

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072

September 21, 2017

NOTICE OF HEARING

CORRECTED - ~~Disregard (computer error)~~

NATHANIEL ALSTON
150 Howell Circle
Apt. 253
Greenville, SC 29615

RECEIVED

OCT 16 2017

SC Court of Appeals

NATHANIEL ALSTON v. All My Son's Moving & Storage

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: November 2, 2017 at 01:00 PM

Location: County Square, 301 University Ridge, Conference Room E, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Mike Campbell
803-737-5678, bcheeseboro@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara Cheeseboro, SC Workers' Compensation, September 21, 2017

Party

Employee: NATHANIEL ALSTON
150 Howell Circle
Apt. 253
Greenville, SC 29615

Attorney

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

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STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
	)	
Nathaniel Alston,	)	WCC FILE NO. 1419738
	)	
Claimant,	)	
	)	
vs.	)	
	)	
All My Son's Moving & Storage,	)	FULL COMMISSION ORDER
	)	
Employer,	)	
	)	
and	)	
	)	
Vanliner Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

HEARING: Held in Columbia, South Carolina on April 19, 2017.

APPEARANCES: The Claimant, Nathaniel Alston, appeared, not represented.

The Defendants, All My Sons Moving & Storage, Employer and Vanliner Insurance Company, Carrier, were represented by George D. Gallagher of Speed, Seta, Martin, Trivett & Stubley, LLC of Columbia.

PURPOSE: To determine issues set forth on Claimant's Form 30 Request for Full Commission Review and Rehearing

DECISION AND ORDER BY: Commissioners James, McCaskill, and Taylor
SC Workers' Compensation Commission
(Order Assigned to Commissioner Taylor)

FILED: 9/10, 2017
9/25/2017

STATEMENT AND EVIDENCE OF THE CASE

This matter comes before the Full Commission Appellate Panel via Appeal from a Decision and Order from Commissioner Avery Wilkerson dated October 14, 2016. This is an admitted claim but the factual and procedural background is complicated and bears recitation here.

Claimant sustained an admittedly compensable left shoulder injury on 12/13/14 while lifting a heavy cast iron table. Defendants initiated TTD benefits as of 12/14/14. Claimant's original attorney, Samuel Harm, filed a Form 50 Notice of Claims and entered a letter of representation. TTD benefits were initially suspended as of June 29, 2015 for Claimant's purported non-compliance with medical treatment but were ultimately resumed after 6 weeks later on August 10, 2015. TTD benefits have been running since August 10, 2015. Following the injury, Employer immediately referred Claimant to their company physician, Dr. Forrest Pommeranke with Doctors Care. He was diagnosed with a shoulder sprain and AC joint arthritis. He was initially referred for physical therapy, but Dr. Pommeranke quickly amended his order for an orthopedic evaluation. Defendants authorized Dr. John Vann with Piedmont Orthopedics to evaluate/treat Claimant. Dr. Vann ordered an MRI scan on 1/7/15. Dr. Vann's impression of the MRI was "left shoulder impingement and partial cuff tear." Dr. Vann recommended conservative treatment- PT, NSAIDs, and activity modification, including no lifting greater than 10 pounds overhead.

Thereafter, Claimant started PT but did not complete the course. By and through his then counsel, Ryan Montgomery, Claimant requested redirection of his medical care to a provider other than Dr. Vann. Claimant cited Dr. Vann's aloofness to his complaints as the reason for the

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request. He specifically requested to be seen by Dr. Vann's partner, Dr. Paylor, with whom Claimant treated for a prior right shoulder injury. As a gesture of good faith, Defendants agreed to refer Claimant to another provider outside the Piedmont Orthopedics practice. Throughout February, March, and April of 2015 Defendants contacted multiple shoulder specialists in the Greenville area regarding assumption of Claimant's treatment, including, but not limited to the following well-known physicians: Drs. Posta, Lonergan, Brown, Hoenig, and Kissenberth. After reviewing records, all providers except Dr. Brown and Dr. Hoenig declined to see Claimant, however they could not see him for several more months. By that time Claimant had been without regular treatment since January 2015. Feeling they had exhausted all reasonable efforts to accommodate Claimant's request, Defendants insisted he return to Dr. Vann. Claimant declined to return to Dr. Vann.

A Hearing was scheduled before Commissioner Gene McCaskill on May 6, 2015 to adjudicate direction of Claimant's medical care. Ryan Montgomery was relieved as counsel just prior to the Hearing. In preparation for the Hearing, Claimant's newly retained counsel, John Holland and Rob Usry, suggested direction of treatment to Dr. John Keith of Orthopedic Specialists of Spartanburg. Defendants countered that return to Dr. Vann was the only reasonable option, given additional TTD liability incurred for periods where he was undergoing no active treatment to lessen his disability and decreased prospects for maximum recovery. By Order dated July 8, 2015 Commissioner McCaskill found, *inter alia*, that Claimant had shown "good cause" for redirection of his medical care to a provider other than Dr. Vann and ordered Defendants to continue efforts to designate a new authorized provider. Following receipt of Commissioner McCaskill's ruling and prior to entry of his Order, Defendants authorized Dr. Keith. Shortly thereafter, John Holland and Rob Usry requested to be relieved as counsel.

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Claimant saw Dr. Keith on May 14, 2015 (APA pp. 1-3). Dr. Keith noted that Claimant's MRI showed "some tendinosis of the left shoulder with AC joint spurring but no major rotator cuff tear." Dr. Keith further notes "On my exam today his pain seems to be out of proportion to his MRI findings. For that reason, I am reluctant at this point to proceed with surgery." Dr. Keith recommends referral to a neurosurgeon to see if his alleged severe pain may be stemming from cervical disc pathology. Finally, Dr. Keith notes that Claimant requested pain medications, which he declined to prescribe, and Claimant "seemed to be very upset" that he would not prescribe narcotics based on a relatively benign MRI finding. Claimant followed up with Dr. Keith on May 22, 2015 "demanding" pain medicine. (APA p. 8). Claimant also "demanded" that Dr. Keith proceed with surgery immediately. Dr. Keith again concluded that he was not comfortable proceeding with surgery or prescribing narcotics. Dr. Keith dismissed Claimant from his practice.

Following discussions with Claimant's new counsel, Stephen Garcia, Defendants ultimately authorized Claimant to see Dr. Paylor with Piedmont Orthopedics on August 17, 2015. Dr. Paylor noted "this shoulder seems very similar to the problem with his right shoulder that necessitated pain management to get him over it." (APA p. 15) (emphasis added). Dr. Paylor goes on to say, "I really do not see anything on the MRI scans that would indicate that he needs surgery on the shoulder today." On 8/31/15 Dr. Paylor stated, "There is really nothing else to do for him from an orthopedic standpoint. I would recommend pain management." (APA p. 16).

A Hearing was scheduled before Commissioner Beck on October 22, 2105 pursuant to Form 50 filed by Mr. Garcia. Claimant sought reinstatement of TTD benefits for the period between June 29, 2015 and August 10, 2015, plus a 25% penalty on same. Claimant also

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requested pain management referral to Dr. Eric Loudermilk, the pain management provider with whom he treated previously for his right shoulder. Defendants agreed to refer Claimant to Dr. David Shallcross for pain management. An appointment with Dr. Shallcross was scheduled for October 8, 2015 and Mr. Garcia was notified of same. Claimant did not appear for the appointment. Just prior to the 10/22/15 Hearing, Mr. Garcia was relieved as counsel.

Following an extended pre-Hearing conference with Commissioner Beck and prior to convening the Hearing, Claimant's new counsel, Spencer Langley, and defense counsel reached a purported agreement (Defense Exhibit A) to resolve the issues for Hearing. Defendants agreed to reinstate the 6 weeks of suspended TTD benefits with 25% interest, in exchange for Claimant's agreement to see Dr. Shallcross. The Consent Order memorializing same was never executed.

FOUR DAYS after the Hearing was cancelled upon notification by counsel that the issues had been resolved via Consent, Claimant returned to Dr. Paylor on October 26, 2015. He advised Dr. Paylor "he was not able to go to pain management." (APA p. 21). As a result of this representation, Dr. Paylor recommended arthroscopic surgery and Claimant agreed to proceed. Just ONE DAY before the last appointment with Dr. Paylor, Mr. Langley wrote Claimant a letter confirming his withdrawal as counsel (Defense Exhibit A). This letter also confirmed the purported agreement that resulted in disposition of the 10/22/15 Hearing, including Claimant's agreement to treat with Dr. Shallcross.

Claimant thereafter re-hired Stephen Garcia as his counsel and the parties conducted Dr. Paylor's deposition on November 24, 2015 to address the status of Claimant's treatment. Regarding the basis of his recommendation for surgery on 10/26/15 after he had previously insisted on pain management, Dr. Paylor testified "I got the impression from Mr. Alston that they

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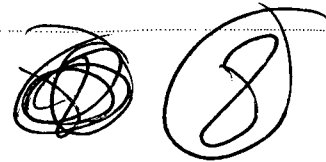
were not going to allow him to go to pain management, but that came from him.” (Paylor Depo. P. 18 ll. 2-9). In response to his understanding that the Carrier would not authorize pain management, Dr. Paylor recommended surgery. Specifically, Dr. Paylor stated:

Well, that’s what he wanted me to do, because he said that he did do that and eventually he did will with his right shoulder, so he’s the one that initiated that. I was—since he did not do as well as I would have liked with his right shoulder, I was wanting him to not have surgery yet and do more conservative treatment. (Paylor Depo. P. 18 ll.13-21).

Dr. Paylor later stated that, assuming pain management was indeed authorized by Carrier, it was a much better option since Claimant had not responded as well to his previous right shoulder surgery as he did to the pain management- “my reasoning there... why don’t we just skip the surgery and let him do pain management.” (Paylor Depo. P. 21 ll. 10-25 – P. 22 ll. 1-12. Dr. Paylor concludes by noting that he “didn’t have a preference” as to the pain management provider.” (Paylor Depo. P. 24 .4). Under examination by Mr. Garcia, Dr. Paylor again confirmed that pain management in lieu of surgery was a more reasonable option. (See Paylor Depo. P. 32 ll. 15-25- P. 33 ll. 1-3.). Thereafter, Claimant never saw Dr. Shallcross despite several rescheduled appointments and attempts by defense counsel to arrange same via Claimant’s counsel.

Consequently, Defendants again refiled their Form 21 to terminate Claimant’s TTD for Claimant’s refusal to comply with recommended medical treatment from Dr. Paylor. Mr. Garcia ultimately withdrew as counsel again. A Hearing was initially scheduled before Commissioner Beck on March 2, 2016. Claimant retained Kathryn Williams shortly before the Hearing. Ms. Williams and defense counsel agreed to continue the Hearing until April to allow her to “get up to speed” on the case. Shortly thereafter, Ms. Williams was relieved as counsel.

Claimant then retained Tom Gagne. Mr. Gagne filed a Form 50 Notice of Claim but did not request a Hearing. Defendants withdrew the Form 21 following Mr. Gagne’s appearance.



Defense counsel advised Mr. Gagne that Dr. Shallcross would no longer see Claimant due to missed appointments. Defendants then refiled their Form 21. Defendants scheduled Claimant an appointment with another pain management provider, Dr. Behr, for July 13, 2016. Mr. Gagne then was relieved as counsel.

Claimant presented to the St. Francis Hospital Emergency Room on March 10, 2106 complaining of low back pain attributable to his work accident with Employer on 12/13/14. He had a follow up appointment with St. Francis on April 11, 2016. Claimant began treating on his own initiative with Dr. Loudermilk with Piedmont Pain Management on May 20, 2016. Claimant presented to Dr. Loudermilk with complaints of left shoulder and low back pain attributable the 12/13/14 work accident.

This matter was initially scheduled to be heard before the Commissioner Wilkerson on June 29, 2016. At the Hearing Claimant advised that he wanted another opportunity to seek new counsel. Commissioner Wilkerson agreed to continue the Hearing, but advised Claimant that he must appear for the appointment with Dr. Behr and that the Hearing would not be continued again for any reason, regardless of whether he retained a new attorney or not. Commissioner Wilkerson also agreed to accept the record from Claimant's appointment with Dr. Behr on July 13 into the Record, if it was dictated and available.

The Hearing per Defendants Form 21 was finally convened on July 29, 2016. Claimant did indeed appear for the July 13 appointment with Dr. Behr. Dr. Behr notes that he has nothing to offer because it his understanding based on Claimant's history to him that surgery has been recommended. (See Dr. Behr report submitted at Hearing and APA # 4).

Defendants requested an Order finding Claimant that refused authorized medical treatment per § 42-15-60- specifically, pain management recommended by Dr. Paylor- and

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thereby forfeited entitlement to all TTD benefits for the period of refusal. Defendants contend the period of Claimant's refusal ranges from November, 25, 2015 (when Dr. Paylor confirmed via deposition his recommendation for pain management in lieu of surgery) and July 13, 2016 (when Claimant saw the new designated pain management provider, Dr. Behr) for a total of 33 weeks. Defendants seek an Order for credit for benefits paid during the 11/24/15-7/13/16 refusal period, to be applied as either a suspension of TTD going forward for 33 weeks, or as a credit against any future PPD award on the back end of the claim. Defendants finally seek an Order Compelling Claimant to comply with all treatment recommendations from Dr. Behr.

Regarding Claimant's alleged lower back condition, the parties stipulated to adjudication of that issue before Commissioner Wilkerson. Defendants deny that Claimant sustained injury to his lower back in the 12/13/14 accident, pointing out that the initial record from Dr. Pommeranke following this accident did not reference a back injury (APA p. 23-25). Defendants also note that Claimant was recently awarded Social Security Disability benefits, due at least in part, for his prior right shoulder condition AND for spine injuries stemming from a previous work accident. For these reasons, Defendants submit that all benefits relative to the alleged low back injury should be denied.

In response, Claimant first counters that he has never failed to comply with medical treatment and therefore Defendants are not entitled to suspend his weekly TTD or assert credits against a future award. Claimant only seeks medical treatment with a provider who will fairly assess his condition and not be dismissive or aloof to his problems. Claimant vehemently and emotionally testified that he has been treated unfairly by the doctors authorized by Carrier. Claimant also testified that none of his prior seven attorneys ever advised him of the issues presented in his claim. Claimant further stated his belief that none of his attorneys were looking

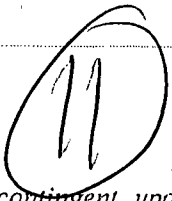
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out for his best interests. Claimant acknowledged that he liked Dr. Behr and would be willing to treat with him.

Regarding his lower back, Claimant seeks a finding of compensability and further medical evaluation, including an MRI, and necessary treatment. In response to Defendants arguments that there is no mention of an alleged back injury in the contemporaneous medical records, Claimant counters that he reported back issues to Dr. Keith in 2015, as evidenced by his recommendation for an MRI. In reply, Defendants contend that Dr. Keith's reference to spinal pathology was specifically confined to possible *cervical spine issues*, not lumbar issues, since it is well accepted that cervical pathology can produce referred symptoms and dysfunction in the shoulder. In sum, other than Claimant's self-serving history to medical providers nearly a year and half after the accident, there is no evidence of a compensable back injury stemming from the 12/13/14 accident.

By Order dated October 14, 2016, Commissioner Wilkerson makes the following findings for fact, conclusions of law, and Orders (*in italics*):

- 1) *The undersigned Commissioner issued his ruling August 3, 2016 and mailed to the parties on the same day.*
- 2) *The parties stipulated to have compensability of the alleged low back injury determined at this Hearing.*
- 3) *Based on the greater weight of the evidence, this is a left shoulder claim only. Compensability of the alleged lower back injury is DENIED, in part, because there is no medical opinion stated to a degree of medical certainty that his current back condition and need for treatment is due to the 12/13/14 work accident.*

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- 4) Claimant is ordered to return to Dr. Behr for pain management, contingent upon clarification from Dr. Paylor that pain management is best course and that surgery is still not indicated at this time.
 - 5) Given Claimant's clear misunderstandings with the numerous medical appointments and doctors, nurse case management services are ordered to be provided to ensure that all relevant information in accordance with this Order is communicated correctly to the treating providers.
 - 6) Giving Claimant the benefit of the doubt that he truly did not understand the medical compliance and carrier direction issues presented in his claim because his attorneys never advised him appropriately, Claimant has not "refused" medical treatment in violation of S.C. Code § 42-15-60 and has therefore not forfeited entitlement to TTD benefits for same.
 - 7) Defendants request to suspend TTD going forward and/or as a credit against any future PPD award is DENIED.
 - 8) All other issues not specifically addressed shall be held on abeyance.

CONCLUSIONS OF LAW

The aforementioned findings are governed by, or have otherwise been made in light of, the following principles of South Carolina law:

- 1) S.C. Code § 42-15-60 generally vests the Employer/Carrier with the authority to designate a medical provider to serve as Claimant's attending physician, and Claimant shall accept such attending physician.
- 2) The Employer/Carrier's right to designate a treating provider is not unfettered. In case of controversy, the Commission has considerable discretion to order or award

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additional medical evaluation/treatment/services or changes to the treating provider upon a showing of "good cause." See Clark v. Aiken County, 371 S.C. 69 (Ct. App. 2006).

- 3) S.C. Code § 42-15-60 also states in pertinent part that "the refusal of an employee to accept any medical treatment or evaluation provided by the employer or ordered by the Commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of the refusal." (emphasis added)*
- 4) S.C. Code § 42-9-210 allows an Employer/Carrier to take credit for all compensation benefits paid when not due to be applied against future compensation.*
- 5) S.C. Code § 42-1-160 governs compensability of alleged injuries by accident and requires medical evidence stating causal relation between an alleged injury/condition and accident to within a reasonable degree of medical certainty in medically complex cases.*

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all claims for compensation and/or medical benefits under the Act secondary to Claimant's alleged lower back injury are ***DENIED***.

IT IS FURTHER ORDERED that Claimant shall submit to further pain management evaluation and treatment with Dr. Behr contingent upon the conditions set forth herein, including confirmation from Dr. Paylor that Claimant is not a surgical candidate until conservative measures are exhausted.

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IT IS FURTHER ORDERED that Defendants shall assign nurse case management services to ensure compliance with this Order.

*IT IS FINALLY ORDERED that Defendants request to suspend Claimant's TTD benefits and/or assertions for credit against future compensation is **DENIED**.*

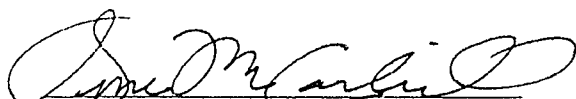
Thereafter, Claimant appealed to the Full Commission Appellate Panel alleging numerous errors, but Claimant's primary exception is denial of his back claim. This matter was reviewed by the undersigned Panel on April 19, 2017 in Columbia, SC.

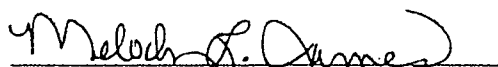
Based on the Panel's review of the evidentiary Record, Commission's file, and consideration of Oral Arguments presented by the parties, the Panel hereby finds, based on the preponderance of the evidence and applicable law, that Commissioner Wilkerson's findings, conclusions, and Orders are correct as stated in his Order. As such, the Panel **AFFIRMS** Commissioner Wilkerson's Order in its entirety and it hereby becomes the Decision and Order of the Full Commission and incorporated herein by reference.

IT IS SO ORDERED!


Aisha Taylor, Commissioner for the Panel

WE CONCUR:


Gene McCaskill, Commissioner


Melody L. James, Commissioner

CERTIFICATE OF SERVICE

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

By Eugenia on September 25, 2017

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BEFORE THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
WCC FILE NO.: 1419738

(15)

Nathaniel Alston,)
)
Claimant,)
)
vs.)
)
All My Sons Moving,)
)
Employer,)
)
Vanliner Insurance Company,)
)

Carrier.)

