

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SEP 20 2017

APPEAL FROM SOUTH CAROLINA  
WORKER'S COMPENSATION COMMISSION

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**S.C. SUPREME COURT**

Supreme Court Opinion No. 27708  
(Refiled June 28, 2017)

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HENTON T. CLEMMONS, JR., EMPLOYEE,.....PETITIONER,

v.

LOWE'S HOME CENTERS, INC.-HARBISON, EMPLOYER, AND  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,  
CARRIER,.....RESPONDENTS.

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**RETURN IN OPPOSITION TO  
PETITION FOR STAY OF THE REMITTITUR**

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Pursuant to Rules 221 and 240, SCACR, Respondents Lowe's Home Centers, Inc.-Harbison and Sedgwick Claims Management Services, Inc. hereby oppose Petitioner Henton T. Clemmons, Jr.'s Petition to Stay the Remittitur and for a Hearing Before the Court to Determine Whether or Not the Petitioner is Entitled to Relief Under the Reverse and Remand Opinion of the Court and for the Reasons Set Forth in the Petition, filed September 12, 2017 ("Petition").

First, this Court lacks jurisdiction over the issues raised by Petitioner. It is well-established that an appellate court retains jurisdiction over a matter from service of the notice of appeal "until the remittitur is sent to the lower court." Stokes-Craven Holding Corp. v. McKenzie, 416 S.C. 517, 534 n.7, 787 S.E.2d 485, 494 n.7 (2016), *quoting*

Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 137, 742 S.E.2d 867, 868 (2013). The sending of a remittitur ends appellate jurisdiction over a case “and no further motions will be entertained after the remittitur is sent.” Stogsdill v. South Carolina Dep’t of Health & Human Servs., 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016), *citing* Wise v. South Carolina Dep’t of Corr., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007); Mickle v. Blackmon, 255 S.C. 136, 140-141, 177 S.E.2d 548, 549 (1970) (Supreme Court loses jurisdiction over the issues involved in an appeal after the remittitur is sent). “The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court,” Wise, 372 S.C. at 174, 642 S.E.2d at 551, none of which are alleged in the Petition. As a result, this Court has no power to recall or stay the Remittitur issued on September 5, 2017. State v. Barnes, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015), *citing* Earle v. City of Greenville, 84 S.C. 193, 196, 65 S.E. 1050, 1051 (1909) (once “the remittitur has been sent down, this Court loses jurisdiction, and cannot, therefore, in the further progress of the case, render a different decision upon the points decided, so as to affect the particular case in which the decision was rendered”). Even where this Court may have committed an error, once the remittitur has been sent, this Court loses jurisdiction and “[w]hatever error may have been committed by this Court, if any was committed ... could not be corrected.” Durst v. Southern Ry. Co., 161 S.C. 498, 510, 159 S.E. 844, 849 (1931); Jenkins v. Southern Ry. Co., 145 S.C. 161, 164, 143 S.E. 13, 14 (1928) (once the “remittitur has been sent down, the Supreme Court loses jurisdiction, and cannot render a different decision upon the question decided (even if it should be convinced that there was error), so as to affect the particular case in which the decision was rendered”).

Second, Petitioner has not demonstrated that he has been unable or will be unable to secure a fair and impartial hearing on remand. Mere allegations of bias based on a second-hand account of statements do not establish bias or any violation of the Judicial Canons. Winthrow v. Larkin, 421 U.S. 35, 55 (1975) (without a showing to the contrary, state administrators “are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances”); Babcock Center, Inc. v. Office of Audits, 286 S.C. 398, 402, 334 S.E.2d 112, 113-14 (1985) (explaining that a “presumption, the burden of which is upon the complainant to overcome, exists that members of such panels are unbiased”).

Third, and critically, as the Court may or may not be aware, Petitioner filed a Form 50 with the Commission dated September 28, 2016 alleging a change of condition. (Exh. A). At this point, Respondents are willing to stipulate that Petitioner has suffered a change of condition for the worse with regard to his back and that, as a result, he is now totally and permanently disabled. Respondents’ stipulation eliminates the need for the Commission to consider and/or decide the issues of whether Respondents have rebutted the Section 42-9-30(21) presumption, Petitioner’s impairment rating, and any other issues that concern the degree of disability that Petitioner suffers. In other words, Respondents’ stipulation renders the remand hearing moot and effectively eliminates any objection or criticism by Petitioner as to the fairness and impartiality of the Commissioners.

