accidents and injuries to his supervisor the day after each occurred, his duty to provide Notice was satisfied. Any alleged failure to request follow-up or seek medical treatment could not change that fact.

The Full Commission recognized the apparent problem with Finding 9. During oral argument, the following comment was provided:

What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we agree with you, wouldn't you agree that perhaps that finding could be reworded?" (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

Sure. You could – you could – you could fix the wording to

say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things...

(R. p.877, lines 25; p. 878, lines 1-9).

However, in response to Mr. Jimenez's Appeal, the Full Commission, "Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9." (R. p. 37). The Commission's Order made specific changes to Findings of Fact 9 and 13, and Conclusion of Law 3. (R. pp. 27-28 and pp. 36-37)

However, the Commission's new Findings failed to resolve the problems with the Hearing Order, but rather created new error. Finding of Fact 9 was changed to:

We find that Claimant reported "incidents" following each alleged date of injury, however, **we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents"**. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

Emphasis added. (R. p. 36).

Compounding the error, Finding of Fact 13 and Conclusion of Law 3 were changed to specifically reflect the bases for each to be new Finding of Fact 9.

Finding of Fact 13 provides:

We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This finding is based upon the greater weight of the evidence in the record and **moreover, Finding of Fact # 9 above.**

Emphasis added. (R. p. 36).

Yet, Finding 9 only addresses Mr. Jimenez's alleged behavior after the "injury by accident." Like Notice, once an "injury by accident" occurs, any alleged failure to request follow-up or seek medical treatment cannot change that fact.

Conclusion of Law 3 was changed to:

Pursuant to §42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, **for the reasons specifically stated in Finding of Fact #9, and based on the greater weight of the evidence.** The Claimant is therefore not entitled to any benefits under the Act.

Emphasis added. (R. p. 37).

Pursuant to S.C. Code Ann. § 42-17-50 (Supp.2007), the Commission shall weigh the evidence as presented at the initial hearing and, **if good grounds are shown**, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct.App.1984); *see also* Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967) (holding although it is logical for the Commission to give weight to the Single Commissioner's opinion, the Commission may disagree with his findings based on the credibility of witnesses).

In Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct.App.1991), this court determined the findings of fact in the Commission's order were conclusory and remanded the case to the Commission to make sufficient findings of fact to afford a reasonable basis for appellate review. The Court in Baldwin v. James River Corp., 405 S.E.2d at 422 also referenced the application of the Administrative Procedures Act § 1-

23-350 (1986) ("Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.").

According to Pack v. State Dept. of Transp., 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009):

The task of an appellate court is to inquire whether the Commission's findings are supported by substantial evidence. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. However, without clear findings of fact, this Court cannot evaluate the decision of the Commission under the substantial evidence standard. See *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 123, 127 S.E.2d 288, 292 (1962) (holding remand is proper where Commission's order affords no reasonable basis upon which the appellate court can determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings).

See also Fox v. Newberry County Mem'l Hosp., 319 S.C. at 280, 461 S.E.2d at 394 (holding when an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings).

The basis for the Full Commission's new Finding 9 was not changed from the original Hearing Order. Use of the word "incidents" in quotes and the phrase "alleged date of injury", rather than the word "accidents" and the term "date of injury" reflect the Commission was still operating under a misunderstanding of the applicable law regarding "injury by accident." The substantial evidence established Mr. Jimenez was injured at work on the reported dates. (R. pp. 475-476; pp. 173-174). Hutson v. S.C. State Ports Authority, 732 S.E.2d at 503. Moreover, the stated basis for new Finding 9 remained: "upon the greater weight of the evidence in the records." This language is conclusory and lacks adequate specificity for the Appellate Court to determine if the Commission correctly applied the law to the facts. Baldwin v. James River Corp., 304 S.C. 485, 405

S.E.2d at 422. It points to no particular evidence for the Appellate Court to consider. It is not an explicit statement of the underlying facts supporting the findings as required per APA, SC Code Ann. §1-23-350 (1986). While Appellant agrees Finding 9 of the Hearing Order was in error, the Commission failed to identify the “good grounds... shown” for changing the Hearing Order, per S.C. Code §42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89. The Commission failed to provide any explanation for changing Finding of Fact 9.