CONSENT ORDER

RECEIVED

OCT 16 2017

SC Court of Appeals

A Hearing in the above referenced claim was scheduled to be heard before the undersigned Commissioner on October 22, 2015 pursuant to Forms 50 and 51 filed by the parties. Specifically, Claimant seeks reinstatement of TTD benefits suspended by the Carrier for the period between June 29, 2015 and August 10, 2015. Claimant contends that such benefits were improperly suspended without an Order from the Commission in violation of Section 42-9-260 (F). He also seeks a 25% penalty on the amount of benefits withheld. Defendants counter that Section 42-15-60 provides forfeiture of entitlement to benefits for all periods during which a claimant refuses medical treatment. In this case, Defendants submit that Dr. Keith, the Defendants authorized treating physician, dismissed Claimant from his practice for cause after only 2 visits, which is tantamount to refusal of medical treatment.

In the interim since the parties' respective pleadings were filed, Claimant's TTD benefits were reinstated, but other issues have arisen regarding the direction of medical treatment. The Claimant's current treating physician, Dr. Paylor, has referred Claimant to pain management. Dr. Paylor referred Claimant to Dr. Eric Loudermilk. Defendants agreed to refer Claimant for pain

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management with Dr. David Shallcross. Claimant had an appointment set with Dr. Shallcross on October 8, 2015 but Claimant did not appear. Defendants seek an Order from the Commissioner compelling Claimant to submit to evaluation with Dr. Shallcross per Section 42-15-60. In contrast, Claimant seeks an Order designating Dr. Loudermilk as his treating pain management provider, citing previous success with Dr. Loudermilk's treatment of a previous shoulder injury. Defendants counter that pain management evaluation/treatment is a commodity medical service that does not justify Claimant's choice of provider over their statutory prerogative to designate the treating provider.

Following an extended pre-Hearing conference with the undersigned, counsel for the parties advised they reached an agreement to resolve the aforementioned disputed issue via Consent. The agreement of the parties that they now desire to be memorialized as the Order of the Commission is as follows:

- 1) Defendants agree to pay, and Claimant agrees to accept, the sum of \$2173.43 as satisfaction of all claims of entitlement to TTD benefits for the period of 6/29/15-8/10/15 and any penalties/interest thereon.
- 2) Claimant agrees to immediately submit to evaluation and treatment of his compensable left shoulder injury with the Defendants authorized treating physician, Dr. David Shallcross, or any other provider designated by the Defendants.
- 3) All other issues not specifically addressed herein shall be held in abeyance until further controversy arises that is other ripe for adjudication at the request of the parties.

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WHEREFORE, the undersigned Commissioner finds that the aforementioned agreement of the parties is a fair just resolution of the issues pending; it hereby becomes the Order of the Commission.

AND IT IS SO ORDERED

Date: _____

By: _____
T. Scott Beck, Commissioner

WE SO MOVE AND CONSENT TO THIS ORDER:

Spencer Langley, Esquire
Attorney for Claimant

George D. Gallagher, Esquire
Attorney for Employer/Carrier

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STATE OF SOUTH CAROLINA)
COUNTY OF GRENVILLE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Nathaniel Alston,)
Employee,)

WCC FILE NO: 1419738

vs.)

All My Sons Moving,)
Employer,)

DECISION AND ORDER

and)

Vanliner Insurance Company,)

Carrier.)

DATE OF HEARING:

Hearing held in Greenville, South Carolina on May 6, 2015.

APPEARANCES:

Claimant appeared and represented by Robert Usry,
Esquire of Holland Law Firm of Greenville, South
Carolina.

Defendants represented by George D. Gallagher, Esquire of
The McKay Firm of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues set forth on Form 50 and Form 51.

COMMISSIONER:

Commissioner Gene McCaskill

FILED:

July 8, 2015

Multiple - by parts
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STIPULATIONS

Counsel for the parties stipulated to the following at the Hearing:

- 1) Nathaniel Alston ("Claimant") sustained an admittedly compensable injury to his left shoulder arising out of and in the course of his employment with All My Sons Moving ("Sons") on December 13, 2014 in Greenville County, SC while moving furniture; therefore, the South Carolina Workers Compensation has jurisdiction over this claim.
- 2) The purpose of the Hearing is to determine all issues pursuant to Forms 50 and 51 filed by the parties, specifically, Claimant's entitlement to redirection of his medical treatment to a provider other than the Employer/Carrier's designated provider- Dr. John Vann of Piedmont Orthopedic Specialists. There are no other issues presented at this time.
- 3) All parties of interest received timely and proper notice of the Hearing.
- 4) Venue is proper in Greenville County, South Carolina
- 5) Claimant is on running TTD based on a stipulated average weekly wage of \$448.16 and applicable compensation rate of \$298.79.

MEDICAL AND OTHER DOCUMENTARY EVIDENCE

Pursuant to the SC Administrative Procedures Act and SCWCC Regulation 67-612, the following medical records and other documentary evidence were admitted into the record without objection from the parties:

<u>APA #</u>	<u>Name of Physician/Other</u>	<u>Date of Report</u>	<u>Page No.</u>
1	Piedmont Orthopaedic Associates	01/12/2015	1-4
2	North Hills Medical Center	01/07/2015	5-6
3	Doctor's Care	12/15/2014-01/17/2015	7-24

STATEMENT AND EVIDENCE OF THE CASE

Following his compensable left shoulder injury, Defendants immediately referred Claimant for evaluation and treatment with the Son's company provider, Dr. Forrest Pommeranke with Doctors Care. He was diagnosed with a shoulder sprain and AC joint arthritis (APA p. 21). He was initially referred for physical therapy. That order was later amended to immediately refer him for orthopedic evaluation, due in part to the fact Claimant had a similar injury to his right shoulder previously that required specialized treatment.

The Defendants authorized Dr. John Vann with Piedmont Orthopedics to evaluate/treat Claimant. Claimant first had an MRI scan dated January 7, 2015. Per the radiologist's interpretation, that scan revealed a "tiny partial articular surface tear involving the supraspinatus tendon;" "interstitial tearing of the distal infraspinatus myotendinous junction;" "mild intraarticular biceps tendinosis;" "moderate AC joint arthrosis;" and "subacromial subdeltoid bursitis." (APA p. 6).

Dr. Vann saw Claimant on a single occasion on January 12, 2015. His impression was "left shoulder impingement and partial cuff tear." (APA p. 3). Dr. Vann recommended



conservative treatment- physical therapy, NSAIDs, and activity modification, including refrain from overhead lifting greater than 10lbs. Dr. Vann also discussed possible surgery.

Thereafter, Claimant started PT but did not complete the recommended course. By and through his former counsel, Claimant requested redirection of his treatment to Dr. Vann's partner, Dr. Paylor who treated Claimant for his prior right shoulder injury. As a gesture of good faith, Defendants agreed to refer him for a second opinion evaluation and possible treatment with another provider. Throughout February, March and April of 2015, Defendants contacted multiple shoulder specialists in the Greenville/Spartanburg area, including: Dr. Posta, Dr. Lonergan, Dr. Brown, Dr. Hoenig, and Dr. Kissenberth. After reviewing records, all providers declined to see Claimant, except Dr. Brown and Dr. Hoenig, neither of whom could see him until July or August.

Feeling they had exhausted reasonable efforts to accommodate Claimant's request, defense counsel contacted Claimant's former counsel to insist Claimant return to Dr. Vann. By that time, Claimant had not undergone any evaluation/treatment since January. Claimant declined to return to Dr. Vann and elected to proceed with Hearing on his Form 50. In the meantime, Claimant's former attorney was relieved as counsel and he retained his current counsel.

Claimant requests an Order compelling Defendants to redirect Claimant's treatment to a provider other than Dr. Vann. In preparation for the Hearing Claimant's current counsel contacted several providers to inquire whether any would be willing to accept treatment of Claimant, including Dr. John Keith at Orthopedic Specialists of Spartanburg. They request redirection of care to Dr. Keith, if he is willing to take Claimant's case.

Defendants counter that they have exhausted all reasonable efforts to redirect Claimant's care to another provider and contend he should return to Dr. Vann to begin treatment immediately. Defendants point out they have incurred ongoing TTD liability for periods during which Claimant is undergoing no active treatment necessary to lessen the period/extent of his disability. Defendant's argue that this delay in treatment have decreased the prospects for maximum recovery.

At the Hearing, Claimant testified passionately about his opposition to returning to Dr. Vann. Specifically, Claimant contends Dr. Vann was aloof, dismissive to his complaints, and generally seemed to lack concern for his health and well-being during his only visit. Claimant alleges Dr. Vann only spent a few short minutes discussing his condition, during which time Dr. Vann never conducted a physical examination. In contrast, Claimant described the excellent and compassionate treatment he received for his prior right shoulder injury. Claimant requests to see another specialist who will "listen" to his problems.

FINDINGS OF FACT

After careful consideration of able arguments presented by counsel for the parties, review of the medical records, and lay testimony presented at the Hearing, the undersigned commissioner hereby makes the following findings:

- (21)
- 1) Claimant sustained an admittedly compensable injury to his left shoulder only arising out of and in the course of his employment with All My Sons Moving on December 13, 2014.
 - 2) Given Claimant's vehement negative impression of Dr. Vann, returning him to Dr. Vann is not in the best interests of either party.
 - 3) Regardless of whether Claimant's opposition to Dr. Vann is justified or not, the prospects for Claimant's maximum recovery from his injury will likely not be furthered by further treatment with Dr. Vann.
 - 4) Claimant has shown "good cause" for reversing the Defendants designation of Dr. Van as his authorized treating physician.
 - 5) Defendants shall exhaust further efforts to redirect Claimant's treatment to another shoulder specialist of their choosing.

CONCLUSIONS OF LAW

- 1) S.C. Code Ann. 42-15-60 generally affords the Commission great discretion for ordering additional medical evaluation/treatment and/or changes to an employer/carrier's treatment plan upon showing of "good cause," including a change in provider. *See Also Clark v. Aiken County Government*, 371 S.C. 69 (Ct. Apps. 2006).
- 2) Once another provider has been designated by the employer/carrier, employee shall accept such provider as the attending physician. S.C. Code Ann. §42-15-60.

ORDER

IT IS HEREBY ORDERD ADJUDGE AND DECREED that Defendants shall designate a provider of their choosing, other than Dr. Vann, to provide further causally related, medically necessary, and reasonable medical evaluation and treatment of Claimant's left shoulder injury.

IT is FURTHER ORDERED that Claimant shall accept another treating provider designated by Defendants to treat his left shoulder condition.

SO ORDERED!

Date: _____

By: _____
Commissioner Gene McCaskill

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Nathaniel Alston v All My Son's Moving & Storage
SCWCC: 1419738
Commissioner: Wilkerson

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

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. _____ Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.
REINSTATE APPEAL

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

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.

[Signature]
T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

12/12 2016

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

This *12* day of *December*, 2016.

By: *[Signature]*
SCWCC Judicial Department



23

WCC File #: 1419738
Carrier File #: 830000140072
Carrier Code #:
Employer FEIN #:

Claimant's Name: Nathaniel Histon SSN: 217-21-4044 Employer's Name: All my Son's Moving and Storage
Address: 105 Cavalier Dr Apt #11 Address:
City: Greenville State: S.C. Zip: 29607 City: State: Zip:
Home Phone: 864-593-3429 Work Phone: N/A Insurance Carrier:
Preparer's Name: Self Law Firm: N/A Preparer's Phone #:

DIRECTIONS: Please print or type. Answer the following questions about your claim to the best of your ability. If you cannot answer a question, leave it blank. Use additional sheets of paper, if necessary. Please use short statements.

Questions

Did the Commissioner fail to consider important reasons for award of compensation? If so, what reasons?

Did the Commissioner incorrectly decide the facts? If so, what facts? Yes... Submitted evidence for back injury as well as treating Doctor reports as well as Insurance Doctor Burr

Do you think the Commissioner applied the wrong law? If so, what law? Yes...

Do you feel there are any other reasons why the Commissioner's judgment was wrong? If so, what? Yes... After the hearing, he allowed the Defense lawyer take from my records me and my wife saw this action, and he Ignor my appeal, He did not give wait to Doctor Undermilk and Dr. Burr.

What action do you want the Commission to take in this case? To bar Judge Wikeson from my claim and for the panel to make full and final judgement to this claim, as I am disable as of S.S.A order and decision.

Signature

Date

IMPORTANT: A copy of this Brief and any attachments must be filed with the Commission within 10 days of receipt of the Review Hearing Notice, Form 31. The Commission will serve your Brief on the employer's representative. Questions about the use of this form may be directed to the Commission's Judicial Department.

BEFORE THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
WCC FILE NO.: 1419738

24

Nathaniel Alston,

Claimant,

vs.

All My Sons Moving,

Employer,

Vanliner Insurance Company,

Carrier.

ORDER RECEIVED

OCT 16 2017

SC Court of Appeals

A Hearing in the above-referenced claim was scheduled to be heard before the undersigned Commissioner on June 29, 2016 pursuant to Defendants' From 21 request to terminate Claimant's TTD for alleged non-compliance with medical treatment and credit for TTD paid during all periods of such non-compliance. Prior to convening the Hearing, the undersigned advised Claimant, who appeared *pro se*, that he had a right to retain an attorney to represent him and that the Hearing would be continued for a reasonable time to allow Claimant to retain an attorney. Claimant expressed his desire to seek representation.

Over Defendants' objection, the undersigned ruled that the Hearing would be continued, subject to the following conditions: 1) Claimant will attend the appointment with Defendants' authorized medical provider, Dr. Behr, on July 13th at 8:30 am. Address: 115 Deacon Tiller Dr. Duncan, SC 29334; and 2) the Hearing reset for July 27, 2016 at 10:00 am in Greenville, SC shall not be continued again for Claimant to retain counsel or for any other reason absent extraordinary circumstances. Claimant agreed to these conditions.



THEREFORE, it is hereby **ORDERED** that this matter shall be continued until July 27, 2016 in order for Claimant to seek counsel. It is **FURTHER ORDERED** that Claimant shall present to the appointment with Dr. Behr scheduled for July 13, 2016. This matter shall not be continued again absent extraordinary circumstances.

SO ORDERED.

Date: _____

By: _____
Avery B. Wilkerson, Jr., Commissioner

STATE OF SOUTH CAROLINA)
)
COUNTY OF GRENVILLE)
)
Nathaniel Alston,)
)
Employee,)
)
vs.)
)
All My Sons Moving,)
)
Employer,)
)
and)
)
Vanliner Insurance Company,)
)
Carrier.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO: 1419738

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Greenville, South Carolina on May 6, 2015.

APEARANCES:

Claimant appeared and represented by Robert Usry,
Esquire of Holland Law Firm of Greenville, South
Carolina.

Defendants represented by George D. Gallagher, Esquire of
The McKay Firm of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues set forth on Form 50 and Form 51.

COMMISSIONER:

Commissioner Gene McCaskill

FILED:

~~July 8, 2015~~

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STIPULATIONS

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Counsel for the parties stipulated to the following at the Hearing:

- 1) Nathaniel Alston ("Claimant") sustained an admittedly compensable injury to his left shoulder arising out of and in the course of his employment with All My Sons Moving ("Sons") on December 13, 2014 in Greenville County, SC while moving furniture; therefore, the South Carolina Workers Compensation has jurisdiction over this claim.
- 2) The purpose of the Hearing is to determine all issues pursuant to Forms 50 and 51 filed by the parties, specifically, Claimant's entitlement to redirection of his medical treatment to a provider other than the Employer/Carrier's designated provider- Dr. John Vann of Piedmont Orthopedic Specialists. There are no other issues presented at this time.
- 3) All parties of interest received timely and proper notice of the Hearing.
- 4) Venue is proper in Greenville County, South Carolina
- 5) Claimant is on running TTD based on a stipulated average weekly wage of \$448.16 and applicable compensation rate of \$298.79.

MEDICAL AND OTHER DOCUMENTARY EVIDENCE

Pursuant to the SC Administrative Procedures Act and SCWCC Regulation 67-612, the following medical records and other documentary evidence were admitted into the record without objection from the parties:

<u>APA #</u>	<u>Name of Physician/Other</u>	<u>Date of Report</u>	<u>Page No.</u>
1	Piedmont Orthopaedic Associates	01/12/2015	1-4
2	North Hills Medical Center	01/07/2015	5-6
3	Doctor's Care	12/15/2014-01/17/2015	7-24

STATEMENT AND EVIDENCE OF THE CASE

Following his compensable left shoulder injury, Defendants immediately referred Claimant for evaluation and treatment with the Son's company provider, Dr. Forrest Pommeranke with Doctors Care. He was diagnosed with a shoulder sprain and AC joint arthritis (APA p. 21). He was initially referred for physical therapy. That order was later amended to immediately refer him for orthopedic evaluation, due in part to the fact Claimant had a similar injury to his right shoulder previously that required specialized treatment.

The Defendants authorized Dr. John Vann with Piedmont Orthopedics to evaluate/treat Claimant. Claimant first had an MRI scan dated January 7, 2015. Per the radiologist's interpretation, that scan revealed a "tiny partial articular surface tear involving the supraspinatus tendon;" "interstitial tearing of the distal infraspinatus myotendinous junction;" "mild intraarticular biceps tendinosis;" "moderate AC joint arthrosis;" and "subacromial subdeltoid bursitis." (APA p. 6).

Dr. Vann saw Claimant on a single occasion on January 12, 2015. His impression was "left shoulder impingement and partial cuff tear." (APA p. 3). Dr. Vann recommended

conservative treatment- physical therapy, NSAIDs, and activity modification, including refrain from overhead lifting greater than 10lbs. Dr. Vann also discussed possible surgery.

Thereafter, Claimant started PT but did not complete the recommended course. By and through his former counsel, Claimant requested redirection of his treatment to Dr. Vann's partner, Dr. Paylor who treated Claimant for his prior right shoulder injury. As a gesture of good faith, Defendants agreed to refer him for a second opinion evaluation and possible treatment with another provider. Throughout February, March and April of 2015, Defendants contacted multiple shoulder specialists in the Greenville/Spartanburg area, including: Dr. Posta, Dr. Lonergan, Dr. Brown, Dr. Hoenig, and Dr. Kissenberth. After reviewing records, all providers declined to see Claimant, except Dr. Brown and Dr. Hoenig, neither of whom could see him until July or August.

Feeling they had exhausted reasonable efforts to accommodate Claimant's request, defense counsel contacted Claimant's former counsel to insist Claimant return to Dr. Vann. By that time, Claimant had not undergone any evaluation/treatment since January. Claimant declined to return to Dr. Vann and elected to proceed with Hearing on his Form 50. In the meantime, Claimant's former attorney was relieved as counsel and he retained his current counsel.

Claimant requests an Order compelling Defendants to redirect Claimant's treatment to a provider other than Dr. Vann. In preparation for the Hearing Claimant's current counsel contacted several providers to inquire whether any would be willing to accept treatment of Claimant, including Dr. John Keith at Orthopedic Specialists of Spartanburg. They request redirection of care to Dr. Keith, if he is willing to take Claimant's case.

Defendants counter that they have exhausted all reasonable efforts to redirect Claimant's care to another provider and contend he should return to Dr. Vann to begin treatment immediately. Defendants point out they have incurred ongoing TTD liability for periods during which Claimant is undergoing no active treatment necessary to lessen the period/extent of his disability. Defendant's argue that this delay in treatment have decreased the prospects for maximum recovery.

At the Hearing, Claimant testified passionately about his opposition to returning to Dr. Vann. Specifically, Claimant contends Dr. Vann was aloof, dismissive to his complaints, and generally seemed to lack concern for his health and well-being during his only visit. Claimant alleges Dr. Vann only spent a few short minutes discussing his condition, during which time Dr. Vann never conducted a physical examination. In contrast, Claimant described the excellent and compassionate treatment he received for his prior right shoulder injury. Claimant requests to see another specialist who will "listen" to his problems.