**CONCLUSION**

For all the reasons stated herein, this Court should deny Petitioner's Petition. This Court no longer has jurisdiction over the issues raised by Petitioner and, in any event, Respondents' stipulation that Petitioner is now totally and permanently disabled, renders the remanded issue, along with Petitioner's Petition moot.

September 18, 2017

Respectfully submitted,

MCANGUS, GOUDELOCK & COURIE, LLC



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Helen F. Hiser, S.C. Bar No.: 76124  
735 Johnnie Dodds Blvd., Suite 200 (29464)  
Post Office Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

Kelly F. Morrow, S.C. Bar No.: 72909  
1320 Main Street, 10<sup>th</sup> Floor (29201)  
Post Office Box 12519, Capitol Station  
Columbia, South Carolina 29211-2519  
(803) 779-2300

*Attorneys for Respondents*

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**S.C. SUPREME COURT**

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 30 years.

Telephone (803) 771-7211

Facsimile (803) 252-0709

Preston F. McDaniel

Matthew Robertson

September 28, 2016

Amy Bracy, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

RE: Henton T. Clemmons, Jr. vs. Lowe's Home Centers Inc.  
WCC File No.: 1015200

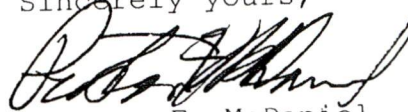
Dear Ms. Bracy:

Enclosed herewith is my Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon opposing counsel in this matter. I have also enclosed this firm's check in the amount of \$25.00 representing the appropriate filing fee.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,

  
Preston F. McDaniel

PFM/kth  
Enclosure

cc: Kelly Morrow, Attorney at Law ✓  
Mr. Henton "Tommy" Clemmons, Jr.

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SEP 30 2016

Per 2013-10044



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



WCC File #: 1015200  
Carrier File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: Henton T. Clemmons, Jr. SSN: 247-63-8794 Employer's Name: Lowe's Home Centers, Inc.  
Address: 118 Tucker Road Address: 390 Harbison Blvd.  
City: Leesville State: SC Zip: 29070 City: Columbia State: SC Zip: 29212  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: Self-Insured, Sedgewick CMS  
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Date of Injury or Illness: 9-12-2010

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

- Injury  Illness  Repetitive Trauma  Occupational Disease  Physical Brain Injury  Concurrent Jurisdiction
1. The claimant sustained an injury to head, back and legs (Part(s) of Body Injured) on 9-12-10 (Month/Day/Year) in Richland county, state of SC.  
Body part(s) affected are: head, back and legs
2. Briefly describe how the accident occurred. Claimant was in the "straw truck" at Lowe's, the employer, when he slipped on wet, loose straw and after slipping and sliding his legs went out from under him resulting in him landing flat on the back of his head, back and buttocks.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/7/10 (Month/Day/Year) in the following manner:  
While a fellow employee was present in the truck and witnessed the accident and its aftermath, and the Claimant's immediate supervisor, Steve Dawson was aware of the problems that he developed after that involving weakness and pain in his back and legs, the Claimant with a witness from his family who took him to the store, officially notified Ms. Audrey Williams in Human Resources of the injury on 10-7-10. (Awarded Case).
7. Due to injury, the claimant is in need of (check one):  
 (a) medical examination and treatment for: \_\_\_\_\_  
 (b) additional medical examination and treatment for: Change of Condition. See #11.
8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:  
To be determined.
9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):  
 (1) General Disability:  Total  Partial  (2) Specific Disability:  Total  Partial  (3) Wage Loss
- 9a.  A determination of permanent disability is premature at this time.
10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: Altered gait.
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$391.19, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: None
11. Further grounds or unusual aspects of claim: See attached.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:  
Lexington Medical Center, West Columbia, SC; Dr. Drye, Dr. Armsey, Midlands Orthopaedics & Neurosurgery, Columbia, SC; Doctors Care, Irmo, SC; Dr. Hicks-Hawkes, Lexington Family Practice, Lexington, SC; Dr. Gunter, Lexington Brain & Spine, West Columbia, SC.
- 11b. To the best of your knowledge, did you have any prior permanent disability? \_\_\_\_\_  
If yes, describe: N/A
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 1 hour
- Mediation  
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.  
 b. Mediation is required pursuant to Reg. 67-1802.  
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.  
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov).