Finding of Fact 13 is conclusory and not sufficient to afford a reasonable basis for Appellate review. As discussed *infra*, new Finding of Fact 9 provides no support to the issue of whether an “injury by accident” occurred. Finding of Fact 9 finds Mr. Jimenez’s current back and left leg problems are not causally-related to the reported incidents because of alleged delay in requesting follow-up or seeking medical care. An injury by accident involves the origin and cause of the injury, and is date and time specific, Hall v. Desert Aire, Inc., 656 S.E.2d at 758. It cannot be changed by circumstances arising after the initial reported injury occurred. (See Argument I, pp. 25-37 of this brief). The only other basis provided for new Finding of Fact 13 is the generic “upon the greater weight of the evidence in the record.” This basis lacks specificity or sufficient direction for the appellate court to determine the Commission’s application of the facts to the law. Baldwin v. James River Corp., 405 S.E. 2d at 422. Drake v. Raybestos-Manhattan, Inc., 241 S.C. at 123, 127 S.E. 2d at 292. It is not an explicit statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the “good grounds...shown” for its

changes to the Hearing Order, per 42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89.

Conclusion of Law 3 holds Mr. Jimenez did not suffer an injury by accident “based on Finding of Fact #9 and the greater weight of the evidence in the record.” Again Finding 9 provides no support for this conclusion. Hall v. Desert Aire, Inc., 656 S.E.2d at 758. Likewise, the basis is non-specific. It is not an explicit statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the “good grounds...shown” for its changes to the Hearing Order, per §42-17-50 and Lowe 283, S.C. at 537, 324 S.E.2d at 89. It is conclusory and not sufficient to afford a reasonable basis for appellate review per Baldwin 405 S.E.2d at 422; Drake, 241 S.C. at 123, 127 S.E.2d at 292.

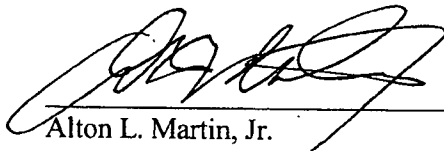
The Order of the Full Commission should be reversed and remanded for new findings and conclusions consistent with the substantial evidence presented that Mr. Jimenez suffered “compensable injuries by accident; and, with sufficient specificity to allow appellate review should subsequent appeals arise.

CONCLUSION

For the foregoing reasons, the Decision of the Appellate Panel should be Reversed. Mr. Jimenez suffered an” injury by accident” to his low back and left leg per S.C. Code Ann. §42-1-160. Respondents should provide medical treatment in accordance with the Act and pay temporary benefits until Claimant has reached MMI or been released to return to work without restrictions. Alternatively, the Court should Reverse and Remand for findings consistent with the evidence that Mr. Jimenez suffered a “compensable injury by

accident” and providing sufficient specificity to allow for appellate review should any subsequent appeal arise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alton L. Martin, Jr.', is written over a horizontal line.

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June 16, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

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SC Court of Appeals

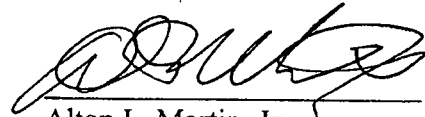
Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule
211 (b), SCARC



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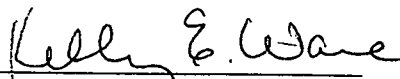
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PROOF OF SERVICE

I, certify that I, Kelly E. Ware, paralegal to Alton L. Martin, Jr., and that I have caused the **Final Brief of Appellant** and **Final Reply Brief of Appellant** to be served upon counsel for the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

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June 16, 2016
Greenville, South Carolina

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STATEMENT OF THE ISSUES

- I. Did the South Carolina Workers' Compensation Commission Appellate Panel correctly conclude that the claimant failed to establish that his current injuries to his low back/left leg are causally related to injuries by accident arising out of and in the course of employment on July 14, 2011, or March 13, 2012, pursuant to South Carolina Code section 42-1-160?
 - A. Is the Decision and Order of the Appellate Panel affected by an error of law?
 - B. Is the Decision and Order of the Appellate Panel supported by substantial evidence?
- II. Does the South Carolina Workers' Compensation Commission Appellate Panel's Decision and Order state sufficient Findings of Fact and Conclusions of Law to afford the claimant judicial review?