FINDINGS OF FACT

After careful consideration of able arguments presented by counsel for the parties, review of the medical records, and lay testimony presented at the Hearing, the undersigned commissioner hereby makes the following findings:

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- 1) Claimant sustained an admittedly compensable injury to his left shoulder only arising out of and in the course of his employment with All My Sons Moving on December 13, 2014.
- 2) Given Claimant's vehement negative impression of Dr. Vann, returning him to Dr. Vann is not in the best interests of either party.
- 3) Regardless of whether Claimant's opposition to Dr. Vann is justified or not, the prospects for Claimant's maximum recovery from his injury will likely not be furthered by further treatment with Dr. Vann.
- 4) Claimant has shown "good cause" for reversing the Defendants designation of Dr. Van as his authorized treating physician.
- 5) Defendants shall exhaust further efforts to redirect Claimant's treatment to another shoulder specialist of their choosing.

CONCLUSIONS OF LAW

- 1) S.C. Code Ann. § 42-15-60 generally affords the Commission great discretion for ordering additional medical evaluation/treatment and/or changes to an employer/carrier's treatment plan upon showing of "good cause," including a change in provider. *See Also Clark v. Aiken County Government*, 371 S.C. 69 (Ct. Apps. 2006).
- 2) Once another provider has been designated by the employer/carrier, employee shall accept such provider as the attending physician. S.C. Code Ann. §42-15-60.

ORDER

IT IS HEREBY ORDERD ADJUDGE AND DECREED that Defendants shall designate a provider of their choosing, other than Dr. Vann, to provide further causally related, medically necessary, and reasonable medical evaluation and treatment of Claimant's left shoulder injury.

IT is FURTHER ORDERED that Claimant shall accept another treating provider designated by Defendants to treat his left shoulder condition.

SO ORDERED!

Date: _____

By: _____
Commissioner Gene McCaskill



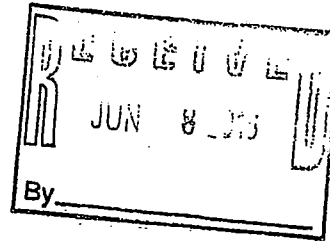
Personal
Injury Practice

Attorney Offices of Thomas Gagné, P.A.

Thomas M. Gagné, Esquire, Owner/President



30



May 31, 2016

S.C. Workers' Compensation Commission
Claims Department
PO Box 1715
1333 Main Street
Suite 500
Columbia SC 29202-1715

Re: Our Client: Nathaniel Alston
SS#: 247-21-4044
WCC File #: 1419738

Dear Sir or Madame:

Please let this letter serve as notice that I represent the above named individual in his Worker's Compensation claim with All My Sons Moving & Storage in connection with injuries he suffered on or about 12/13/2014.

Enclosed please find the original and one (1) copy of the Form 50 and Certificate of Mailing. I ask that you please return a filed, stamped copy to me in the envelope that has been provided for same.

In that regard, please direct all future correspondence concerning this claim to me at the below address.

Also, please let this letter serve as a lien in the amount of 33.33% of any settlement offers obtained by the Attorney Offices of Thomas M. Gagné, PA.

I look forward to working with you. Please call me immediately if there are any questions or concerns.

RECEIVED

JUN 03 2016

Yours very truly,

Attorney Offices of Thomas Gagné

Thomas M. Gagné

Thomas Gagné, Esq.
Owner/ President

"Dedicated To The Injured Person"

Greenville Office: 101 Chapman St., Greenville, SC 29605

Phone: (864) 233-2000 Fax: (864) 233-1913

Spartanburg Office: 145 N. Church St., Suite 101, Spartanburg, SC 29306 (Location only, not a mailing address)

Phone: (864) 591-1114 Fax: (864) 233-1913

31

Enclosure: Form 50
Treating physician's sheet
Certificate of Service

TMG/ad

RECEIVED

JUN 03 2016

Division of Claims
Claims Administration
U.S. Women's Comp. Center



WCC File #: 1419738
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: NATHANIEL ALSTON SSN: 247-21-4044 Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE APT 11 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: _____ Work Phone: _____ Insurance Carrier: VANLINER INSURANCE
Preparer's Name: THOMAS M. GAGNE, ESQ. Law Firm: GAGNE LAW FIRM Preparer's Phone #: 864-233-2000

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction Date of Injury or Illness: 12/13/2014

1. The claimant sustained an injury to LEFT SHOULDER & SPINE (Part(s) of Body Injured) on 12/13/2014 (Month/Day/Year) in Greenville county, state of SC. Body part(s) affected are: LEFT SHOULDER & SPINE
2. Briefly describe how the accident occurred. Claimant was moving a table.
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 12/14/2014 (Month/Day/Year) in the following manner:
Verbally to Chris, supervisor.

- ☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: TBD
☒ (b) additional medical examination and treatment for: Left shoulder & spine

- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
From DOA to MMI.

- ☒ 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:
TBD

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

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

11. Further grounds or unusual aspects of claim:
NA

- 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:
See claimant's exhibit #1

- 11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: Yes, right shoulder.

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

- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 1 Hour
☐ 13b. I am requesting a hearing. A \$25 fee is required.

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to McKay, Cauthen, Setana & Stubley / George Gallagher, Esq.
address PO Box 7217 Columbia SC 29202 on the 31st day of May, 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: Thomas M. Gagne, Esq. Title: Esq. Email: tgagne@prodigy.net Date: 5/31/2016

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.

CERTIFICATE OF SERVICE

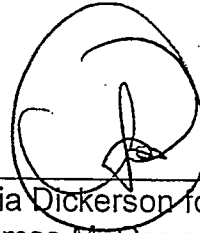
33

I, the undersigned, of The Attorney Offices of Thomas M. Gagne, L.L.C. do hereby certify that I have served the below addressee with a copy of the pleading herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

S.C. Workers' Compensation Commission
ATTN: Judicial Department
PO Box 1715
Columbia SC 29202-1715

George Gallagher, Esq.
McKay, Cauthen, Settana & Stublely
PO Box 7217
Columbia SC 29202

Form: WCC Form # 50, LOR, Treating Physicians sheet & Certificate of Service
Claimant: Nathaniel Alston
SS#: 247-21-4044
Date of Injury: 12/13/2014
WCC File #: 1419738



Alicia Dickerson for
Thomas M. Gagne, Esq.
Attorney for Claimant
101 Chapman Street
Greenville, SC 29605
Dial: 864.233.2000
Fax: 864.233.1913

Date: May 31, 2016

Forms

And

~~Handwritten scribbles~~

OFFER



34

Claimant's Name: NATHANIEL ALSTON Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE, APT. 21 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: () - Work Phone: () - Carrier: VANLINER INSURANCE
Preparer's Name: STEPHEN GARCIA Preparer's Phone #: (864) 271-7335

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ 298.79 2. AWW: \$ 448.16 Date of Injury: 12/13/2014
3. Type of injury and body part(s): LEFT SHOULDER/LEFT UPPER EXTREMITY
4. Facts in controversy: (1) WHETHER CLAIMANT IS ENTITLED TO TTD BACKPAY PLUS 25% PURSUANT TO § 42-9-260; (2) WHETHER CLAIMANT IS ENTITLED TO MEDICAL TREATMENT WITH DR. LOUDERMILK @ PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP AS REFERRED TO BY THE ATP, DR. JOHN PAYLOR
5. Legal issues involved: § 42-9-260
6. Unusual aspects:
7. Witnesses (designate if expert):* CLAIMANT
8. Exhibits: PLEASE REFER TO THE ADMINISTRATIVE PROCEDURES ACT SUBMITTAL; CLAIMANT RESERVES THE RIGHT TO ADD/AMEND SUBMISSIONS, FORM 58 & WITNESSES; CLAIMANTS RESERVE THE RIGHT TO SUBMIT ADDITIONAL EVIDENCE AS NEEDED
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
PLEASE REFER TO EXHIBITS LISTED IN THE ADMINISTRATIVE ACT SUBMITTAL
10. Name, address, and specialty, if any, of the treating physician: PLEASE REFER TO THE APA INDEX
11. Impairment rating(s); body part(s); physician and date of opinion: CLAIMANT IS NOT AT MMI
12. I am amending my Form 50/51 in the following manner: REMOVING THE SPINE AS AN INJURED BODY PART

☐ Mediation

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to George Gallagher, Esq. c/o The McKay Law Firm

Post Office Box 7217 Columbia, SC 29202 on the 21st Day of October 2015 by: ☒ first class postage ☐ certified mail ☒ personal service.

Signature: [Signature] Email: stephen@scgarcialaw.com
Date of hearing: October 22, 2015 Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

Amend Submission
Adding New Evidence



Claimant's Name: NATHANIEL ALSTON SSN: 247-21-4044 Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE, APT. 11 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: () - Work Phone: () - Insurance Carrier: VANLINER
Preparer's Name: STEPHEN GARCIA Law Firm: GARCIA LAW FIRM, LLC Preparer's Phone #: 864-271-7335

SUBPOENA

To: GEORGE GALLAGHER, ESQ., ATTORNEY FOR THE DEFENDANTS



YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____

ROOM: _____

DATE AND TIME: _____



YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____

DATE AND TIME: _____



YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS:

ANY AND ALL MEDICAL RECORDS PERTAINING TO THE CLAIMANT THAT IS IN THE POSSESSION OF THE DEFENDANT OR COMING INTO THE POSSESSION OF THE DEFENDANT, PERSONNEL RECORDS REGARDING CLAIMANT INCLUDING BUT NOT LIMITED TO ENTIRE EMPLOYMENT FILE, APPLICATIONS FOR EMPLOYMENT, DISCIPLINARY ACTIONS, TERMINATION RECORDS, WAGE INFORMATION, PAYROLL RECORDS, PERFORMANCE EVALUATIONS, DATE OF EMPLOYMENT, ANY AND ALL STATEMENTS MADE BY OR ABOUT THE CLAIMANT, ANY AND ALL VIDEOTAPES OF CLAIMANT (i.e. TRAINING, SURVEILLANCE, VIDEOS OF THE ACCIDENT...etc.), ANY INVESTIGATIVE MATERIALS REGARDING THE SUBJECT MATTER OF THIS CLAIM, ANY AND ALL MATERIALS IN THE POSSESSION OF THE DEFENDANT REGARDING THE CLAIMANT THAT IS NOT PROTECTED BY WORK PRODUCT - IN SHORT, EVERYTHING.

PLACE: 604 PETTIGRU ST. GREENVILLE, SC 29601

DATE AND TIME: 08/04/15



YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____

DATE AND TIME: _____

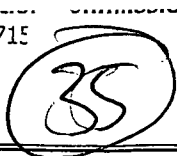
THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

ISSUING OFFICER'S SIGNATURE AND TITLE

(864) 271-7335
PHONE NUMBER

07/21/15
DATE

Serve this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.



Claimant File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: NATHANIEL ALSTON SSN: 247-21-4044 Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE, APT. 11 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: () - Work Phone: () - Insurance Carrier: VANLINER INSURANCE
Preparer's Name: STEPHEN GARCIA Law Firm: THE GARCIA LAW FIRM Preparer's Phone #: (864) 271-7335

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

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

Date of Injury or Illness: 12/13/2014

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to LEFT SHOULDER/LEFT UPPER EXTREMITY & SPINE (Part(s) of Body Injured) ON 03/04/14 (Month/Day/Year) in
1b. GREENVILLE county, state of SOUTH CAROLINA.
Body part(s) affected are: LEFT SHOULDER & LEFT UPPER EXTREMITY

Briefly describe how the accident occurred. CLAIMANT WAS MOVING A TABLE WHEN HE HEARD A "POP" IN HIS LEFT SHOULDER/UPPER EXTREMITY.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 12/14/2014 (Month/Day/Year) in the following manner:
VERBALLY TO SUPERVISOR, CHRIS

- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: LEFT SHOULDER/LEFT UPPER EXTREMITY & SPINE
☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
SINCE THE DATE THAT THE A.T.P HAS WRITTEN THE CLAIMANT OUT OF WORK, IF APPLICABLE
☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one): T.B.D.
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial
☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$FORM 20 REQ., 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:
TO BE SUPPLIED, IF APPLICABLE

11a. Further grounds or unusual aspects of claim:

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
DOCTORS CARE, PIEDMONT ORTHO & NORTH HILLS (GREENVILLE, SC) & ORTHOPAEDIC SPECIALTIES OF SPARTANBURG (SPBG, SC)

11c. To the best of your knowledge, did you have any prior permanent disability? YES
If yes, describe: HAS PERMANENCY TO RIGHT SHOULDER

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

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

Preparer's Signature

Attorney for Claimant

Stephen@SCGarciaLaw.com

Title

Email

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

WCC Form # 50

Revised 9/07

50

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

SEWCC
OCT 14 2015
JUDICIAL



36

Claimant's Name: Nathaniel Alston Employer's Name: All My Sons Moving
Address: 105 Cavalier Drive, Apt. 11 Address: 1102 Old State Road
City: Greenville State: SC Zip: 29607 City: Simpsonville State: SC Zip: 29687
Home Phone: () - Work Phone: () - Carrier: Vanliner Insurance Company
Preparer's Name: George D. Gallagher, Esquire Preparer's Phone #: (803) 256-4645

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$298.79 2. AWW: \$448.16 Date of Injury: 12/13/2014
3. Type of injury and body part(s): Admitted left shoulder.
4. Facts in controversy: A) Direction of Claimant's medical treatment; B) Whether Claimant must resume treatment with authorized pain management provider - Dr. Shallcross- or other provider designated by Defendants; c) Whether defendants are entitled to credit for all TTD benefits paid since 11/24/15 based on Claimant's refusal/non-compliance with medical treatment and material misrepresentations to providers.
5. Legal issues involved: §42-15-60 (direction of medical treatment- "the employee shall accept an attending physician" and "the refusal of an employee to accept any medical ... treatment or evaluation when provided by the employer or ordered by the Commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of the refusal."; WCC R67-509; WCC R67-506; § 42-9-210 (credit for benefits paid when not due or barred by law)
6. Unusual aspects: Claimant is unrepresented after four attorneys withdrawing as counsel. Claimant's TTD benefits were suspended for non-compliance under medical in July and re-established approximately six weeks later. Claimant has now failed to appear for appointments with Dr. Shallcross.
7. Witnesses (designate if expert):* A witness from the employer/carrier may be called to testify; Dr. John Taylor via deposition.
8. Exhibits: WCC File #141973; transcript of Deposition of Dr. John Paylor dated 11/24/15
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Dr. John Keith, Orthopaedic Specialists of Spartanburg; Dr. John Paylor, Piedmont Orthopaedic Associates
10. Name, address, and specialty, if any, of the treating physician: Dr. Paylor, Piedmont Orthopaedic Associates
11. Impairment rating(s); body part(s); physician and date of opinion: Premature
12. I am amending my Form 50/51 in the following manner:

☐ **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.

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

certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephen Garcia, Esquire

Address 126 E. Broad Street, Greenville, SC 29601 on the 18th day of February, 2016 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature] Email: ggallagher@mckayfirm.com
Date of hearing: March 3, 2016 at 12:00 PM (Commissioner Beck) Time needed for hearing: 30 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58

Revised 7/13

South Carolina Workers' Compensation Commission

P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)-737-5790 www.wcc.sc.gov

WCC File #

1419738

Carrier File #

Carrier Code #

Employer FEIN

Nathaniel J. Alston**247-21-4044****All My Sons Moving & Storage**

Claimant's Name

SSN

Employer's Name

105 Cavalier Dr., Apt. 11, Greenville, SC 29607

1102 Old Stage Road, Simpsonville, SC 29681

Address

Address

Companion

Home Phone

Work Phone

Carrier

Preparer's Name: Kathryn WilliamsLaw Firm: Kathryn Williams, P.A.Preparer's Phone: (864) 235-6254

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

Date of Injury or Illness: on or about 12/13/2014☒ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. Claimant sustained accidental injury to left shoulder, back on or about 12/13/2014 in Greenville County, State of South Carolina. Body part(s) affected are: left shoulder, back
2. Briefly describe how accident occurred Claimant was lifting cast iron table, felt pull in left shoulder and back.
3. Both claimant and 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 injury, claimant was performing services arising out of and in the course of employment.
6. Notice of accidental injury was given to employer on or about 12/14/2014, in the following manner: Notified Supervisor.
- ☒ 7. Due to injury, claimant is in need of (check one):
☐ (a) medical examination and treatment for
☒ (b) additional medical examination and treatment for left shoulder, back
- ☒ 8. Due to injury, 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 injury, 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 injury, claimant has a serious bodily disfigurement consisting of.
- 10a. At the time of injury, claimant was paid weekly wages of \$to be determined; and demands accounting of days worked and wages earned as provided by law.
- 10b. Names and addresses of all employers for whom claimant has worked since the date of accident: to be determined
11. Further grounds of claim: See # 12. Claimant makes claim to any and all rights/benefits entitled to under the S.C. Workers' Compensation Act. Claimant requests payment of any award in lump sum with lifetime allocation. Claimant reserves the right to amend the Form 50.
- 11a. Names and addresses of all physicians or other medical specialists who have seen or treated claimant as a result of accident: Doctors Care, 701 Congaree Road, Greenville, SC 29607; Progressive PT, 701 Congaree Road, Greenville, SC 29607; North Hills Medical Center, 800 Pelham Road, Greenville, SC 29615; Piedmont Orthopaedic Associates, 35 International Drive, Greenville, SC 29615; Orthopaedic Specialties of Spartanburg, 303 E. Wood Street, Spartanburg, SC 29303.
- 11b. To the best of your knowledge, was there any prior permanent disability? To be determined. If yes, describe: To be determined.
12. Appropriate benefits as provided in the Act for 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:

Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to S.C. Workers' Comp. Comm'n, P.O. Box 1715, Columbia, SC 29202-1715; Companion, P.O. Box 100159, Columbia, SC 29202; George D. Gallagher, P.O. Box 7217, Columbia, SC 29202; All My Sons Moving & Storage, 1102 Old Stage Road, Simpsonville, SC 29681 on the 15th day of February 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.

Signature of Claimant/Representative

FEB 15 2016
Titlekwilliamslaw@bellsouth.net
Email

Date

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

WCC FORM #50
Revised 7/13

50

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



File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: NATHANIEL ALSTON SSN: 247-21-4044 Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE, APT. 11 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: () - Work Phone: () - Insurance Carrier: VANLINER INSURANCE
Preparer's Name: STEPHEN GARCIA Law Firm: THE GARCIA LAW FIRM Preparer's Phone #: (864) 271-7335

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

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

Date of Injury or Illness: 12/13/2014

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to LEFT SHOULDER/LEFT UPPER EXTREMITY & SPINE (Part(s) of Body Injured) ON 03/04/14 (Month/Day/Year) in
1b. GREENVILLE county, state of SOUTH CAROLINA.

Body part(s) affected are: LEFT SHOULDER & LEFT UPPER EXTREMITY

Briefly describe how the accident occurred. CLAIMANT WAS MOVING A TABLE WHEN HE HEARD A "POP" IN HIS LEFT SHOULDER/UPPER EXTREMITY.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 12/14/2014 (Month/Day/Year) in the following manner:
VERBALLY TO SUPERVISOR, CHRIS

☒ 6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: LEFT SHOULDER/LEFT UPPER EXTREMITY & SPINE

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
SINCE THE DATE THAT THE A.T.P HAS WRITTEN THE CLAIMANT OUT OF WORK, IF APPLICABLE

☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one): T.B.D.