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the \_\_\_\_\_ day of 2016,  
by  first class postage  certified mail  personal service.

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

Preparer's Signature

preston@pfmcdlaw.com  
Title

9/28/16  
Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

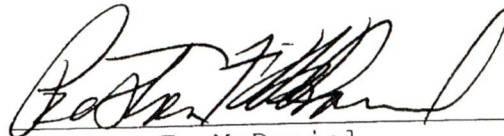
Form 50 Attachment

Henton T. Clemmons, Jr. v. Lowe's Home Centers, Inc.

WCC File Number: 1015200

11. a) This is an awarded case and the Claimant is filing for additional treatment based on a change of condition for the worse based on the medical opinion evidence submitted, including the attached report from Lexington Brain and Spine.

b) The Award also provided for "Dodge medical" under the direction of Dr. Randall Drye. Per the attached letter from Dr. Drye, the Claimant is seeking an Order of the Commission transferring medical care to the surgeons at Lexington Brain and Spine.



Preston F. McDaniel  
Attorney for Claimant

September 28, 2016

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Richard J. Davis, M.D. 1947 - 1994  
Founder

09/06/2016

*Sports Medicine*  
Robert M. Peele, Jr., MD (Ret)  
Robert M. DeSilva, MD  
James A. O'Leary, MD  
Bernard G. Krol, MD  
Benjamin B. Barden, MD

*Surgery of the Upper Extremity*  
Michael R. Ugino, MD  
Michael S. Green, MD

*Physical Medicine and  
Electrodiagnosis*  
M. David Redmond, MD  
Ryan A. Wetzel, MD

*Surgery of the Foot and Ankle*  
William C. James, III, MD

*Podiatric Orthopedic Surgery*  
Frederick C. Plehl, MD

*Total Joint Replacement*  
Thomas P. Gross, MD

*Trauma and Total Joint  
Reconstruction*  
Coleman D. Fowble, MD

*Non-Operative Orthopaedics and  
Sports Medicine*  
Thomas D. Arnsley, II, MD

*Surgery of the Adult Spine*  
Ivan E. LaMotta, MD

*Spine & Neurological Surgery*  
Thomas J. Holbrook, Jr., MD  
William M. Rambo, Jr., MD  
Randall G. Drye, MD  
Karl A. Lozanne, MD

*Pain Medicine*  
Eva Jane Rawl, MD  
Steven B. Stenck, MD

**All Offices:**  
(803) 258-4107 or (803) 704-3700

**Office Locations**  
1910 Blanding St.  
Columbia, SC 29201  
Occupational Therapy Ext.  
6183

1013 Lake Murray Blvd.  
Irmo, SC 29063  
Occupational Therapy Ext.  
7140

114 Gateway Corp. Blvd., Suite  
110  
Columbia, SC 29201

7080 Sunset Blvd.  
West Columbia, SC 29169

**Surgery Center**  
(803) 461-4740  
1930 Blanding Street  
Columbia, SC 29201

www.midlandsortho.com or  
columbieneurosurgical.com

To Preston McDaniel:

**RE:** Henton Clemmons  
**DOB:** 12/01/1971

Dear Preston:

I appreciate the update on Mr Clemmons and am sorry to hear that he has ongoing difficulties. I am no longer performing elective surgery and therefore would agree with transferring Mr Clemmons' care to the surgeons at Lexington Brain and Spine for any additional Neurosurgical needs he may have.

Sincerely,

Electronically Signed by: RANDALL G. DRYE, MD



Lexington Brain and Spine Institute  
146 N. Hospital Drive, Suite 120  
West Columbia, SC 29169  
(803) 935-8410

**Patient:** HENTON CLEMMONS  
118 TUCKER DR  
LEESVILLE, SC 29070

**DOS:**08/17/2016

**DOB:** 12/01/1971

**Gender:** M

**MR#:** 1520593

**Provider:**Brett C. Gunter MD

**Message**

I have reviewed the records and imaging studies for Mr. Henton T. Clemmons. My professional medical opinion, the patient has progressed a syndrome directly related to his previous Workmen's Compensation claim an injury from 2010. Present imaging studies demonstrate solid anterior cervical fusion at C5-6 and C6-7 related to his previous surgery in 2010 by Dr. Drye. They also confirm significant spinal stenosis with spinal cord compression at C3-4 and C4-5. With a reasonable degree of medical certainty, the previous treatment rendered at C5-6 and C6-7 played a direct role and accelerated degeneration and now cord compression at C3-4 and C4-5. It is again my recommendation that the patient pursue anterior cervical discectomy, partial corpectomy, and fusion at C3-4 and C4-5.