STATEMENT OF THE CASE

This is the appeal of a workers' compensation case by the Appellant/Claimant Jose Jimenez ("claimant") in an action filed against the Respondent/Defendant Kohler Company ("defendant Kohler"). The claimant had two claims which were consolidated for a hearing before Commissioner T. Scott Beck ("the Hearing Commissioner") by way of the claimant's Form 50s. On W.C.C. claim #1122474, the claimant alleged an injury by accident on July 14, 2011, to his back and his right shoulder (the "July 14, 2011 claim"). (R. p. 39). On W.C.C. claim #1219561, the claimant alleged an injury by accident on March 13, 2012, to his back and legs (the "March 13, 2012 claim"). (R. p. 42). As to both claims, the claimant sought a determination of compensability, the payment of temporary benefits, and authorized medical treatment. (R. pp. 39, 42).

The defendant Kohler denied the claims. (R. pp. 45, 46, 49, 50, 179-92). The issues raised by the Defendant were (1) whether the claimant's current alleged injuries or complaints were, in fact, injuries by accident under South Carolina Code section 42-1-160 that arose out of and in the course of employment on the dates alleged, (2) whether the claimant gave proper notice of an injury by accident; (3) whether the claimant had any pre-existing disabilities, (4) whether Kohler suffered any prejudice due to the claimant's delay in prosecuting his claims, (5) the claimant's credibility, (6) causation of the alleged injuries to the alleged claims being pursued, and (7) laches. (Id.).

The Hearing was held over three days: in Columbia, South Carolina, on May 23, 2014, in Greenville, South Carolina, on June 3, 2014, and in Columbia, South Carolina, on June 4, 2014, before Commissioner Beck. (R. p. 1). By way of Decision and Order filed on October 24, 2014, the Hearing Commissioner determined that the claimant did not sustain a compensable injury by

accident to his low back/legs on July 14, 2011, or on March 13, 2012. (Id.). Specifically, the Hearing Commissioner determined the Claimant failed to meet his burden of proof as to causation under Section 42-1-160 and, therefore, denied the Claimant's claim for benefits. (Id.)

The claimant appealed the Hearing Commissioner's Decision and Order to the Appellate Panel. A hearing was held before the Appellate Panel on March 16, 2015. (R. p. 30). By way of Decision and Order filed April 3, 2015, the Appellate Panel unanimously affirmed the Decision and Order of the Hearing Commissioner, while amending Finding of Fact #9, Finding of Fact #13, and Conclusion of Law #3. (Id.).

The claimant has now appealed the Appellate Panel's Decision and Order to the South Carolina Court of Appeals, arguing that the Commission erred as a matter of law in determining that the claimant did not establish that his alleged current injuries or complaints were causally related to injuries by accident on July 14, 2011, or March 13, 2012, and therefore not compensable under South Carolina Code section 42-1-160. The claimant also argues that the Appellate Panel's decision is not supported by substantial evidence. Finally, the claimant argues that the Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow sufficient appellate review.¹

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") governs review of decisions of the South Carolina Workers' Compensation Commission by the Court of Appeals. S.C. Code Ann. § 1-23-380 (2015); Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). The judicial

¹ The defendant Kohler contemporaneously filed a Motion to Strike portions of the Claimant's Designation of the Record on Appeal as it was not relevant to the issues before the Commission, no evidence on these issues were presented to the Commission at the Hearing to decide compensability, and actually dealt with issues that resolved prior to the Hearing. Additionally, the Defendant is requesting that facts set forth in the Claimant's Statement of Facts relating to the issues, as set forth on pages 4 and 5 of claimant's brief, be stricken from Appellant's Final Brief to this Court, in the event the Motion to Strike the Designation is granted. (This motion was denied).

review of the appellate panel's factual findings is governed by the substantial evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006); Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004).

“The claimant has the burden of proving facts that will bring the injury within the workers’ compensation law, and such award must not be based on surmise, conjecture or speculation.” Nicholson v. S.C. Dep’t of Soc. Servs., 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) (quoting Crisp v. SouthCo., 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013)).