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$FORM 20 REQ., 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:
TO BE SUPPLIED, IF APPLICABLE

11a. Further grounds or unusual aspects of claim:

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
DOCTORS CARE, PIEDMONT ORTHO & NORTH HILLS (GREENVILLE, SC) & ORTHOPAEDIC SPECIALTIES OF SPARTANBURG (SPBG, SC)

11c. To the best of your knowledge, did you have any prior permanent disability? YES
If yes, describe: HAS PERMANENCY TO RIGHT SHOULDER

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

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

Preparer's Signature

Attorney for Claimant

Stephen@SCGarciaLaw.com

Title

Email

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

WCC Form # 50

Revised 9/07

50

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

SGWCC
OCT 14 2015
JUDICIAL
07/21/15
Date



34

Claimant's Name: Nathaniel Alston
Address: 105 Cavalier Drive, Apt. 11
City: Greenville State: SC Zip: 29607
Home Phone: () - Work Phone: () -
Preparer's Name: George D. Gallagher, Esquire

Employer's Name: All My Sons Moving
Address: 1102 Old State Road
City: Simpsonville State: SC Zip: 29687
Carrier: Vanliner Insurance Company
Preparer's Phone #: (803) 256-4645

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$298.79 2. AWW: \$448.16 Date of Injury: 12/13/2014
3. Type of injury and body part(s): Admitted left shoulder.
4. Facts in controversy: A) Direction of Claimant's medical treatment; B) Whether Claimant must resume treatment with authorized pain management provider – Dr. Shallcross.
5. Legal issues involved: §42-15-60; WCC R67-509; WCC R67-506
6. Unusual aspects: Claimant is unrepresented after four attorneys withdrawing as counsel. Claimant's TTD benefits were suspended for non-compliance under medical in July and re-established approximately six weeks later. Claimant has now failed to appear for appointments with Dr. Shallcross.
7. Witnesses (designate if expert):* A witness from the employer/carrier may be called to testify.
8. Exhibits: WCC File #141973
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Dr. John Keith, Orthopaedic Specialists of Spartanburg; Dr. John Paylor, Piedmont Orthopaedic Associates
10. Name, address, and specialty, if any, of the treating physician: Dr. Paylor, Piedmont Orthopaedic Associates
11. Impairment rating(s); body part(s); physician and date of opinion: Premature
12. I am amending my Form 50/51 in the following manner: _____

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.

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

certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Nathaniel Alston

address 105 Cavalier Drive, Apt. 11, Greenville, SC 29607 on the 15th day of October, 2015 by; ☒ first class postage ☒ certified mail ☐ personal service.

Signature: [Signature]
Date of hearing: October 22, 2015 (Commissioner Beck)

Email: ggallagher@mckayfirm.com
Time needed for hearing: 30 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58

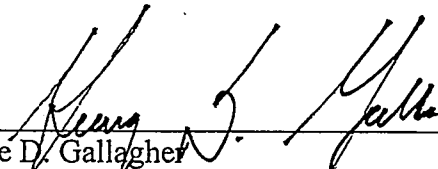
Revised 7/13

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the

deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employer/carrier.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the employer/carrier: Claimant or other Representative of the Employer/Carrier, the Claimant and any witnesses listed by the Claimant.


George D. Gallagher
McKay, Cauthen, Settana & Stublely, P.A.
Post Office Box 7217
Columbia, South Carolina 29202-7217
(803) 256-4645

Attorneys for Defendant(s)

Columbia, South Carolina

October 15, 2015

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO.: 1419738

CERTIFICATE OF SERVICE

The Honorable T. Scott Beck
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Via Certified Return Receipt
Nathaniel Alston
105 Cavalier Drive, Apt. 11
Greenville, SC 29607


Heather R. Vardell
Paralegal to Mark D. Cauthen
McKay, Cauthen, Settana & Stublely, P.A.
Post Office Box 7217
Columbia, SC 29202-7217

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072

September 15, 2015

NOTICE OF HEARING

43

NATHANIEL ALSTON v. All My Son's Moving & Storage

Subject: To determine issues as set forth on Forms 50 and 51.
Date: October 22, 2015 at 01:00 PM
Location: County Square, 301 University Ridge, Suite 5100, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner T. Scott Beck
803-737-5698, sdebruhl@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Shawn M DeBruhl, SC Workers' Compensation, September 15, 2015

Party

Employee: NATHANIEL ALSTON

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

Attorney

Stephen Garcia
stephen@scgarcialaw.com
864-271-7335

George D. Gallagher
ggallagher@mckayfirm.com
803-705-2161

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072
January 21, 2016

NOTICE OF HEARING

NATHANIEL ALSTON v. All My Son's Moving & Storage

44

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

Date: March 3, 2016 at 12:00 PM

Location: County Square, 301 University Ridge, Suite 5100, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner T. Scott Beck
803-737-5698, sdebruhl@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Shawn M DeBruhl, SC Workers' Compensation, January 21, 2016

Party

Attorney

Employee: NATHANIEL ALSTON

Spencer D. Langley
spencer@brumbacklangley.com
864-414-9097

Employee: NATHANIEL ALSTON

Stephen Garcia
stephen@scgarcialaw.com
864-271-7335

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

George D. Gallagher
ggallagher@mckayfirm.com
803-256-4645

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072
May 4, 2015

NOTICE OF HEARING CORRECTED

45

NATHANIEL ALSTON v. All My Son's Moving & Storage

Subject: To determine issues as set forth on Forms 50 and 51.
Date: May 6, 2015 at 02:00 PM
Location: County Square, 301 University Ridge, Suite 5100, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Gene McCaskill
803-737-5663, klindler@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Kellie C Lindler, SC Workers' Compensation, May 4, 2015

Party

Employee: NATHANIEL ALSTON

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

Attorney

Robert T. Usry
rob@bhollandlawfirm.com
864-582-0416

George D. Gallagher
ggallagher@mckayfirm.com
803-705-2161

This hrg
was held to
determine if
he had to return
to Dr. Vann
not - Comm said
NO

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072
September 15, 2015

NOTICE OF HEARING

46

NATHANIEL ALSTON v. All My Son's Moving & Storage

Subject: To determine issues as set forth on Forms 50 and 51.
Date: October 22, 2015 at 01:00 PM
Location: County Square, 301 University Ridge, Suite 5100, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner T. Scott Beck
803-737-5698, sdebruhl@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Shawn M. DeBruhl, SC Workers' Compensation, September 15, 2015

Party

Employee: NATHANIEL ALSTON

Attorney

Stephen Garcia
stephen@scgarcialaw.com
864-271-7335

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

George D. Gallagher
ggallagher@mckayfirm.com
803-705-2161



47

WCC File #: 1418755
Carrier File #: 830000140072
Carrier Code #: 0437
Employer FEIN #: 454437370

Claimant's Name: Nathaniel Alston Employer's Name: All My Son's Moving
Address: 105 Cavalier Dr. Apt 11 Address: 1120 Old Stage Rd
City: Greenville State: SC Zip: 29607 City: Simpsonville State: SC Zip: 29681
Home Phone: 864-593-3927 Work Phone: () - Insurance Carrier: Companion TPA for Vanliner Insurance
Preparer's Name: Kimberly Sims Law Firm: _____ Preparer's Phone #: 803-264-5046

1. Date of injury: 12/13/2014 2. Total Weeks Compensation Paid: 70
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

	(m/d/yyyy)	(m/d/yyyy)
Type: <u>TT</u>	From: <u>12/14/14</u>	To: <u>4/19/16</u>
Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____

4. Date of First Payment: 12/29/2014
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$19,122.56
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$3221.38

6. Informal Conference is Requested: ☐ Yes ☒ No (check one)

Use these lines to send a memo to the Commission:

Employer's Representative Phone _____ Date _____

Type or print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after Number 6 to request an informal conference. Refer to R.67-413, and R.67-804 for further information.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1419738
Carrier File #: 830000140072
May 10, 2016

NOTICE OF HEARING

NATHANIEL ALSTON
105 CAVALIER DR APT 11
GREENVILLE, SC 29607

48

NATHANIEL ALSTON v. All My Son's Moving & Storage

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: June 29, 2016 at 10:00 AM

Location: County Square, 301 University Ridge, Suite 5100, East Wing
Greenville, SC 29601

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Avery B. Wilkerson Jr.
803-737-5697, eboyd@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Elaine Boyd, SC Workers' Compensation, May 10, 2016

Party

Employee: NATHANIEL ALSTON
105 CAVALIER DR APT 11
GREENVILLE, SC 29607

Employer: All My Son's Moving & Storage
Carrier: Vanliner Insurance Company

Attorney

George D. Gallagher
ggallagher@mckayfirm.com
803-256-4645

OCB 6/14/16
SB 6/14/16
BO 6/17/16



HL

Claimant's Name: NATHANIEL ALSTON Employer's Name: ALL MY SONS MOVING & STORAGE
Address: 105 CAVALIER DRIVE, APT. 11 Address: 1102 OLD STAGE ROAD
City: GREENVILLE State: SC Zip: 29607 City: SIMPSONVILLE State: SC Zip: 29681
Home Phone: () - Work Phone: () - Carrier: VANLINER INSURANCE
Preparer's Name: STEPHEN GARCIA Preparer's Phone #: (864) 271-7335

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ 298.79 2. AWW: \$ 448.16 Date of Injury: 12/13/2014
3. Type of Injury and body part(s): LEFT SHOULDER/LEFT UPPER EXTREMITY
4. Facts in controversy: (1) WHETHER CLAIMANT IS ENTITLED TO TTD BACKPAY PLUS 25% PURSUANT TO § 42-9-260; (2) WHETHER CLAIMANT IS ENTITLED TO MEDICAL TREATMENT WITH DR. LOUDERMILK @ PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP AS REFERRED TO BY THE ATP, DR. JOHN PAYLOR
5. Legal issues involved: § 42-9-260
6. Unusual aspects:
7. Witnesses (designate if expert):* CLAIMANT
8. Exhibits: PLEASE REFER TO THE ADMINISTRATIVE PROCEDURES ACT SUBMITTAL; CLAIMANT RESERVES THE RIGHT TO ADD/AMEND SUBMISSIONS, FORM 58 & WITNESSES; CLAIMANTS RESERVE THE RIGHT TO SUBMIT ADDITIONAL EVIDENCE AS NEEDED
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
PLEASE REFER TO EXHIBITS LISTED IN THE ADMINISTRATIVE ACT SUBMITTAL
10. Name, address, and specialty, if any, of the treating physician: PLEASE REFER TO THE APA INDEX
11. Impairment rating(s); body part(s); physician and date of opinion: CLAIMANT IS NOT AT MMI
12. I am amending my Form 50/51 in the following manner: REMOVING THE SPINE AS AN INJURED BODY PART

☐ Mediation

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to George Gallagher, Esq. c/o The McKay Law Firm

Post Office Box 7210 Columbia, SC 29202 on the 21st Day of October 2015 by: ☒ first class postage ☐ certified mail ☒ personal service.

Signature: [Signature] Email: stephen@scgardalaw.com
Date of hearing: October 22, 2015 Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/13

58

PRE-HEARING BRIEF

Amend Submission
(Adding New Evidence)

24

From: George D. Gallagher ggallagher@mckayfirm.com
Subject: Alston
Date: December 1, 2015 at 4:35 PM
To: Stephen N. Garcia, Esq. Stephen@SCGarciaLaw.com

50



Stephen- take Alston \$20K to clincher now and he will have his money by Christmas. \$20K= approximately 3 months TTD, \$5K for meds, and 13% PPD to shoulder. I think that's a pretty damn good offer.

Nathanial
864-593-3427

CR \$289.79

Prav
We Chim

Social Security
Documents.

Job Application

Meaningful Use 2014: Government Mandated Questionnaire

52

Today's Date: 1/12/15

Name: First: Nathaniel Middle: Last: Alston

Date of Birth: 11-24-72

Your physician needs a local pharmacy on file:

Pharmacy Name: C. V. S

Pharmacy Address: W. Butler Rd

Pharmacy Phone #:

Pharmacy Fax #:

Your physician requires an active email address:

Email: N/A

Primary Language: (Check One)

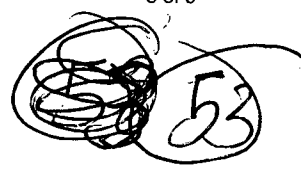
- ☒ English
☐ Spanish
☐ Other Specify _____

Race:

- ☐ American Indian
☐ Asian
☒ Black
☐ Native Hawaiian
☐ Unknown
☐ White

Ethnicity: (Check One)

- ☒ Non-Hispanic
☐ Hispanic



PIEDMONT ORTHOPAEDIC ASSOCIATES

PATIENT CONSENT AND AUTHORIZATION

Name of Patient Nathanial Alston Date of Birth 11-24-72

Piedmont Orthopaedic Associates, P.A., referred to as POA in the remainder of this document, is authorized to release protected health information about the above named patient to the entities named below. The purpose is to inform the patient or others in keeping with the patient's instructions.

Entities Authorized to Receive Information:

Please list the name of any person who you would like to have access to your information at our office.

Spouse: Andrea Alston Parent/Guardian: _____

Other: _____ Other: _____

Description of Information to be Released:

Please check the box of the information that can be released to the entities you have listed above.

☒ Family Billing Information ☒ Financial ☒ Medical as Follows: _____

Rights of the Patient Regarding Release of Information:

I understand that I have the right to revoke this authorization at any time and that I have the right to inspect or copy the protected health information to be disclosed as described in this document by sending a written notification to POA. I understand that a revocation is not effective in cases where the information has already been disclosed but will be effective going forward.

I understand that information used or disclosed as a result of this authorization may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.

Payment is Required at Time of Service:

Payment for medical care is solely the responsibility of the patient or his/her legal guardian. By signing below I give POA authorization to treat my medical condition. I also allow them to release my medical information as necessary for treatment, payment and operation of POA.

Consent of Release of Medication History:

A patient's current and up to date medication history is very important to the treatment plan of the provider. By signing below I give POA authorization to download my current medication history. Each provider of POA reserves the right to not see a patient who refuses this consent.

Acknowledgement of Receipt of Patient Financial Policy:

I have read and understand POA "Patient Financial Policy" and I agree to all terms listed in the policy. I also give POA authorization to submit claims to my insurance carrier on my behalf and to accept assignment on my claims.

Acknowledgement of Receipt of Notice of Privacy Practice:

I understand that the purpose of this notice is to inform me of my rights in regards to my "Protected Health Information" (PHI) and also the ways in which POA may use my PHI. I also understand that POA has my permission to use my PHI as necessary for treatment, payment and/or operation.

Nathanial Alston
Patient/Guardian Signature

1-12-15
Date

Piedmont Orthopaedics

2014

Patient Health Form

Name: Nathaniel AlstonDate of Birth: 11/24/72

Family Doctor: _____

Pharmacy/Telephone Number: _____

Current Medications: (Include Over the Counter) OR See Attached List: _____

Ibuprofen 800mg Morco 325mg

Drug Allergies (Please List): _____

Prior surgeries and hospitalizations (OTHER THAN THOSE PROVIDED BY PIEDMONT ORTHOPAEDIC ASSOCIATES) WITH DATES (please list)

right shoulder surgery 6/1/10 + 10/1/10

Check the box if you currently have OR have had: ☐ Heart Attack/Stroke ☒ High Blood Pressure ☐ High Cholesterol ☐ Diabetes ☐ Asthma ☐ COPD ☐ GERD
☐ Cancer ☐ Liver Disease ☐ Thyroid ☐ Ulcers ☐ Gout ☐ Staph/MRSA ☐ Hepatitis ☐ Blood Clots ☐ AIDS

Other Medical Problems: _____

Family History: Health and ages of parents & siblings (if no longer living, give age at death and cause): _____

Social History: ☐ Single ☒ Married ☐ Divorced ☐ Widowed ☐ Have Children ☐ Alcohol use ☐ Drug use ☐ TobaccoOccupation: truck driver

Review of Systems: Check each of the following body systems including any problems or symptoms that you presently have:

Constitutional:☒ NONE ☐ Fever ☐ Weight lossOptical /Eyes:☒ NONE ☐ Double vision ☐ Blurred visionENT & Mouth:☒ NONE ☐ Deafness ☐ Hoarseness ☐ Sinus trouble ☐ Dental problemsCardiovascular:☒ NONE ☐ Pacemaker ☐ Palpitations ☐ Chest pain ☐ Irregular beats ☒ High blood pressure ☐ Heart AttackRespiratory:☒ NONE ☐ Cough ☐ Asthma ☐ Sleep Apnea ☐ Heavy Snoring ☐ Shortness of breath ☐ Trouble breathing at nightGastrointestinal:☒ NONE ☐ Diarrhea ☐ Heartburn ☐ Constipation ☐ Abdominal pain ☐ Loss of appetite ☐ UlcersGenitourinary:☒ NONE ☐ Painful urination ☐ Trouble urinating ☐ Loss of bladder controlMusculoskeletal:☒ NONE ☐ Arthritis ☐ Stiffness ☐ Swelling of joints ☐ Pain in joints or bonesSkin-Breast:☒ NONE ☐ Rashes ☐ Lesions ☐ Scars ☐ Masses ☐ UlcersNeurological:☒ NONE ☐ Stroke ☐ Seizure ☐ Weakness ☐ Balance problems ☐ Numbness or tinglingPsychiatric:☒ NONE ☐ Depression ☐ Hallucinations ☐ Sleep disturbancesEndocrine System:☒ NONE ☐ Diabetes ☐ Frequent urination ☐ Hyper or Hypo activity ☐ Growth or hair changes ☐ Frequent thirstHematologic/Lymphatic:☒ NONE ☐ Anemia ☐ Excessive Bleeding ☐ Lymph node pain or enlargementAllergic Immunologic:☒ NONE ☐ Eczema ☐ Dermatitis ☐ Staph/MRSA ☐ Hepatitis ☐ AIDS ☐ Latex ☐ OTHER _____Patient Signature: Nathaniel Alston

Authorized signature above confirms information provided to POA is true & accurate to the best of my knowledge and/or ability.

Date: 11/12/15

Pulse: _____ BP: _____ Temp: _____ Max. Lifetime Ht: _____ Ht: _____ Weight: _____ BMI: _____ Arm span: _____

MD Initials: _____ Date: _____

MD Initials: Ar Date: 11/12/15

MD Initials: _____ Date: _____

MD Initials: _____ Date: _____

MD Initials: _____ Date: _____

MD Initials: _____ Date: _____

GreenLink Solution LC

1 Augusta St
Suite 302
Greenville, SC 29601

505

Invoice

Date	Invoice #
1/19/2015	784

Bill To
Nathaniel Alston Care of: Garcia Law Firm 604 Pettigru St Greenville, SC 29601

P.O. No.	Terms	Project
	Due on receipt	739-Nathaniel Alston

Quantity	Description	Rate	Amount
		2,000.00	2,000.00
		Total	\$2,000.00

GreenLink Solutions LLC

1 Augusta St
Suite 302
Greenville, SC 29601

Invoice

Date	Invoice #
7/14/2015	929

Bill To
Nathaniel Alston Care of: Garcia Law Firm 604 Pettigru Street Greenville, SC 29601

P.O. No.	Terms	Project
	Due on receipt	929-Nathaniel Alston

Quantity	Description	Rate	Amount
		2,000.00	2,000.00
		Total	\$2,000.00

(57)

(scribble)

STEP 3 - DRIVER APPLICATION

DRIVER APPLICATION MUST BE COMPLETE IN IT'S ENTIRELY. ALL QUESTIONS MUST BE ADDRESSED, UNANSWERED OR QUESTIONS LEFT BLANK WILL RESULT IN THE APPLICATION BEING RETURN. APPLICATION MUST BE DATED AND SIGNED.

DATE: 2-27-14

INSTRUCTIONS: Complete all portions of this form. If a portion does not apply, write NA or None in the space. Print all information, and use a BLACK or BLUE PEN. Application must be filled out in full; resumes will not be accepted.