**Signatures**

Electronically signed by : Andrew Palmer, PA; Aug 17 2016 7:59AM EST



Lexington Brain and Spine Institute  
146 N. Hospital Drive, Suite 120  
West Columbia, SC 29169  
(803) 935-8410

**Patient:** HENTON CLEMMONS  
118 TUCKER DR  
LEESVILLE, SC 29070

**DOS:**05/31/2016

**DOB:** 12/01/1971

**Gender:** M

**MR#:** 1520593

**Provider:**Brett C. Gunter MD

**Chief Complaint**

Reason For Visit: fu to mri

**History of Present Illness**

**HPI Free Text:**

Patient Presents today in follow-up for his low back and bilateral legs. He had MRIs of his cervical and lumbar spines and is here today to review. Since I last saw him he did have a fall and was seen in the emergency department. He states that his LEFT leg "gave out on him".

Low back: 50%. Patient describes diffuse axial back pain which is intermittent. He rates this an 8/10 on a scale. His symptoms are worse with prolonged sitting, as well as any type of bending, twisting, or lifting. He's able to get some relief with gentle stretching exercises.

Bilateral legs: 50%. The patient describes RIGHT greater than LEFT radiating hip and leg pain from his buttocks down the posterior calves. His symptoms are present with sitting and standing. He describes persistent weakness of his bilateral lower extremities, which has been chronic for the most part. He has had a long-term "shuffling gait". He feels as though his legs have gotten weaker over the past year. He denies difficult with bowel or bladder control.

In further questioning he does have some degree of neck stiffness as well as numbness and tingling into his bilateral hands.

- Active Problems**
1. Acute sinusitis (461.9) (J01.90)
  2. Acute upper respiratory infection (465.9) (J06.9)
  3. CAD (coronary artery disease) (414.00) (I25.10)
  4. Hypercholesterolemia (272.0) (E78.0)
  5. Hypertension (401.9) (I10)
  6. Low back pain (724.2) (M54.5)
  7. Peripheral neuropathy (356.9) (G62.9)
  8. Sinobronchitis (473.9,490) (J32.9,J40)

**Past Medical History**

Past Medical History Reviewed

**Surgical History**

1. History of Cervical Vertebral Fusion
  - Assessed By: Hawkes, Kimberly P (Family Practice); Last Assessed: 28 Apr 2014

**Family History**

1. Family history of hypertension (V17.49) (Z82.49) : Father, Mother

Date of Service: 05/31/2016  
Patient Name: HENTON T. CLEMMONS JR  
Patient DOB: 12/01/1971  
MR#: 1520593  
Gender: M  
Provider: Brett C. Gunter MD

2. Family history of type 2 diabetes mellitus (V18.0) (Z83.3) : Mother, Father

#### Social History

- Never a smoker

#### Current Meds

1. Atorvastatin Calcium 10 MG Oral Tablet; TAKE 1 TABLET DAILY;  
Therapy: 15Mar2016 to (Evaluate:11Sep2016); Last Rx:15Mar2016 Ordered
2. Bayer Aspirin Regimen 325 MG Oral Tablet Delayed Release; Take one daily;  
Therapy: 28Apr2014 to Recorded
3. Clopidogrel Bisulfate 75 MG Oral Tablet; Take 1 daily;  
Therapy: 15Mar2016 to (Last Rx:15Mar2016) Ordered
4. Gabapentin 300 MG Oral Capsule; TAKE 1 CAPSULE Bedtime Requested for:  
17Sep2015; Last Rx:17Sep2015 Ordered
5. Hydrocodone-Acetaminophen 7.5-325 MG Oral Tablet; Take one or two tablets by mouth  
every 4-6 hours as needed for pain;  
Therapy: 20Apr2016 to (Last Rx:20Apr2016) Ordered
6. Lisinopril 10 MG Oral Tablet; TAKE 1 TABLET DAILY FOR BLOOD PRESSURE;  
Therapy: (Recorded:28Apr2014) to Recorded
7. Metoprolol Tartrate TABS; TAKE 1 TABLET TWICE DAILY;  
Therapy: (Recorded:28Apr2014) to Recorded