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, 541 S.E.2d 526 (2001). The Appellate Panel’s decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (citing Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). A reviewing court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. Houston v. Deloach & Deloach, 378 S.C. 543, 550, 663 S.E.2d 85, 88 (Ct. App. 2008). As the South Carolina Supreme Court observed,

a decision of the Workers’ Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action. *Quantitatively, substantial evidence is something less than the weight of the evidence.*

Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987) (internal citations omitted) (emphasis added).

The Appellate Panel is the ultimate fact finder in Workers’ Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness

credibility and the weight to be accorded evidence is reserved to the Appellate Panel. See Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe, 336 S.C. 154, 519 S.E.2d 102; Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, *the findings of the Appellate Panel are conclusive*. Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (emphasis added).

STATEMENT OF FACTS

The claimant originated from Mexico and at the time of the hearing, was 35-years old. (R. pp. 6722-73).² The claimant worked for Kohler initially from 2001 through January 2004, and again from February 2004 until his termination in February 2013. (R. p. 674).

The claimant worked in the casting department at Kohler. The claimant testified at the Hearing that on or about July 14, 2011, he felt pain down his leg while lifting a drain pan. (R. p. 676). The claimant continued working that day, but alleged that the next day, he felt more pain. (*Id.*). On July 15, 2011, an incident report was completed regarding the claimant's complaints and reflects that the claimant denied having any pain but rather only was having a little tightness. (R. p. 476). The claimant was sent to see Kohler's plant nurse, Pat Zimmerman. (R. p. 678). Nurse Zimmerman was the Occupational Health Nurse at Kohler Company for forty-six years until her retirement on February 1, 2014. (R. pp. 481-82). Nurse Zimmerman's notes reflect that the claimant pulled his back the previous day and that he was still sore. (R. p. 532). Nurse Zimmerman

² Though the claimant alleged that he did not speak English very well, and he had a translator at the hearing, the overwhelming evidence established that the claimant communicated with his doctors, his coworkers, and other Kohler employees all in English and did not require a translator. This issue went not only to the issue of the claimant's credibility but also whether claimant could blame his various stories on a language barrier. (R. p. 413). The claimant and his witnesses, Jesus Lugo and Yuri Valderamma, were all found not to be credible, as further addressed in the argument below. Moreover, the Hearing Commissioner found Jesus Lugo and Yuri Valderamma's testimony was not relevant to any of the issues before him, which was affirmed by the Full Commission.

provided the claimant with BioFreeze and Back Quell tablets and was advised to use warm soaks over the weekend. (R. p. 174). Nurse Zimmerman's testimony confirmed that the claimant reported to her office on July 15, 2011, and reported he "was draining molds, picked up a slip pan and felt low back pull." (R. p. 485). She advised him to follow-up Monday (the 18th), but the claimant never returned. (R. p. 486).

Despite the fact the claimant complained of soreness that day, he continued to work for the remainder of the day. (R. p. 355). Mike Tolleson, the Safety Specialist at Kohler, testified that at no point between July 15, 2011, and March 12, 2012, did the claimant ever request of him to see a doctor and at no point did claimant report that he had made an appointment with a doctor. (R. pp. 330, 369, 374, 376)³. Had he requested an appointment with a doctor, he would have been sent to one and a meeting would have been held regarding his injury and any restrictions an employee may need. (R. pp. 3). Rather, as testified to by the claimant himself, he continued to work full-duty, with no restrictions, from July 14, 2011, until January 2013, or approximately 18 months.⁴ (R. p. 697). The claimant admitted he had medical insurance throughout this period of time which would have covered him had he felt the need to see a doctor, but outside of a single Doctor's Care visit in April 2012, the claimant waited until October 2012 to see a doctor for any issues related to his back. (R. p. 698).

With respect to the July 14, 2011, incident, Sam Barnwell, foreman of the casting department and claimant's foreman for approximately four (4) years also testified at the hearing. (R. p. 398; p. 412). He confirmed that the claimant came to him on July 15, 2011, and reported that the claimant felt something in the lower middle part of his back the day before and that

³ The claimant, in his Statement of Facts, represents that Kohler called its employees as witnesses. This is false, as the claimant called every witness in this case.

⁴ The claimant was apparently given a note for light duty work for three (3) days from Doctor's Care in April 2012.