PERSONAL INFORMATION

NAME: Alston Nathaniel MI SOCIAL SECURITY #: 247-21-4044
LAST FIRST MI

CURRENT PHONE: 864-593-3427 DATE OF BIRTH: 11-24-72

CURRENT ADDRESS: 327 Jacqueline Greenville S.C. 29607
STREET CITY STATE ZIP

RESIDENCE PAST 3 YEARS

<u>327</u> <u>Jacqueline</u> <u>Greenville</u> <u>S.C.</u> <u>29607</u> <u>1 1/2</u> <u>yr</u>
STREET CITY STATE ZIP HOW LONG
<u>14</u> <u>Endel St</u> <u>Greenville</u> <u>S.C.</u> <u>29607</u> <u>3</u> <u>yr</u>
STREET CITY STATE ZIP HOW LONG

STREET	CITY	STATE	ZIP	HOW LONG
--------	------	-------	-----	----------

EMERGENCY CONTACT INFORMATION

NAME: Andrea L Alston Wife
FIRST LAST RELATIONSHIP

ADDRESS: 327 Jacqueline Greenville S.C. 29607 PHONE: 864-593-7137
STREET CITY STATE ZIP

Initials NA



License	Class	Issue	Expire	Status	Explanation	Action
COMMERCIAL	A	04/25/2003	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: DUPLICATE
COMMERCIAL	A	07/21/2004	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: DUPLICATE
COMMERCIAL	A	08/11/2004	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: DUPLICATE
COMMERCIAL	A	10/23/2006	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: DUPLICATE
COMMERCIAL	A	03/05/2007	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: DUPLICATE
COMMERCIAL	A	07/15/2005	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: MODIFY
COMMERCIAL	A	09/29/2004	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: MODIFY
COMMERCIAL	A	02/06/2003	11/24/2008	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: BP TO DL
COMMERCIAL	A	01/24/2003	07/24/2003	EXPIRED	COMBINE VEH > 25K W/TRAILER > 10K NO DISQUALIFICATION	Issued: RETURNED
COMMERCIAL	A	01/24/2003	07/24/2003	EXPIRED	LEARNERS - COMB VEH > 26K W/TRAILER > 10K NO DISQUALIFICATION	Issued: ORIGINAL
PERSONAL	D	02/04/2000	11/24/2008	EXPIRED	ALL NON-COMMERCIAL VEH < 26K (EXCEPT MOTORCYCLE) NO SUSPENSION	Issued: RETURNED
PERSONAL	D	02/04/2000	11/24/2005	EXPIRED	ALL NON-COMMERCIAL VEH < 26K (EXCEPT MOTORCYCLE) NO SUSPENSION	Issued: RENEWAL
PERSONAL	D	02/04/2000	11/24/2005	EXPIRED	ALL NON-COMMERCIAL VEH < 26K (EXCEPT MOTORCYCLE) NO SUSPENSION	Issued: REISSUE



G. Courtesy and Safety

1. Yield to right of way
2. Consistently strives to drive in safe manor
Allows faster traffic to pass
3. Uses horn only when necessary

S
S
S
S

Part 7 – Miscellaneous

A. General Driving Ability and Habits

1. Consistently alert and attentive
2. Consistently is aware of changing traffic
3. Anticipates problems
4. Performs routine functions without taking eyes from road
5. Checks instruments regularly
6. Remains calm under pressure

S
S
S
S
S
S

B. Use of Special Equipment

NA

Remarks:

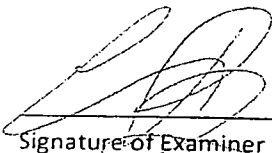
NA

General Performance: Safety X Needs Training _____

Explain: _____

Quality for: Straight Truck X Tractor/Semi _____ Twin Trailers _____ Other _____

Special Equipment NA _____



Signature of Examiner / Manager

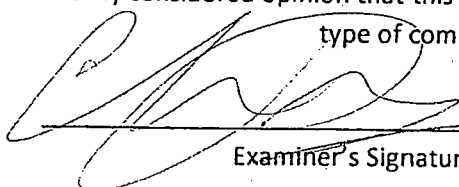


ROAD TEST CERTIFICATION

Drivers Name Nathaniel Alston
Operator's Or Chauffeur License # 004122712 State SC
Type of Power Unit 26' Straight Box Type of Trailer NA
If Passenger Carrier, Type of Bus NA

This is to certify that the above named driver was given a road test under my supervision on the day of 24 in the month of Feb, 2014 consisting of approximately 20 miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.


Examiner's Signature / Manager Manager Title

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined NATHANIEL ALSTON in accordance with Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, if this person is qualified; and, if applicable, only when:

☐ wearing corrective lenses ☐ driving within an exempt intracity zone (49 CFR 391.63)
☐ wearing hearing aid ☐ accompanied by a Skill Performance Evaluation Certificate
☐ accompanied by a _____ waiver/exemption ☐ qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete exam form with any attachment embodies my findings completely and correctly, and is on file in my office.

SIGNATURE OF MEDICAL EXAMINER <u>H. Bassenard III</u>	TELEPHONE <u>864-201-1776</u>	DATE <u>6/17/15</u>
MEDICAL EXAMINER'S NAME (PRINT) <u>H. Bassenard III</u>	☐ MD ☐ DO ☐ Chiropractor ☐ Physician Assistant ☐ Advanced Practice Nurse	
MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE <u>17821SC</u>		
SIGNATURE OF DRIVER <u>Nathaniel Alston</u>	DRIVER'S LICENSE NO. <u>004122712</u>	
ADDRESS OF DRIVER <u>14 Ende St. Greenville, SC 29604</u>		
MEDICAL CERTIFICATE EXPIRATION DATE <u>JUNE 17, 2015</u>		

DRIVER COPY

(61)

[Handwritten scribbles]

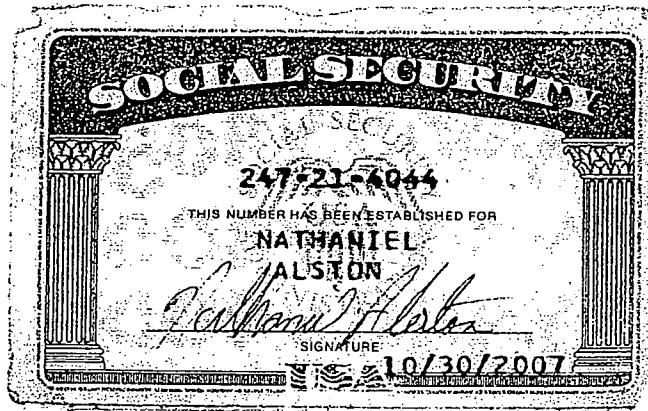
South Carolina SC • USA **COMMERCIAL DRIVER'S LICENSE**

DL#: 004122712 **ALSTON, NATHANIEL JUNIOR**
 321 JACQUILINE LN
 GREENVILLE, SC 296074618

DOB: 11-24-1972
 Issued: 11-20-2013
 Expires: 11-24-2018
 Class: A
 Sex: M
 Weight: 275
 Height: 6-01
 Restrict: None
 Endorse: None

11-24-1972

21025 R 2



12

DRIVER QUALIFICATION FILE CHECKLIST

Driver Nathaniel Alston has completed all steps of the driver qualification process as outlined and has also been verified meeting our Driver Screening criteria.

Driver Qualification File Requirements:

- ☒ Driver Questionnaire
- ☒ MVR consent statement
- ☒ Pre-Employment Screening Program (PSP) Consent Statement
- ☒ Background consent statement
- ☒ Copy of criminal background report
- ☒ Copy of 3 year MVR (must have for each state licensed in for the previous 3 years)
- ☒ Driver Application (entire application must be completed)
- ☒ Previous Employment Verification(s) form
 - o (One must be completed for each employer that requires verification)
- ☒ Copy of Driver's license (both sides must be clear and legible)
- ☒ Copy of Pre-Employment drug screen "NEGATIVE" results
- ☒ Copy of Medical card and form (DOT Physical)
- ☒ Completed Road Test and Certificate of Road Test
- ☒ Acknowledgment Receipt of Safety Handbook

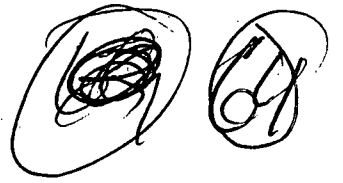
Employee Personnel File:

- ☒ Completed W-4 form
- ☒ Completed I-9 form
- ☒ Copy of Social Security Card

Location: Simpsonville, SC

Verified By: 

Date: 2/24/14



DRIVER QUALIFICATION PROCESS

STEP 1: Driver completes the Driver Questionnaire (Any 'Yes' answer contact Safety for review)

STEP 2: Driver completes the following authorization forms: (All documents are required to be initialed or signed)

- MVR Form
- Background Forms
- PSP Form

STEP 3: Qualify Worker (Tab near top left corner)

- Enter all fields (required)
- Submit

STEP 4: Review MVR and COPS results

STEP 5: View/ Edit (tab)

- Print Application (Driver then must complete entire application)

STEP 6: Driver completes in office sample test

STEP 7: Print Managers Package (complete the following)

- Complete Road Test and certificate of
- Complete I-9 (see downloads in CMS)
- Complete W-4 (see downloads in CMS)
- Driver receives copy of our "Driver Safety Manual" (complete and retain acknowledgement page)
- 7 Day On Duty Prior Time
- Complete Previous employment verification and or Memo to File

STEP 8: Upload the following completed information

- Driver Application – application must be legible and entirely completed as requested
- Driver's license – must be clear and legible (front and back)
- Social Security Card – must be clear and legible (front and back)
- Completed MVR and background authorization forms

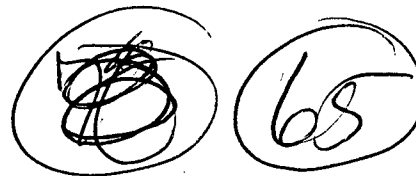
STEP 9: Driver completes controlled Pre- Employment drug screen

- Must use labcorp or an authorized vendor of Advanced Testing
- Test must be completed on our chain of custody with Advanced Testing

STEP 10: Driver completes DOT Physical (Concentra National Account charge is \$60.00)

STEP 11: Upload completed Managers Package

- Completed Road Test and certificate of Road Test
- Completed acknowledgment of Driver Safety handbook page
- Completed I-9 form
- Completed W-4 form
- Completed 7 Day On Duty Prior Time
- Completed Previous Employment Verification(s) and or Memo to File form.



MULTIPLE EMPLOYER DRIVER APPLICANTS

Driver applicants who will be working for other employers while working for All My Sons shall complete drive qualifications cited in the multiple drivers' checklist.

Multiple-employer drivers shall report hours worked for other employer as on duty hours.

Manager shall insure multiple employer diver do not operate CMV without sufficient hours available.

Multiple employer driver failing to report other on duty hours form other employer's amounts to falsification of hour and will result in immediate/termination.

MULTIPLE-EMPLOYER DRIVERS

Instructions: If a motor carrier employs a person as a multiple-employer driver (as defined in 9CFR 390.5), the motor carrier shall comply with all requirements of Par 391, except the carrier need not –

1. Require the person to furnish an application for employment (391.21);
2. Make an inquiry into the person's driving record during the preceding three years to the appropriate Sate agency(s) and an investigation of the person's employment record during the preceding three years (391.23);
3. Perform annual review of the person's driving record (391.25; or
4. Require the person to furnish a record of violations or a certificate (391.27)

The checklist below may be helpful to ensure that required documents are obtained.

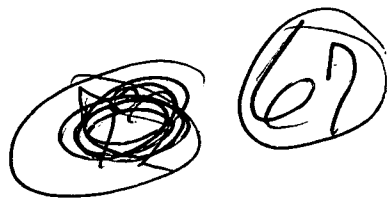
DRIVER QUALIFICATION FILE CHECKLIST	
Name:	Nathaniel Alston
Social Security Number:	247-21-4044
Driver's License Number:	004122712
Type of License:	A State: SC
In addition to the above information, copies of the following must be obtained. ☒ Medical Examiner's Certificate ☒ Road Test (o Equivalent) ☒ Certificate of Road Test ☒ Controlled Substances Test	

Regulations required previous employer inquires on any driver that was
Subject to FMCR's.

Any vehicle over 10,000 pounds would require the previous employer
documents.

This includes all employers meeting this requirement in the last 3 years.

Driver applicants who do not meet criteria above, that **DO NOT** require
previous employer verification must have **MEMO TO FILE** in place of
previous employment verifications.



ALCOHOL AND SUBSTANCE ABUSE POLICY

The purpose of this policy is to establish set guidelines to help prevent accidents and injuries resulting from the misuse of alcohol or use of a controlled substance drivers of commercial motor vehicles.

this policy follows Department of Transportation and Federal Motor Carrier Safety Administration regulations found in 49 CFR Parts 40 and 382

- If at any time, a driver or driver's helper shall have any questions or concerns about the materials contained in this policy, he or she should not hesitate to contact the companies "DER":

- All drivers who drive Commercial Motor Vehicles which require a Commercial License are subject to controlled substance and alcohol testing
- All drivers and drivers' helpers who operate a Company Vehicle are subject to controlled substance and alcohol testing.
- The categories of drivers that are subject to this stipulation are as follows:
Any person who operates a commercial motor vehicle- This includes, but is not limited to, full time, regularly employed drivers, independent, owner-operator contractors who are either directly employed by or under lease to an employer or who can operate a commercial motor vehicle at the direction of or with the consent of an employer.
- No driver or drivers' helper shall report for duty or remain on duty requiring the performance of safety-sensitive functions while under the influence of alcohol or a controlled substance. Safety-sensitive functions means all the time from the time the driver begins to work or is required to be in readiness to work until he/she is relieved from work and all responsibility for performing work. Also, any time spent in the warehouse waiting to be dispatched, all time spent inspecting vehicles and equipment and loading or offloading of the vehicles, all time spent repairing the vehicles, and while driving the commercial motor vehicle.
- Prohibited driver conduct is as follows: No driver shall report for duty or remain on duty while having an alcohol concentration of 0.01 or greater, no driver shall use alcohol or controlled substances while performing safety-sensitive functions within twelve (12) hours after using alcohol. No driver required to take post accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test. No driver shall report for or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except under the instructions of a licensed practitioner. No driver shall report for duty, remain on duty, or perform safety-sensitive functions if tested positive for controlled substances.



Memo to File

Applicant: Nathaniel Alston

Driver ID #: _____

Date: 2/24/14

Please be aware that a previous employer safety investigation is not possible for the above captioned driver.

The driver has no previous employers within the past three years that have been subject to the FMCSR's or CFR 49 part 40.



- Prior to the first time the driver performs safety-sensitive functions for an employer; the driver shall undergo testing for alcohol and controlled substances. No employer shall allow any driver who has tested positive for either test to operate a commercial motor vehicle.
- Each employer shall maintain good records of its alcohol misuse and controlled substance use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access. Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under 382.401. Any driver involved in the following: human fatality, body injury with immediate medical attention away from the scene, disabling damage to the vehicle requiring tow-away, will subject themselves to testing.
- All testing will fall as follows: pre-employment (Drivers), post-accident (regardless of fault), random, reasonable suspicion, return to duty, and follow-up.
- Refusal to submit to testing includes but not limited to, the driver: failing to provide adequate breath without a medical explanation after he/she received notice of the requirement for breath testing in accordance with safety compliance conditions, failing to provide adequate amounts of urine under the same guidelines, engaging in conduct that clearly obstructs the testing process.
- No driver or driver's helper shall report to duty, remain on duty, or perform a safety-sensitive function if he/she is found in violation of our drug/alcohol policy.
- Driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 must review the company drug/alcohol policy.

This is to certify I, _____ have read and fully understand the Companies alcohol and substance abuse policy and that a copy is available to me upon request. I also fully understand the Department of Transportation and Federal Motor Carrier Safety Administration regulations found in 49 CFR Parts 40 and 382 (Controlled Substances and Alcohol Testing Policy) and that a copy is available to me upon request. Also available is a list of substance abuse professionals, which I can contact if I or any fellow employees have an alcohol or substance abuse problem. If I have any questions or comments regarding these policies, I can ask any company "DER" and be assured that the conversation would be kept strictly confidential.

Nathaniel A. Smith
PRINT NAME SIGNATURE

3-15-14
DATE

[Signature]
MANAGER SIGNATURE DATE 3/15/14



Certificate of Training for Entry Level Commercial Drivers

Nathaniel Junior Alston

Driver's first, middle, last name

I certify that the above named driver has completed the training requirements set forth in the Federal Motor Carrier Safety Regulations for entry level driver training in accordance with 49 CFR 380.503

- Driver Qualification Requirements (49 CFR 391)
- Hours of Service of Drivers (49 CFR 395)
- Driver Wellness
- Whistleblower Protection (29 CFR 1978)

Manager

2/24/14

Certificate Date

Form W-4 (2011)

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2011 expires February 16, 2012. See Pub. 505, Tax Withholding and Estimated Tax.

Note. If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$950 and includes more than \$300 of unearned income (for example, interest and dividends).

Basic instructions. If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

Head of household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 919, How Do I Adjust My Tax Withholding, for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using

Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax if you have pension or annuity income, see Pub. 919 to find out if you should adjust your withholding on Form W-4 or W-4P.

Two earners or multiple jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 919 for details.

Nonresident alien. If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Check your withholding. After your Form W-4 takes effect, use Pub. 919 to see how the amount you are having withheld compares to your projected total tax for 2011. See Pub. 919 especially if your earnings exceed \$130,000 (Single) or \$180,000 (Married).

Personal Allowances Worksheet (Keep for your records.)

A Enter "1" for yourself if no one else can claim you as a dependent B Enter "1" if: • You are single and have only one job; or • You are married, have only one job, and your spouse does not work; or • Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less. C Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.) D Enter number of dependents (other than your spouse or yourself) you will claim on your tax return E Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above) F Enter "1" if you have at least \$1,900 of child or dependent care expenses for which you plan to claim a credit (Note. Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.) G Child Tax Credit (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than \$61,000 (\$99,000 if married), enter "2" for each eligible child; then less "1" if you have three or more eligible children. • If your total income will be between \$61,000 and \$84,000 (\$99,000 and \$119,000 if married), enter "1" for each eligible child plus "1" additional if you have six or more eligible children H Add lines A through G and enter total here. (Note. This may be different from the number of exemptions you claim on your tax return.) ▶ H For accuracy, complete all worksheets that apply. • If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2. • If you have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$40,000 (\$10,000 if married), see the Two-Earners/Multiple Jobs Worksheet on page 2 to avoid having too little tax withheld. • If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.	A <u>1</u> B <u> </u> C <u>1</u> D <u>0</u> E <u>0</u> F <u>0</u> G <u>0</u> H <u>2</u>
--	--

Cut here and give Form W-4 to your employer. Keep the top part for your records.

W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate		OMB No. 1545-0047 2011
▶ Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.				
1 Type or print your first name and middle initial. <u>Nathaniel</u>		Last name <u>Alston</u>		2 Your social security number <u>247-21-4044</u>
Home address (number and street or rural route) <u>327 Jacqueline Ln</u>		3 ☐ Single ☒ Married ☐ Married, but withhold at higher Single rate Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.		
City or town, state, and ZIP code <u>Greenville SC 29607</u>		4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card ▶ ☐		
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2) <u>2</u>		6 Additional amount, if any, you want withheld from each paycheck <u>\$</u>		
7 I claim exemption from withholding for 2011, and I certify that I meet both of the following conditions for exemption. • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here. ▶ <u>7</u>				
Under penalties of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief, it is true, correct, and complete.				
Employee's signature <u>Nathaniel Alston</u>		Date <u>2-27-11</u>		
8 Employer's name and address (Employer. Complete lines 8 and 10 only if sending to the IRS.) <u>All My Sons Moving & Storage 1102 Old Stage Rd</u>		9 Office code (optional)		10 Employer identification number (EIN)

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(This must be completed the Day prior to actually driving for All My Son's)

STATEMENT OF PRIOR ON-DUTY TIME

Motor carriers, when using a driver for the first time or intermittently, must obtain the driver a signed statement giving the total time on-duty during the immediately preceding seven days and the time at which the driver was last relieved from duty prior to beginning work.