#### Allergies

1. No Known Drug Allergies
2. Dairy
3. Dust Mite
4. Milk
5. Seasonal

#### Vitals

##### Vital Signs [Data Includes: Last 1 Instance]

Recorded: 31May2016 08:00AM

Heart Rate: 48  
Height: 6 ft  
Blood Pressure: 113 / 72  
Weight: 315 lb  
BMI Calculated: 42.72  
BSA Calculated: 2.58

Recorded: 15Mar2016 03:25PM

Temperature: 98.3 F

Recorded: 21Dec2015 12:27PM

Pain Scale: 3  
O2 Saturation: 95  
Respiration: 18

Recorded: 28Apr2014 11:14AM

Pain Location/Quality: BACK PAIN

#### Results/Data

**Free Text Results:** MRI of his cervical spine from 5/25/2016 demonstrates solid anterior cervical fusion C5-6 and C6-7. He has moderate posterior disc protrusions and significant stenosis with cord compression at C3-4 and C4-5. He has a mild to moderate degree of congenital spinal stenosis as well.

MRI of his lumbar spine from 5/25/2016 demonstrates multilevel lumbar spondylosis most significant at L5-S1. He has a central to RIGHT paracentral disc herniation with extrusion at L5-S1.

Date of Service: 05/31/2016  
Patient Name: HENTON T. CLEMMONS JR  
Patient DOB: 12/01/1971  
MR#: 1520593  
Gender: M  
Provider: Brett C. Gunter MD

### Physical Exam

#### GENERAL EXAM:

GAIT: The patient arises from the chair without particular problems. He has a slow, steady, shuffling awkward gait across the room. he uses a cane.

GENERAL: appropriate for age

HEAD: normocephalic

EYES: pupils equal and reactive, extraocular movements intact

EARS: external anatomy unremarkable

THROAT: oropharynx clear to visual inspection

LUNGS: clear to auscultation bilaterally

HEART: regular rate and rhythm

ABDOMEN: soft non-distended, nontender

EXTREMITIES: warm, moist, pulses present

BACK: Free of masses or lesions. He has mild tenderness palpation diffusely throughout his low back. He can forward flex to his proximal tibia with moderate discomfort. Extension of the spine reproduces mild axial back pain.

#### NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time

SPEECH: fluent and conversant

#### CRANIAL NERVE:

I Olfactory: sense of smell present

II Optic: visual acuity present

III Oculomotor: medial, superior, inferior rectus muscle intact

IV Trochlear: superior oblique muscle intact

V Trigeminal: facial sensory muscle intact

VI Abducent: lateral rectus muscle intact

VII Facial: muscle of facial expression symmetric

VIII Vestibulocochlear: hearing in both ears present

IX Glossopharyngeal: sensation of oropharynx present

X Vagus: elevation of oropharynx present

XI Accessory: shoulder shrug intact

XII Hypoglossal: tongue protrudes normally in the midline

#### POWER EXAM:

##### LOWER EXTREMITIES:

HIP FLEXORS: power 5/5 bilaterally

QUADRICEPS: power 5/5 bilaterally

HAMSTRINGS: power 5/5 bilaterally

ANTERIOR TIBIALIS: power 5/5 bilaterally

EXTENSOR HALLICUS LONGUS: power 5/5 bilaterally

GASTROSOLEUS: power 4/5 bilaterally

#### SENSORY EXAM:

LOWER EXTREMITIES: sensation intact to light touch

CEREBELLAR: gait and finger to nose testing intact

REFLEXES: upper and lower extremity reflexes brisk and intact

#### ADDITIONAL EXAM:

Negative clonus. Straight leg raise reproduces bilateral buttock pain bilaterally.