DRIVER NAME:

SOCIAL SECURITY NUMBER:

Nathaniel Alston

247 - 21 - 4044

DAY	1	2	3	4	5	6	7	
DATE	<u>2/18/14</u>	<u>2/19/14</u>	<u>2/20/14</u>	<u>2/21/14</u>	<u>2/22/14</u>	<u>2/23/14</u>	<u>2/24/14</u>	TOTAL
DAY OF WEEK	<u>Tues</u>	<u>Wed</u>	<u>Thur</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>	<u>Mon</u>	HOURS
TOTAL HOURS WORKED	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	

By signing below, I certify that the total hour's on-duty for seven previous days are true and correct and that I was relieved from duty prior to this trip on 2/24/14 at 11:00 A.M./P.M.

Nathaniel Alston

DRIVER SIGNATURE

[Signature]

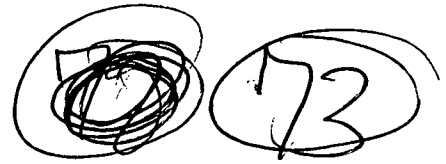
WITNESS

2-24-14

DATE

2/24/14

DATE



DRUG TEST/DOT PHYSICAL

I acknowledge that as a condition of employment I am required to undergo a pre-employment MRO drug test at the expense of All My Sons Moving & Storage and a DOT Physical in case of the absence of a medical examination certificate, which will be deducted from my FIRST payroll check. I understand that the offer of employment is based off the passing of both the drug test and DOT Physical. I agree to furnish any additional information and undergo examinations that might include random alcohol and substance abuse screening tests that may be required to complete or update a DOT regulated driver's file and continue my employment with the company.

AT WILL COMPANY

Also, I understand that just as I am free to resign at any time for any reason, with or without prior notice, the company reserves the right to terminate my employment at any time for any reason, with or without prior notice. I understand that no representative of the company has the authority to make any verbal or written assurance to the contrary.

The application represents the complete and final expression of the intent of the parties and that my signature certifies that all entries are true and completed to the best of my knowledge as well.

FAIR CREDIT REPORTING ACT DISCLOSURE STATEMENT

In ACCORDANCE with the provisions of Section 604(b)(2)(A) of the Fair Credit Reporting Act of 1996 (Title II, Subtitle D, Chapter I, of Public law 104-208) you are being informed that reports verifying your previous employment, previous drug and alcohol test results, and your driving record may be obtained on you for employment purposes. These reports are required by Sections 382.413, 391.23, and 391.25 of the Federal Motor Carrier Safety; Regulations.

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

Applicants Signature:

Nathaniel Alston

Date:

2-24-14

Applicants Name:

Nathaniel Alston

(Please Print)

All My Sons Moving & Storage of Dallas, Inc.

Notice of Violation of Company Policy

Date: 8-25-14

Employee Name: NATHANIEL ALSTON

Situation needing Improvement: USING PROPER SPOTTERS

Facts of the situation: On _____, 20____.

Incident:

NATE DROPPED INTO CUSTOMER SARDOWSKI'S MAIL BOX.
CAUSED IN EXCESS OF \$350.00 IN DAMAGES

You are aware of our company's policies and have agreed to abide by them. The above noted incident is a violation of our policies. This conduct does not serve the best interests of the company, its customers and/or its employees.

Pursuant to the company's at-will employment policy, the company reserves the right to impose whatever forms of discipline it chooses in a particular instance.

Based on the details of the incident we shall take the following action:

☒ Written Warning # _____

☐ _____ Probation

☐ Termination

Further corrective measures:

NATE WILL PAY BACK \$3100.00 OF THE BILL. NATE WILL
ALSO USE SPOTTERS EVERYTIME HE DROPS UP!

A copy of this letter may be placed in your personnel file. I acknowledge receipt of a copy of this letter.

Nathaniel Alston
Employee Signature

[Signature]
Manager Signature



2400 Old Mill Rd. Carrollton, TX 75007



STEP 1 - DRIVER QUESTIONNAIRE

ALL QUESTIONS MUST BE ANSWERED TRUTHFULLY

1. YES ☒ NO Within the previous 5 years, have you been involved with DWI, DUI, OWL, or any drug related violation while operating a commercial motor vehicle or personal vehicle?
2. YES ☒ NO Have you ever tested positive or refused a test under a DOT or company testing program?
3. YES ☒ NO Have you been involved at fault for reckless or impudent driving in the previous 3 years?
4. YES ☒ NO Driving while license was suspended or revoked due to excessive moving violations in the prior 36 months?
5. YES ☒ NO Have you been at fault for leaving the scene of an accident with injuries, fatality, or while operating a commercial motor vehicle in the previous 3 years?
6. YES ☒ NO Have you pleaded guilty, in the previous 3 years for a felony, the commission of which involved a commercial motor vehicle?
7. YES ☒ NO Are you guilty of a felony in the previous 3 years?
8. YES ☒ NO Have been incarcerated for 7 days or more due to criminal offenses in the previous 3 years?
9. YES ☒ NO Have you had more than one at fault accident in the previous 12 months, or more that two in the previous 3 years?
10. YES ☒ NO Have you received two or more moving violations within the previous 12 months, or more that two in the previous 3 years?
11. YES ☒ NO Any convictions or guilty pleas of murder, rape, physical violence or any offense involving moral turpitude?
12. YES ☒ NO Are you on court supervised probation, parole, under felony indictment, or similar legal proceedings?
13. YES ☒ NO In the previous 3 years, have you refused or failed a controlled substance or alcohol test?
14. YES ☒ NO Have you ever received any violations for an out of service order while operating a commercial motor vehicle?
15. YES ☒ NO Are you younger than 21 years of age?

Applicants Name:

Nathaniel Alston

Please Print

OMB No. 1615-0047; Expires 08/31-12
Form I-9, Employment Eligibility Verification

Department of Homeland Security
 U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name - Last Alston	First NATHANIEL	Middle Initial	Maiden Name
Address (Street Name and Number) 327 Jacqueline Ln S.C.		Apt. # 29607	Date of Birth (month/day/year) 11-24-72
City SC	State SC	Zip Code 29607	Social Security # 247-21-4044

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☒ A citizen of the United States
☐ A noncitizen national of the United States (see instructions)
☐ A lawful permanent resident (Alien #) _____
☐ An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year) _____

Employee's Signature

Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: SC Drivers license		Social Sec Card		
Issuing authority: _____		247-21-4044		
Document #: 004122712				
Expiration Date (if any): 11-24-18				
Document #: _____				
Expiration Date (if any): _____				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) **2-21-14** and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative 	Print Name Felipe Ramos	Title Manager
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Ali My Sons Moving and Storage 1102 Old Stage Rd Simpsonville SC 29681		Date (month/day/year) 2-21-14

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization:	
Document Title	Document #: _____ Expiration Date (if any): _____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

Leonard & Associates, Inc.

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Vocational and Rehabilitation Consultants

Joel D. Leonard
Vocational Consultant
Certified Vocational Evaluator
Certified Rehabilitation Counselor

3710 Landmark Drive, Suite 204-A
Columbia, SC 29204
803-787-1734 - v
803-787-1735 - f

VOCATIONAL EVALUATION: PROSPECTIVE FEASIBILITY & IMPACT ASSESSMENT

Name:
Nathaniel Alston, Jr.

Date of Evaluation:
March 27, 2012

DOB - Age:
11/24/72 - 39

Status:
W/C - Admitted

Referring Party:
Stephen N. Garcia

Alleged Injury Date:
March 22, 2010

I. REFERRAL STATUS:

Mr. Nathaniel Alston was referred for a vocational evaluation subsequent to a workers' compensation claim arising from a March 22, 2010 injury. His referral was enacted by Mr. Stephen Garcia of the Garcia Law Firm, P.A. Mr. Garcia has requested a determination of Mr. Alston's prospective employability subsequent to the cited injury and its functional impact on his overall vocational profile.

Mr. Alston was evaluated at the offices of Leonard & Associates, Inc, in Columbia, South Carolina. The associated procedures lasted just under three hours and consisted of a formal, vocational interview as well as a series of routine tests.

All conclusions contained within the report that follows are provided within a reasonable degree of professional certainty and are issued without regard as to their relative impact on Mr. Alston's claim. Given the forensic nature of certain issues germane to the vocational evaluation process, it is duly noted that the conclusions reached in association with Mr. Alston's evaluation are subject to amendment pending any meaningful changes in the functional record.

II. CLAIM BACKGROUND:

Mr. Alston's workers' compensation claim is framed by an injury that occurred during the course of his employment as a delivery truck driver with the Greenco Beverage Company.

On March 22, 2010, Mr. Alston was reaching up to remove a case of beer from the back of a delivery truck when he felt a snap in his right shoulder.

In response to the workplace accident, Mr. Alston has been provided with medical care intended to lessen the degree of residual disability. He has undergone two distinct surgeries to his right shoulder. Unfortunately, he reports little benefit from either procedure.

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According to the evidence of record, Mr. Alston has reached maximum medical improvement and has been released from further care – absent those interventions intended to maintain his level of impairment and associated degree of disability. Mr. Alston has been provided with an impairment rating and directive opinions have been issued as to his capacity to engage in physical and functional tasks. In light of such, Mr. Garcia has requested an opinion as to Mr. Alston's likely employability.

III. SUBJECTIVE ALLEGATIONS:

Mr. Alston alleges a number of ongoing, symptomatic difficulties affecting his neck, right shoulder, right arm and psychological health. Mr. Alston contends that such problems are correlated to the March 2010 injury and that they adversely impact his ability to work.

Most notably, Mr. Alston reports the presence of pain in his right shoulder and right upper arm. He describes audible "clicks" and "pops" in his shoulder joint as well as occasional swelling. Mr. Alston states that he experiences tightness and a sharp pain in his right upper arm. He further notes intermittent "soreness" in and around his neck region.

Beyond the physical symptoms arising from the injury, Mr. Alston asserts the presence of rather significant, psychological difficulties that appear to be driven by pain as well as a general fear of the future. Notably, Mr. Alston reports feelings of worthlessness and despondency.

Secondary to the above symptoms, Mr. Alston alleges an inability to engage in various, functional activities. Specifically, he notes limitations in the performance of both dynamic as well as static tasks. He is unable to move his right arm in any significant manner without severe pain. As such, he routinely wears a sling that helps to maintain his arm in a protected posture.

Mr. Alston is most limited by tasks that require him to reach overhead, outward or to the side. He does not lift heavy items with his right arm and is limited in the performance of manually demanding tasks. To that point, Mr. Alston reports the onset of severe pain during activities such as writing, eating, bathing, etc. Of note, Mr. Alston is right hand dominant.

From a temperamental perspective, Mr. Alston reports a pre-occupation with the turn of events that his life has taken. He finds himself ruminating on such issues, which adversely colors his view of life. He asserts likely limitations concerning his ability to deal with coworkers as well as the general public.

Mr. Alston does not believe that he is capable of working. Regardless of the occupation or the associated duties, he is unable to envision the performance of gainful employment given his medical problems. To that end, Mr. Alston considers himself to be totally disabled from any and all work.

IV. PROFILE DEVELOPMENT – RELATIVE VOCATIONAL FACTORS:

A. Age, Education & Formal Training:

Mr. Alston is a 39-year-old resident of Greenville, South Carolina. He reportedly left school in the twelfth grade due to learning problems and never returned to complete his diploma or secure a graduate equivalency degree.

Mr. Alston states that he was a poor student and was retained on several occasions. He also notes that he received special education services throughout his formal schooling. Mr. Alston reports a limited capacity to read/ write – noting a variant ability to recognize words as well as a poor ability to spell.

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Mr. Alston allegedly attended truck driving school in 2003 and secured a commercial driver's license (CDL) as part of the training program. His CDL was last renewed in December of 2008. It is valid until November of 2013. He denies undergoing any medical certifications since the March 2010 injury.

Mr. Alston denies any military service. He is not a member of any union nor does he report the performance of any marketable hobbies.

B. Work History:

Mr. Alston reports a relevant work history defined by a wide range of pursuits. Within the relevant past, Mr. Alston has worked for a variety of temporary agencies as a construction laborer, brick mason helper, warehouse worker, etc. He denies any work experience in a clerical, administrative or retail setting.

At the time of the injury, Mr. Alston was employed as a delivery driver for the Greenco Beverage Company. He delivered beer products to different retail establishments. Mr. Alston drove a commercial grade truck along a pre-determined route. He pulled the orders from the truck and set product in different locations throughout the store. Mr. Alston states that he was required to rotate stock, face product and ensure a neat and proper presentation of the product.

Globally, Mr. Alston's job is best defined by a "very heavy and semi-skilled" designation. In relation to such, he routinely placed multiple cases of beer on the hand truck (as many as 22 suitcases). Mr. Alston was paid by the case (\$.22 per case). Pending the time of year, Mr. Alston states the he delivered anywhere from 300 to 1200 cases a day.

C. Acquired Skills:

Based upon the nature of Mr. Alston's work history, it would appear that he has developed a base of skills that are transferable to other occupations. For the most part, such skills are primarily defined by his most recent employment with the Greenco Beverage Company. The specific work skills and noted fields are as follows:

Retail Distribution Services: knowledge of procedures and techniques pertaining to the safe operation of commercial grade trucks; knowledge of DOT regulations; transportation record keeping; maintenance of property safety standards; specific competencies related to the delivery and control of beer products; knowledge of jargon and work codes; etc.

Outside of any emotional, academic, intellectual or physical restrictions, Mr. Alston's skills would be transferable to positions such as a bus driver, motor coach operator, water truck operator, order puller, etc.

D. Assessment Results:

Mr. Alston was administered the Wide Range Achievement Test – Fourth Revision (WRAT-4) and the Wide Range Intelligence Test (WRIT) in order to assess his intellectual and academic standing. His test results document the presence of significant academic and intellectual deficits. Specifically, Mr. Alston secured scores at or below the first percentile on all sections of the WRAT.

Mr. Alston performed in a manner consistent with his reported, educational achievement and general presentation. While he is able to read simple words, comprehend simple text and perform basic mathematical operations, such competencies are quite limited. Additionally, Mr.

Alston is significantly limited in his ability to apply more than modest principles of reasoning and analysis as set forth by his score on the WRIT.

Globally, Mr. Alston's test results are considered to represent a negative vocational factor. He is not considered a viable candidate for any type of academic training nor is he suited for advanced, occupational fields. He will likely experience difficulty with pre-employment testing and is best suited for work that is learned in an experiential manner. Mr. Alston's test results are as follows:

Achievement – Education:

WRAT-4 (green)	Raw:	SS:	%tile:
Word Reading	45	63	<1st
Sentence Comprehension	30	58	<1st
Reading Composite	121	60	<1st
Math Computation	36	64	<1st

Intelligence – Reasoning:

WRIT:	Sum:	IQ Equivalent:
Verbal – Crystallized	137	65
Visual – Fluid	148	69
General	285	62

E. Previous Compensable Claims & Concurrent Proceedings:

Mr. Alston reports a history of compensable claims defined by a number of motor vehicle accidents. He denies any permanent limitations or vocational deficits secondary to such events. Reportedly, he received medical care and was issued corresponding settlements. Mr. Alston states that he returned to work without incident and was never found to be totally disabled as a result of any accident or associated legal proceedings.

Mr. Alston has applied for disability benefits through the Social Security Administration. To date, his application has been denied and he is awaiting an administrative hearing. Mr. Alston denies any secondary proceedings concerning his capacity to work.

F. Light Duty & Return to Work Status:

Mr. Alston is not presently working in any form or manner. He denies the performance of any significant work activity since the March 2010 injury. More specifically, Mr. Alston denies the provision of any light duty or any alternative placements within the Greenco Beverage Company. To that point, Mr. Alston is under the impression that his employment has been terminated.

Mr. Alston is not presently engaged in an active job search. He is not participating in a vocational rehabilitation program nor has he returned to school in any form or manner since the injury. Mr. Alston denies any formal, vocational plans for the future.

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G. Psycho-Vocational Status – Emotional:

Mr. Alston reports the onset of psychological problems subsequent to the March 2010 accident. In relation to such, he describes feelings of worthlessness, despondency, anger and a sense of fear as to his future.

Functionally, Mr. Alston is of the opinion that his ability to work is primarily driven by physical difficulties. However, he also notes likely limitations in his ability to interact with the general public and tolerate social interactions.

Mr. Alston is not presently under the care of a psychiatrist or psychologist. However, he does report the use of anti-anxiety medication (Klonopin) prescribed by Dr. Erik Loudermilk. To date, there is no direct indication that the carrier has admitted a psychological injury though they are providing the previously noted medication as part of his pain management treatment.

The case file associated with Mr. Alston's claim is significant for a psychological evaluation performed by John Burton, Ed.D. (July 12, 2011). The examination was requested by Mr. Alston's attorney.

Within the text of the evaluation, Dr. Burton cited the nature of Mr. Alston's March 2010 injury. Additionally, he referenced a variety of other circumstances concerning Mr. Alston's psychological development to include a history of substance abuse, in-patient hospitalizations, suicide attempts, a previous robbery and assault, etc. In the end, Dr. Burton was unable to determine the source of Mr. Alston's mental difficulties. While he noted that Mr. Alston would likely benefit from counseling sessions as well as pain management, he did not provide a specific statement of causation or correlation within the bounds of Mr. Alston's current, workers' compensation claim. Rather, Dr. Burton simply alluded to the changes in Mr. Alston's mental state.

The issue of Mr. Alston's psychological state was also discussed during a recent deposition of Dr. Eric Loudermilk – completed on March 20, 2012. In short, Dr. Loudermilk noted that certain aspects of Mr. Alston's psychological state were important to the treatment of his pain disorder. However, Dr. Loudermilk also indicated that Mr. Alston's general presentation with respect to such issues was not overly significant within the bounds of his routine management. As such, it is difficult to determine if the results of Dr. Loudermilk's deposition provided any formal resolution as to the inclusion or exclusion of such issues with respect to Mr. Alston's workers' compensation claim.

Given the current tenor of the record, it does not appear proper to adjust Mr. Alston's psycho-vocational status in a manner that exceeds his pain management treatment. That is, while I suspect that Mr. Alston is limited from a temperamental perspective as noted within the Form 14B completed by Dr. Burnette, the record as a whole does not support any significant deviation in his temperamental profile. As such, no corresponding adjustment in Mr. Alston's overall, vocational profile is warranted at this time – though it is readily acknowledged that such findings could be subject to change should the parties seek further clarification of this issue.

H. Physio-Vocational Status – Admitted Injury:

RUE Injury – R Hand Dom.

Mr. Alston's workers' compensation claim is framed by an admitted injury to his right shoulder with secondary, symptomatic reports involving his neck and right arm. Per the record, Mr. Alston's medical care has followed a course most notable for two shoulder surgeries followed by the provision of ongoing pain management.

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According to the record, Mr. Alston has reached maximum medical improvement and been released from further care. Relative to such, the record is significant for various functional directives as well as corresponding impairment ratings.

Mr. Alston is presently under the care of Dr. Eric Loudermilk of the Piedmont Comprehensive Pain Management Group. Dr. Loudermilk provides Mr. Alston with ongoing care in the form of medications and routine management.

Prior to coming under the care of Dr. Loudermilk, Mr. Alston was followed by Dr. John Paylor of Piedmont Orthopaedics. Dr. Paylor's treatment of Mr. Alston is most notable for the two successive surgeries to his right shoulder. On June 1, 2010, Dr. Paylor performed a right shoulder arthroscopy to include a clavicle resection and subacromial decompression. Roughly four months later, Dr. Paylor completed a second surgery defined in the record as an arthroscopy of the right shoulder with debridement of the scar tissue and adhesions. Following the second surgery, Dr. Paylor released Mr. Alston to the care of a pain management specialist.

Mr. Alston is presently followed by Dr. Loudermilk. Mr. Alston was referred to Dr. Carol Burnette of the same practice to undergo an impairment rating evaluation, which took place on March 31, 2011. Within the text of her report, Dr. Burnette cited various clinical findings to include an apparent, "frozen shoulder syndrome". She referenced the presence of maximum medical improvement and issued an impairment rating of 25% to the whole person (41% to the right upper extremity). Functionally, Dr. Burnette provided restrictions to include "no use of the right upper extremity and no activities requiring sustained or repetitive cervical flexion or extension". In a corresponding Form 14B, signed April 6, 2011, Dr. Burnette further commented that Mr. Alston's "...pain may be too severe to be able to tolerate more than a very limited work schedule."

On June 2, 2011, Mr. Alston underwent a functional capacity evaluation as part of his workers' compensation claim. According to the associated report, the examining therapist was unable to assess Mr. Alston's functional abilities. Apparently, Mr. Alston was not willing to participate in the study based upon his impressions of the likely impact of such activities.

As noted in Subsection G, the case file associated with Mr. Alston's vocational evaluation is significant for a deposition of Dr. Loudermilk completed on March 20, 2012. Within the text of the deposition, the associated parties discussed a number of issues germane to Mr. Alston's medical condition. Specifically, Dr. Loudermilk was questioned as to the presence and correlation of secondary body parts as well as the nature of Mr. Alston's psychological presentation. Functionally, Dr. Loudermilk endorsed the restrictions provided by Dr. Burnette at the time of her impairment rating evaluation. Dr. Loudermilk further endorsed the concept that certain restrictions were prophylactic in nature and that they did not represent an exact injury to a secondary body part (i.e.: the hand itself); however, in the end he continued to cite significant functional deficits with respect to the use of Mr. Alston's right shoulder and right upper extremity in general.

Based upon my review of the record, it is apparent that Mr. Alston's physio-vocational status has been compromised secondary to the March 2010 accident. At present, he retains a functional profile that is most consistent with a "modified" designation that precludes the meaningful use of his dominant, upper extremity. As such, he is not able to return to his past employment or any other work activity similar in exertional requirements.

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I. Physio-Vocational Status -- Combined Effects:

Mr. Alston's injury occurred on March 22, 2010. As such, his claim is not subject to a greater analysis of the functional evidence under *Ellison v. Frigidaire Home Products, Inc.* Rather, Mr. Alston's physio-vocational status is defined by the admitted injury alone -- without consideration of any additional limitations arising from a secondary condition.

V. PLACEMENT PROFILE ANALYSIS:

A placement profile analysis refers to the interactive assessment between the factors noted in Section IV and additional employment concerns. The goal is to determine the overall ease or difficulty associated with securing appropriately targeted employment. The areas outlined in Section IV are combined with other variables such as criminal standing, transportation, residential location, job seeking skills, personal presentation, etc.

A consideration of the contributing variables suggests that Mr. Alston retains a "very poor" placement profile. Outside the bounds of the injury, Mr. Alston retains a limited education accented by modest intellectual capacities. He denies any meaningful knowledge of computers as well as any skills that are transferable to sedentary work. Additionally, Mr. Alston's pre-injury criminal record is another significant concern.

VI. PRE-MORBID EARNING CAPACITY:

Mr. Alston reports a weekly workers' compensation benefit of \$534.96 per week. Such benefits suggest an average weekly wage at or around \$802.44. However, as always, it is recommended that all wage findings be verified against official records so as to ensure an accurate determination. A review of a corresponding Form 20 (date unknown) indicates an average weekly wage of \$820.00. With respect to such, the parties associated with Mr. Alston's claim are cautioned not to rely on his vocational evaluation report as a definitive determination of his pre-morbid earning capacity:

VII. BEHAVIORAL OBSERVATIONS:

Mr. Alston arrived early for his scheduled appointment. He was driven to my office by a private transportation company.

Upon introduction, Mr. Alston was provided with an understanding of my role relative to his claim as well as a basic set of ground rules for the evaluation. Mr. Alston was informed of the intent of the evaluation and the limited confidentiality associated with such proceedings. He was told to make himself comfortable and attend to the evaluation in an honest manner. He was further advised to maintain all confidential facets of his legal representation.

Mr. Alston was dressed in a casual manner to include blue work pants and a blue button-down work shirt. His presentation was significant for a sling in which his right arm was placed. He was pleasant and cordial. He answered all questions without hesitation and appeared to put forth a reasonable effort on the testing.

The entire evaluation lasted just under three hours and was completed from a seated position. Pain behaviors were observed to include verbal complaints of discomfort, positional adjustments and rotational movements. Mr. Alston wore a sling throughout the interview and testing. He demonstrated the ability to use his right hand to complete simple writing tasks though he moved testing materials to the edge of the table. He did not, however, use his right hand to manipulate objects during the "Diamonds" section of the WRIT. Rather, Mr. Alston used his left hand instead -- which yielded a slower testing time.

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When discussing the performance of tasks in and around the house, Mr. Alston discounted most activities due to his right arm and shoulder. In general, he described a rather detailed set of disclaimers in which he noted rather modest, physical abilities.

Mr. Alston maintained an engaging demeanor throughout the evaluation – even when discussing the more unsavory aspects of his placement profile. In response to such, Mr. Alston made it clear that he was not proud of his past but was proud of how his life had changed for the better upon moving to Greenville.

Upon meeting Mr. Alston, it does not take long to realize that he is rather limited from an intellectual and academic perspective. Obviously, such observations are not intended to demean or insult Mr. Alston. Rather, they are intended to provide a visceral sense of our time together.

VIII. PROFILE & FEASIBILITY DETERMINATIONS:

Based upon Mr. Alston's vocational evaluation, it is my professional opinion that he is totally disabled within the directing and defining parameters of "quality, dependability and quantity" – if not totally disabled in an outright manner. In short, Mr. Alston retains an overall vocational profile that is accented by a combination of severe deficits concerning his education, intellectual abilities and physio-vocational status.

In coming to the above conclusions, I have considered the possibility that Mr. Alston is capable of performing alternative employment. However, in order to endorse such outcomes, one would have to account for the nexus of adverse factors that define Mr. Alston's overall, vocational profile. Presently, the functional record does not support such circumstances. Beyond a highly benevolent setting, I cannot conceive of any work that Mr. Alston would be capable of performing. Obviously, the concept of benevolent employment does not represent meaningful access to a stable labor market. In short, the open labor market is not overly receptive to an individual who is essentially limited to one-armed work and is further limited by modest intellectual and academic capacities – never mind the nature of Mr. Alston's pre-morbid placement profile.

In light of such conclusions, it would appear that the March 2010 accident has lead to a catastrophic demise in Mr. Alston's ability to access the open labor market and his ability to garner a competitive wage.

IX. SUMMARY CONCLUSIONS:

- Mr. Alston alleges a work-related injury during the course of his employment with Greenco Beverage Company. It is my understanding that his claim has been admitted though the parties may be in conflict as to the full scope of Mr. Alston's injuries.
 - In response to the March 2010 injury, Mr. Alston has been provided with medical care intended to lessen the degree of residual disability. Most notably, he has undergone successive surgeries to his right shoulder.
 - Mr. Alston has reached maximum medical improvement and been released from further medical care.
 - Mr. Alston's physio-vocational status is defined by a "modified" designation with extensive restrictions concerning the use of his dominant, upper extremity.
 - Testing performed in association with Mr. Alston's evaluation indicates a deficient base of academic and intellectual competencies.
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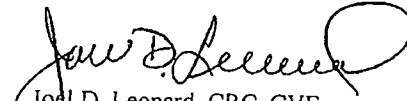
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- Based upon the nature of Mr. Alston's overall vocational profile, it is my professional opinion that he is incapable of gainful work activity as set forth in Section VIII of this report.
- As always, the enclosed report is based upon the available evidence. The right to amend Mr. Alston's report remains ongoing subject to the contributing evidence.

X. RECOMMENDATIONS:

- As noted in Section VI, it is recommended that Mr. Alston's pre-morbid wage be determined from official documents so as to ensure accurate wage comparisons.
- The case file associated with Mr. Alston's claim contains variant statements as to the correlation of his psychological state relative to the March 2010 injury. Should the parties reach a point in which relevant treatment is provided it may be necessary to revisit Mr. Alston's claim at a later date.
- Mr. Alston is encouraged to consult with a financial specialist in order to ensure the long-term viability of any monies received in association with his workers' compensation claim.
- As with all cases, the circumstances surrounding a claimant's light duty standing should be verified to ensure an accurate depiction of reported events.
- Mr. Alston is encouraged to engage in a modest volunteer activity in order to maintain some degree of expected, social interaction.
- Mr. Alston is encouraged to surrender his commercial driver's license to the Department of Motor Vehicles and replace it with a regular license.

Respectfully Submitted: 04/05/12


Joel D. Leonard, CRC, CVE
Vocational Consultant

cc: file

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IMPAIRMENT EVALUATION

Carol W. Burnette, MD

March 31, 2011

Patient: ALSTON, NATHANIEL
DOB: 11/24/1972
SSN: 247-21-4044

Employer: Green Co Beverage
Date of Injury: 3/22/2010

Records reviewed include those of Eric P. Loudermilk, MD, John Paylor, MD, St. Francis Hospital and Innervision MRI & Imaging.

History of Present Illness: This unfortunate right hand dominant gentleman is referred by Eric Loudermilk, MD for an impairment evaluation, in relation to a work injury that occurred on 3/22/2010. At that time, while working as a beer vendor for Green Co Beverage, he developed severe pain in the right neck, shoulder and arm while lifting cases of beer. He had been working in that capacity for a couple of years, and had been having some mild pain in the shoulder intermittently with his usual work activities, but on the day of injury the pain was severe to the point of seeking medical attention.

He was referred to John Paylor, MD after undergoing MRI of the right shoulder, which showed advanced acromioclavicular joint arthropathy, swelling in the soft tissues about the AC joint and distal clavicle, some signs of tendinitis in the supraspinatus, infraspinatus and long head of biceps tendons, and partial tear of the infraspinatus tendon. He went through several sessions of physical therapy with no improvement. He eventually underwent arthroscopic shoulder surgery by Dr. Paylor on 6/01/2010, consisting of subacromial decompression and distal clavicle excision. Unfortunately, despite the surgery, his pain and loss of range of motion continued to worsen. He eventually underwent repeat MRI of the shoulder in September 2010, which showed a small rotator cuff tear, continued tendinopathy of the rotator cuff tendons and long head of biceps tendon, and prominent acromioclavicular joint degenerative changes.

Because of the ongoing pain and continued abnormalities on MRI, he underwent a second shoulder surgery by Dr. Paylor on 10/01/2010, which consisted primarily of debridement of scar tissue. Unfortunately, his pain and loss of motion in the shoulder have continued to worsen over time.

He was referred to Eric Loudermilk, MD on 1/18/2011 for pain management. He had been through several sessions of physical therapy at that point and was using a TENS unit, which he has continued to use up to the present time. He was given a combination of pain medications, including Ultram, Celebrex and Voltaren gel. A shoulder MR-arthrogram was recommended, but apparently not approved by workers compensation. He was felt to have reached maximal medical improvement as of 1/31/2011, according to Dr. Loudermilk's notes. He was subsequently referred for an impairment rating.

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PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP

100 Healthy Way, Suite 1260, Anderson, SC, 29621 Phone 864-225-3551 Fax 864-328-0328
3 St. Francis Drive, Suite 480, Greenville, SC, 29601 Phone 864-269-4416 Fax 864-269-8989

Current Status: He states the right shoulder, neck and arm remain quite painful, with severe pain noted with any movements of the shoulder. He has only been able to move the shoulder a minimal amount due to pain, and he spends most of the time in a shoulder sling for support. He states the pain has become the dominant factor in his life, and he has had to withdraw from virtually all social activities due to pain. In the past he enjoyed bowling, shooting pool, playing horseshoes and "horsing around" with his eleven year old sister, but since the shoulder problem began, he has given up trying to do any recreational activities. He admits to depression and anxiety, but states he has a strong faith in God and has no intention of harming himself. He has been engaged, but states he expects that his fiancée may be planning to end the relationship soon. He has no real social support here in upstate SC, but does have some family in the lower part of the state. He may end up moving to be closer to family, since the shoulder problem has not improved at all. He currently requires assistance for buttoning shirts, pulling up pants, tying shoelaces, and performing personal hygiene. He has ongoing restricted range of motion at the shoulder, as well as some loss of elbow and wrist range of motion, possibly from disuse. He notices ongoing weakness in the arm and hand, with frequent numbness in the hand. He has some right-sided posterior neck pain since the injury, but there are no records available at this time to indicate he has undergone any imaging of the spine. He is not aware of having undergone any nerve conduction studies. He has some headaches associated with his shoulder and neck pain, with frequent elevation of blood pressure. He notices increased pain with changes in weather. He rates the pain as "8" currently on a scale of 0-10, with "10" being the worst pain. At times the pain may improve to "6" with medication and using a TENS unit. Sleep has been difficult due to pain, frequently unable to find a comfortable resting position.

Past Medical History: Otherwise unremarkable aside from current injury-related complaints.

Past Surgical History: None, other than the two injury-related right shoulder surgeries.

Allergies: None known.

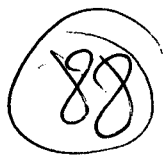
Medications: Celebrex, Tramadol, Voltaren gel, Flexeril.

Family History: Non-contributory.

Social History: He is single, with no children. His relationship with his fiancée apparently has been strained. He has an 11th grade education and never obtained a GED. He smokes 1/2 pack a day of cigarettes for several years. He denies any alcohol or other substance abuse. He had been working for Green Co Beverage for about 2 years, but was terminated last month. Prior to that job, he had been doing mostly construction work and odd jobs.

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Review of Systems: Otherwise non-contributory.

Physical Exam: General: Alert, well oriented, cooperative and punctual for appointment. He was tearful during portions of the exam.

Gait and Station: Grossly normal, aside from decreased right arm swing.

Vitals: Temperature: Afebrile. Pulse: 80 Resp.rate: 18 BP: 142/108

Height: 6'0" Weight: 215 lb

Cervical Spine: Slightly forward posture noted. No heat, erythema, or swelling noted over the spinous processes. Increased muscle tension and mild tenderness noted in the cervicothoracic paraspinal muscles and upper trapezius and rhomboid muscles, left worse than right. Cervical spine range of motion is mildly restricted and painful in all directions, with contralateral pulling discomfort noted. No definite radicular symptoms elicited with any neck movements, but Spurling maneuver does increase axial neck pain on the right.

Right Upper Extremity:

Shoulder:

His shoulder sling was carefully removed for the exam. He appears to have increased discomfort when donning and doffing his shirt and the sling. He needed assistance for buttoning and unbuttoning the shirt. Well healed scars present from previous surgery, with no heat, erythema or signs of infection noted. The glenohumeral, acromioclavicular and sternoclavicular joints are tender to palpation, as is the posterior scapular region. Range of motion is severely restricted and painful, reaching only 10 degrees of flexion, 5 degrees of extension, 10 degrees of abduction, 5 degrees of cross adduction, 10 degrees of internal rotation, and 10 degree of external rotation. He appears tearful during the exam.

Elbow: He complains of pain with flexion and extension, reaching about 120 degrees of extension and 80 degrees of flexion. The elbow joint appears mildly tender to palpation. No heat or erythema apparent.

Wrist and hand: He complains of pain with attempts to grip or squeeze, with pain reported in the shoulder, arm and hand with attempted gripping. Wrist flexion and extension appear restricted and painful, reaching only about 30 degrees in either direction.

Distal pulses appear intact. Skin temperature appears normal.

Neurological: Alert, well oriented, with normal speech and comprehension. Depressed mood apparent. No cranial nerve deficits apparent. Light touch and pinprick sensation are slightly altered in the right hand, including all the digits. Motor exam of the right upper extremity is limited by severe pain with any attempts to move the arm. Muscle stretch reflexes appear decreased symmetrically in both upper extremities, possibly due to poor

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relaxation.

Assessment:

1) Severe chronic right shoulder, neck and arm pain related to lifting/ overuse work injury in 2010. He has ongoing weakness, severely restricted range of motion and pain which limits activities. He has associated insomnia and depression. His MRI has shown a rotator cuff tear, as well as tendinopathy of the rotator cuff tendons and long head of biceps tendon. Functionally, he appears to have severe adhesive capsulitis/ frozen shoulder syndrome. His pain and function have not improved in relation to surgery.

2) He appears to be at maximal medical improvement in relation to the right shoulder. Based on his exam, history and using the 6th edition AMA Guides to the Evaluation of Permanent Impairment, he is assigned a permanent 41% right upper extremity impairment rating, which is equal to 25% whole person impairment. The basis for this is his severely restricted shoulder range of motion. When adding the impairment ratings for lost range of motion for flexion (16%), abduction (10%), extension (2%), adduction (1%), internal rotation (4%), and external rotation (8%), the final total upper extremity impairment rating is 41%. Converting to whole person impairment as directed in the reference textbook yields a value of 25% whole person impairment.

3) He would possibly benefit from further evaluation of the cervical spine and right upper extremity to rule out a co-existing cervical radiculopathy, brachial plexopathy or compressive neuropathy possibly contributing to his pain and dysfunction.

4) He will need continued pain medications indefinitely and would probably benefit from counseling. He is scheduled to follow up with Dr. Loudermilk in the next month for continued renewal of his prescriptions.

5) Recommended work restrictions would include no use of the right upper extremity and no activities requiring sustained or repetitive cervical flexion or extension.

I appreciate the opportunity to examine this very nice gentleman.

Carol W. Burnette MD

Carol W. Burnette, MD

cwb



Physician's Statement

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Claimant's Name: Nathaniel Alston

Employer's Name: Greenco Beverage Co.

Physician's Name: Eric P. Loudermilk, M.D.

Insurance Carrier: Companion Property & Casualty Group

Practice/Clinic: Piedmont Comprehensive Pain Management Group, LLC

SCWCC File No: 1003153

Preparer's Name: Carol W. Burnette, MD

Phone: () - -

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: March 22, 2010

Date of first office visit: 1/18/2011 Date of last visit: 3/31/2011

Diagnosis or nature of injury or illness: R Shoulder injury / impingement, rotator cuff tear, biceps tendonitis, scar tissue status post surgery

Body part(s) injured: Right shoulder Body part(s) affected: R shoulder

Date of Maximum Medical Improvement: 3/21/2011

Based on the **AMA Guidelines**, the claimant has sustained a 41 % medical impairment to R shoulder injured body part(s) and a 25 % medical impairment to whole person other affected body part(s).

☐ The claimant is **able to return to work** without restriction.

☒ The claimant is **able to return to work with the following restrictions:** No use of the right arm or hand; no repetitive or sustained cervical spine flexion or extension. Pain may be too severe to be able to tolerate more than a very limited work schedule.

☒ The claimant is **unable to return to work** at his or her current employment. (He is unable to do the previous job one-handed.)

As of the date I last saw this patient, it is **my professional medical opinion** the claimant:

☒ **will not** need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☐ **will** need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Ongoing pain medications; counseling;

possibly further evaluation to rule out an underlying

cervical radiculopathy, brachial plexopathy or

compressive neuropathy affecting the right arm & hand

Carol W. Burnette MD
Treating Physician, Eric P. Loudermilk, M.D.

Date 4/16/11

9/07 Carol W. Burnette, MD

14B

Physician's Statement

Received
Companion P&C Claims
NEW PATIENT EVALUATION

medicall
5031413

PATIENT: ALSTON, NATHANIEL
PHYSICIAN: Eric Loudermilk, M.D.
SSN: 247-21-4044

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DOS: 01/18/11
DOD: 01/18/11
DOT: 01/19/11

Referring Physician: John Paylor, M.D.

Chief Complaint: Persistent right shoulder pain.