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### Assessment

1. Cervical myelopathy (721.1) (G95.9)
2. Lumbar disc herniation (722.10) (M51.26)

#### Assessment:

Complex patient. Patient has MRI findings as well as physical exam findings of compressive cervical myelopathy. His affected levels are C3-4 and C4-5, both above a previous well-healed anterior cervical fusion at C5 through C7. The nature spinal cord compression was discussed with the patient. I think this is likely contributing to his gait ataxia and lower extremity weakness. MRI findings were reviewed at length. I recommended an anterior cervical

**Date of Service:** 05/31/2016  
**Patient Name:** HENTON T. CLEMMONS JR  
**Patient DOB:** 12/01/1971  
**MR#:** 1520593  
**Gender:** M  
**Provider:** Brett C. Gunter MD

discectomy, partial corpectomy, and fusion C3 through C5 with removal of previous instrumentation at C5 through C7.

In terms of his lumbar spinal pathology his leg pain is likely coming from the lumbar disc herniation at L5-S1. We outlined the pathology and reviewed MRI findings. Options of management were reviewed including continued observation medications, the role for physical therapy, the role for epidural injections, as well as surgery. A lumbar discectomy can certainly help improve his leg pain but would likely not improve his back pain. We briefly outlined a transforaminal lumbar interbody fusion as well. I would not recommend this at this point in time and would prioritize his cervical spinal pathology over his lumbar spinal pathology.

I have reviewed in detail the risks, benefits, and alternatives. I have informed the patient and family of the fact that not all medical procedures and techniques have been studied for FDA "approval", and by necessity some procedures and devices may be used in a manner that has not been studied (considered "off label"). I have specifically discussed with the patient and family the risks of worsening neurologic function, even death, infection, significant bleeding including injury to surrounding structures. These injuries may lead to the need for additional surgery or treatment. I have informed them that artificial devices or products from animal, human, or inanimate origin may be used. I have instructed them that the devices that may be used are subject to mechanical failure and may need to be replaced or revised. I have fully described the expected procedure and some possible deviations that may occur by necessity. After this discussion they have instructed me to proceed. I have given them opportunity to ask questions. They have voiced an understanding of the risks, benefits, and alternatives.

**Plan**

1. Start: TramADol HCl - 50 MG Oral Tablet (Ultram); TAKE 1 TO 2 TABLETS 4 TIMES DAILY AS NEEDED FOR PAIN

**Plan:** Referral to pain management specialist for epidural steroid injection L5-S1  
Contact patient's cardiologist Dr. Wells at Columbia heart to arrange discontinuation of Plavix  
Read about anterior cervical discectomy, partial corpectomy, and fusion C3 through C5  
AP, lateral, lateral flexion and extension x-rays cervical spine "evaluate for instrumentation and fusion"  
Follow-up 1-2 weeks following injection to further discuss  
Patient verbalizes understanding medication as a nerve medication  
Tramadol 50 milligrams.

**Signatures**

Electronically signed by : Andrew Palmer, PA; May 31 2016 8:46AM EST

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 1015200


I hereby certify that I have on this day served the following in the matter of Henton T. Clemmons, Jr. v. Lowe's Home Centers Inc. with a copy of the Form 50 Request for Hearing by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

Kelly F. Morrow, Attorney at Law  
McAngus Goudelock & Courie, LLC  
Post Office Box 12519  
Columbia, SC 29211

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
28<sup>th</sup> day of September 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/28/15

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM SOUTH CAROLINA  
WORKER'S COMPENSATION COMMISSION

---

Supreme Court Opinion No. 27708  
(filed March 8, 2017)

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HENTON T. CLEMMONS, JR., EMPLOYEE,.....PETITIONER,

v.

LOWE'S HOME CENTERS, INC.-HARBISON, EMPLOYER, AND  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,  
CARRIER,.....RESPONDENTS.

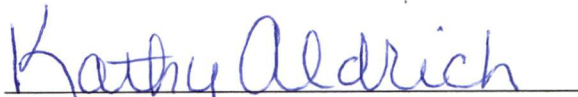
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**PROOF OF SERVICE**

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I certify that I have served the Respondents' **Return in Opposition to Petition for Stay of the Remittitur** on Henton T. Clemmons, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2017, addressed to his attorney of record:

Preston F. McDaniel, Esq.  
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*Attorneys for Respondents*

**RECEIVED**

SEP 20 2017

**S.C. SUPREME COURT**