History of Present Illness: This is a very pleasant 38 year-old gentleman referred by Dr. Paylor for pain management for severe pain in his right shoulder. The patient developed severe shoulder pain at work on March 22, 2010. He drives a beer truck and he says the repetitive stress of loading and unloading and pushing and pulling cases of beer resulted in right shoulder injury. He underwent two surgeries on his right shoulder, the first in June 2010 and the second in October 2010. He says that he is worse now than before the operations. He complains of severe sharp stabbing pain in the right shoulder. The shoulder "locks." There are occasional pins and needle sensations in his right hand. He has very limited range of motion in the right shoulder and weakness in the shoulder and arm. He says the pain radiates up from the shoulder toward the neck. He currently rates the pain as 7/10, at worst 8/10, at best 6/10. Nothing reliably helps his pain. He wears a TENS unit on a daily basis. He said that he underwent physical therapy for about three months following his first operation and then two months following the second surgery. He is currently taking Ultram as needed for pain. He is not taking any anti-inflammatories. The last MRI of his right shoulder was done prior to his last surgery in September 2010. It showed a small full thickness rotator cuff tear of the right shoulder and some tendinopathy. We do not have any recent imaging studies for review.

Past Medical History: None.

Past Surgical History: Right shoulder surgery, June 2010 and October 2010.

Current Medications:

1. Ultram 50 mg q 6 hours as needed.
2. Flexeril 10 mg t.i.d.
3. Hydrocodone (currently not taking).

Allergies: No known drug allergies.

Social History: Denies alcohol abuse. He smokes about a half pack per day. He is single and has no children. He has been out of work since March 22, 2010. He currently does not have a job to go back to.

Family History: Noncontributory.

Review of Systems: Noncontributory.

Physical Exam: General appearance: This is a pleasant middle aged black male sitting in a chair with a brace over his right shoulder and arm and a TENS unit in place. BP: 180/104. Pulse: 90. RR: 18. Weight: 215 lbs. Height 6 ft. 0 in. Head and Neck: Unremarkable. Pupils equal, round and reactive to

Received
Companion P&C Claims

PATIENT: ALSTON, NATHANIEL 01/28/11
PHYSICIAN: Eric Loudermilk, M.D.
SSN: 247-21-4044

DOS: 01/18/11
DOD: 01/18/11
DOT: 01/19/11

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Page 2

light. Extraocular movements intact. Nasal and oral mucosa: Moist. Neck: Supple. Without adenopathy or thyromegaly. Chest: Clear to auscultation. No rales, rhonchi, wheezing or intercostal retractions. Heart: Regular rate and rhythm without murmur. Normal S1 and S2. No S3 or S4. No heaves, gallops or thrills. No carotid bruits or jugular venous distention. Abdomen: Soft. Positive bowel sounds. Nontender. No masses. Extremities: No clubbing, cyanosis or edema. Musculoskeletal: There is normal cervical flexion and extension. Some tightness over the right cervical paraspinous muscles on either maneuver but no evidence of radiculopathy or myelopathy. Minimal tenderness over the cervical spinous processes. There was tenderness over the right cervical paraspinous muscles. There was tenderness on range of motion of the right shoulder joint. Very limited range of motion was noted. Normal range of motion about the left shoulder. Neurologic: Alert and oriented x3. Cranial Nerves: II through XII grossly intact. Sensory: Normal light touch throughout both upper extremities. Motor: Markedly decreased strength with flexion and extension of the right arm mainly due to pain in the right shoulder. Reflexes: 2+ in both biceps. 1+ in both triceps.

Summary: This is a pleasant 38 year-old gentleman with a ten-month history of persistent right shoulder pain despite two shoulder operations who presents for consultation chronic pain management.

Assessment: Chronic severe right shoulder pain status post two prior shoulder surgeries for a rotator cuff injury.

Plan:

1. I refilled a prescription for Ultram 50 mg q 6 hours as needed for pain. I placed him on Celebrex 200 mg b.i.d. and Voltaren gel to apply to his shoulder 3-4x daily.
2. I arranged for an MR arthrogram of the right shoulder to make sure that there are no other complications or correctable surgical conditions of his right shoulder. If the MR arthrogram is unremarkable then I agree that he would be at maximum medical improvement.
3. I performed a urine drug screen today in the office. This was negative for any illicit substances and negative for any narcotic medications.
4. I will see him back in 2 weeks to review the results of his MR arthrogram and to see how he is doing with the new medications.

Eric Loudermilk, M.D.
EL/DTI operAB X127690
Dictated - Not Read

cc: John Paylor, M.D., Piedmont Orthopedics
Marcie Vestal, Companion PNC, Workers' Compensation, P.O. Box 100165, Columbia, SC
29202-3165

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5051415
medical

Progress Note

PATIENT: ALSTON, NATHANIEL
PHYSICIAN: DR. LOUDERMILK
SSN: 247-21-4044

DOS: 01-31-11
DOD: 01-31-11
DOT: 02-07-11

This is a very pleasant 38 year-old gentleman with an eleven-month history of right shoulder pain despite two shoulder surgeries who returns today for follow-up. Apparently the MR arthrogram was not approved and his attorney stated that they are near closing his Workers' Compensation case. He is currently taking Ultram, Celebrex, and Voltaren gel and these are working well for him. I plan to place the patient at maximum medical improvement (MMI). I would recommend that he continue with his current pain medications since they are helping. If he needs to have an impairment rating or a functional capacity evaluation to determine his restrictions and limitations, we will make arrangements for this through our physiatrist. Otherwise, I will see him back in six weeks for follow-up and refill of his medications.

Assessment: Chronic severe right shoulder pain status post two prior shoulder surgeries for rotator cuff injury.

Plan:

- 1) He will continue Ultram 50 mg q 6 hours as needed for pain along with Celebrex 200 mg b.i.d., and Voltaren gel as needed.
- 2) I will see him back in 6 weeks for follow-up in my office.



Eric P. Loudermilk, M.D.

EPL/adb

cc: Marcie Vestal, Companion PNC
Workers' Compensation
PO Box 100165
Columbia, SC 29202-3165
877-379-7389

John Payler, M.D.
Piedmont Orthopaedics
Fax: (864) 675-1657

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Nathaniel Alston,

Employee,

Claimant,

-vs-

Greenco Beverage Co.,

Employer,

and Companion Property & Casualty Group,

Carrier,

Defendants.

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

A M E N D E D O R D E R

W.C.C. FILE NO. 1003153

CARRIER FILE NO. 5051415

RECEIVED
SETTLEMENT

MAY 02 2012

Division of Claims
SC Workers Comp. Comm.

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Nathaniel Alston. The claimant is represented by Stephen N. Garcia, Esquire, and the defendants, Greenco Beverage Co. and Companion Property & Casualty Group, are represented by Mitchell K. Byrd, Jr., Esquire of Willson Jones Carter & Baxley, P.A. The South Carolina Workers' Compensation Commission has jurisdiction.

It appears that the claimant was an employee of Greenco Beverage Co. and that on March 22, 2010 he sustained an injury by accident arising out of and in the course of said employment when he injured his right shoulder. Claimant has also alleged injury to the cervical spine, right arm, and psyche. Defendants deny any compensable injury to any other body part other than the right shoulder. Claimant and Defendants agree that any allegations of injury to any other body part other than the right shoulder are denied and hereby settled on a denied and disputed basis. As a result of this injury, claimant sought and received medical treatment from Dr. John Paylor and Dr. Eric Loudermilk. Disputes have now arisen concerning claimant's entitlement to further medical care and treatment, further temporary total disability compensation and the extent of causally related permanent disability, if any. Claimant's compensation rate is Five Hundred

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Forty-six and 69/100 Dollars (\$546.69). Claimant was rated as having forty-one percent (41%) impairment to right shoulder by Dr. Carol Burnette on April 16, 2011.

The parties hereto now advise that in their opinion the matter is in bona fide dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement the defendants have agreed to pay and the claimant has agreed to accept the sum of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said injury by accident occurring on or about March 22, 2010, while the claimant was an employee of Greenco Beverage Co., **subject to the additional provisions detailed herein regarding additional medical treatment for one year from April 17, 2012 through April 17, 2013.** As an integral part of this settlement agreement, it is expressly understood and agreed that the defendants shall be responsible for all causally related medical expenses authorized by them and incurred through April 16, 2012 and as approved by this Commission, but that any and all further medical expenses of whatsoever nature or kind shall be the express liability of the claimant, and the defendants shall have no liability therefore, with the specific exception of an agreement between the Claimant and the Defendants to provide Claimant with additional medical care and treatment for a period of one (1) year, said period of time beginning on April 17, 2012 and continuing until April 16, 2013, in the form of continued monthly office visits for medication management with Dr. Eric Loudermilk and continuation of Claimant's ongoing prescription medications as prescribed by Dr. Eric Loudermilk. Claimant and Defendants hereby agree that the purpose of the above described agreement regarding additional medical care and treatment is to continue Dr. Loudermilk's current treatment regimen, which includes monthly office visits and prescription medicine refills, for a period of one (1) year, said period of time beginning on April 17, 2012 and continuing until April 16, 2013. Claimant hereby acknowledges and agrees that changes to the treatment plan currently in place by Dr. Eric Loudermilk, other than substitutions of prescriptions medications within the discretion of and as directed by Dr. Eric

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Loudermilk to effectuate the current treatment regimen of medication management, are not covered by this agreement, nor is treatment for any body part other than the right shoulder, and will not be paid by Defendants. Furthermore, Claimant agrees that additional medical treatment outside of the scope of the current treatment plan with Dr. Loudermilk, which Claimant and Defendants agree consists of monthly office visits for and including prescription medications, is not covered by this agreement and will not be paid by Defendants. Claimant fully understands and acknowledges that the payment of the sum of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) represents the final settlement agreement as detailed herein.

The claimant hereby asserts that he has been fully advised by his attorney of record of all his rights under the South Carolina Workers' Compensation Act, and that the claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion the claimant's attorney concurs and asserts that he has fully advised the claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. The claimant hereby asserts that he recognizes that his consent to, and the approval of, this Order is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about March 22, 2010, while the claimant was an employee of Greenco Beverage Co.

The settlement proceeds of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) shall be allocated as follows: One Hundred Five Thousand and 00/100 Dollars (\$102,093.00) in compromise settlement of disputed future disability benefits at the rate of Fifty-one and 42/100 Dollars (\$50.00) per week commencing April 17, 2012, for a period of 2,042.04 weeks representing the life expectancy of the claimant; and Thirty-five Thousand and 00/100 Dollars (\$37,907.00) as attorneys' fees and costs; this pursuant to a written agreement between the claimant and his attorney of record pursuant to Sections 42-9-10 and 42-9-20 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of Utica Mohawk Mills v. Orr, 227 S.C 226, 87 S.E. 2d 587 (1955); Sciarotta v. Bowen, 837 F 2d 135 (3d Cir. 1988).

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The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for the claimant that the claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the employee's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, employee, employer and carrier and/or servicing agent agree that this settlement agreement cannot be voided in the future on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

This Commission is of the opinion that the allocation of the proposed settlement sum as set forth above is reasonable and proper and should be approved.

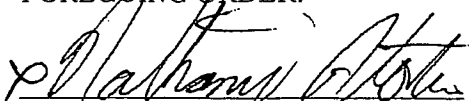
NOW, THEREFORE, IT IS ORDERED that upon the payment of the sum of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) by the defendants, and the acceptance of said sum by the claimant, and the payment of the medical expenses as specifically set forth hereinabove, including additional medical care and treatment in form of monthly office visits with and prescription medications from Dr. Eric Loudermilk, consistent with the already ongoing medication management treatment plan, for a period of one (1) year, said period beginning April 17, 2012 and ending April 16, 2013, the defendants be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about March 22, 2010, while the claimant was an employee of Greenco Beverage Co., so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions.

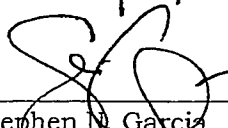
IT IS FURTHER ORDERED that the allocation of the settlement sum and the agreement as to attorney's fees as set forth hereinabove be, and the same hereby are, approved.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

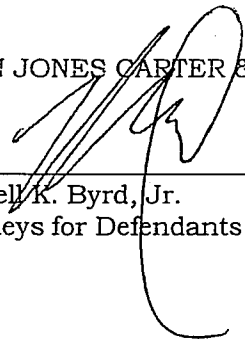
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WE CONSENT TO THE
FOREGOING ORDER:


Nathaniel Alston, Claimant
Dated: 4/23/12


Stephen M. Garcia
Attorney for Claimant

WILLSON JONES CARTER & BAXLEY, P.A.


BY: _____
Mitchell K. Byrd, Jr.
Attorneys for Defendants

FEE SUBJECT TO FORM 61

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

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WCC File # 1003153

Carrier File # 000005051415

Carrier Code # 1008

Employer FEIN 57052928

Nathaniel Alston
Claimant's Name
247-21-4044
SSN
14 Endell Street
Address
Greenville
City
SC
State
29611
Zip
(864) 382-8627
Home Phone #
()
Work Phone #
Janice Pinckney
Preparer's Name
(803) 264-6051
Phone #

Greenco Beverage Company, Inc.
Employer's Name
297 Commerce Road
Address
Greenville
City
SC
State
29611
Zip
Companion Commercial Insurance
Insurance Carrier

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	109	4/3/10	5/4/12	\$ 59,589.21
2. Number of weeks T.P.				\$
3. Number of weeks P.P.				\$
4. Disfigurement.....				\$
5. Agreement and Final Release.....				\$ 140,000.00
Total Compensation Paid.....				\$ 199,589.21
6. Total Medical Benefits* Paid				\$ 32,845.34
7. Funeral Benefits				\$

☐ Case Denied

Date of Injury: 3 22 2010
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Nathaniel Alston
Claimant

By: [Signature]
Employer's Representative

Date: 4/23/12

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party..... \$ _____

B. Attorney's Fee Paid by Employer..... \$ _____

C. Attorney's Fee Paid by Claimant..... \$ _____
(Non contingent fees, only)

File this form with the Claims Department, according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include costs for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

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STATUS REPORT AND COMPENSATION RECEIPT

South Carolina Workers' Compensation Commission

1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



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Carrier File #: _____
Carrier Code #: _____
Employer FE N #: _____

Claimant's Name: NATHANIEL ALSTON Employer's Name: GREENCO BEVERAGE
Address: 14 ENDEL STREET Address: 297 COMMERCE ROAD
City: GREENVILLE State: SC Zip: 29611 City: GREENVILLE State: SC Zip: 29611
Home Phone: () - Work Phone: () - Insurance Carrier: COMPANION
Preparer's Name: Stephen Garcia, Esq. Law Firm: The Garcia Law Firm Preparer's Phone #: (864) 271- 7335

Date Attorney Was Hired: 05/04/11 Date of Injury: 03/22/10
Compensation Rate: _____ Does this conclude the case? ☒ Yes ☐ No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

☒ **A.** R.67-1205C does not apply to the facts of this case. A 33 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

☐ **B.** The subsection of R. 67-1205C applicable to this claim is (C) (). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____

Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____

Impairment Rating given and/or Settlement amount offered after date attorney hired: _____

Authorized Health Care Provider's Name: _____

☐ **C.** Admitted Death Claim - \$2,500.

☐ **D.** Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

Attorney for the Claimant

Date

Summary

Total Amount of Compensation	\$ 140,000.00
Attorney's Fee	\$ 46,666.66 35,000.00
Costs	\$ 4,506.37 2,907.00
Total Fees and Costs	\$ 37,907.00
Client Will Receive	\$ 102,093.00

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client

Date

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

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1 THE COURT: Today's date is May 6,
2 2015. This is Workers' Compensation Commission
3 File Number 1419738. This is the case of
4 Nathaniel Alston vs. All My Son's Moving and
5 Storage. Vanliner Insurance Company is the
6 carrier. The claimant is represented today by
7 John Holland, and the employer/carrier are
8 represented by George D. Gallagher.

9 The date of the accident is
10 December 13, 2014. The claimant has an average
11 weekly wage of \$448.16, with a corresponding
12 compensation rate of \$298.79.

13 Are there objections to
14 jurisdiction, venue, or APA submissions?

15 MR. HOLLAND: No, sir.

16 MR. GALLAGHER: No objection,
17 Commissioner.

18 THE COURT: All right. The
19 Commission file becomes a part of the record
20 with the exception of self-serving declarations
21 and unstipulated medical reports.

22 All right. Before we begin, because
23 we are here today, Mr. Holland, on the Form 50
24 you filed on behalf of your client and I'm
25 going to have you put your client's position on

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1 the record. But for the record, prior to this
2 hearing Mr. Alston arrived and Mr. Alston, in
3 the presence of the court reporter, we spoke
4 very briefly and I told you at that time that I
5 could not talk to you about this matter without
6 the attorneys being present.

7 THE WITNESS: Right.

8 THE COURT: No conversation as to
9 this case occurred.

10 THE WITNESS: No, sir.

11 THE COURT: All right. Very well.
12 All right. Mr. Holland.

13 MR. HOLLAND: Thank you. May it
14 please the Commission.

15 DIRECT EXAMINATION

16 BY MR. HOLLAND:

17 Q. What is your name?

18 A. My name is Nathan Alston.

19 Q. And you live in Greenville?

20 THE COURT REPORTER: Excuse me. Are
21 we not putting positions on the record?

22 THE COURT: Yes, yes. Put your
23 positions on the record first and then we will
24 hear from the witness.

25 MR. HOLLAND: Thank you. Our

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1 position is and we're here today to ask that we
2 get -- redirect the treating physician from
3 Dr. Vann to another doctor that can continue
4 treatment and we are here on our Form 50 for
5 that purpose.

6 THE COURT: All right. Treatment
7 with a different doctor other than Dr. Vann.
8 All right. Mr. Gallagher, you want to speak to
9 that?

10 MR. GALLAGHER: Yes, sir.
11 Commissioner, as we discussed off the record,
12 the request was initially made to refer
13 Mr. Alston to another provider, redirect him
14 away from Dr. Vann, by his prior counsel
15 sometime in late February, early March. And as
16 a courtesy, we agreed to accommodate that. We
17 made inquiries with several doctors, including
18 Dr. Lonergan and Dr. Posta, who after reviewing
19 the records have just outright declined to take
20 over care.

21 So we moved on to other options and
22 we got some other doctors who would agree to
23 see him, but it wasn't going to be until later
24 in the year. And at that particular point in
25 time, those were not palpable options because

1 it was just so far off. Specifically
2 Dr. Hoenig, I can't pronounce his name, as of
3 early April agreed to see him, but he wouldn't
4 have an appointment available until August.
5 And Dr. Brown agreed to see him, but he wasn't
6 going to be able to see him until June and I
7 don't remember at what point in June.

8 But in any event, Commissioner, it
9 simply got to the point where we made every
10 good faith effort to accommodate a reasonable
11 request to honor his request to redirect care,
12 and finally my clients just got to the point
13 where we insisted he go back to Dr. Vann.
14 We're talking about a case where Mr. Alston has
15 not had any treatment since early February of
16 2015. Actually, it may even be sometime in
17 January. He's only seen Dr. Vann one time, and
18 at that point in time the records will
19 indicate, Commissioner, that Dr. Vann had
20 obviously opted to treat him conservatively,
21 but had also referenced in his record possible
22 need for surgery.

23 Mr. Alston has been drawing
24 temporary total disability benefits this entire
25 time as well. And at this late date, early May

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1 2015, it's just a matter of getting his medical
2 care back on track so that he doesn't regress
3 to a point that further care may not provide
4 maximum benefit to him, notwithstanding the
5 fact that we've already incurred three or four
6 months of TTD liability where he hasn't had any
7 treatment. And I'm not saying that because
8 we're alleging that Mr. Alston is dragging his
9 feet. It's just the nature of the beast.
10 We've inquired with doctors. It's just been a
11 time-consuming process even trying to get a
12 doctor to agree to see him.

13 So at this point in time Dr. Vann
14 has agreed to see him. In fact, during the
15 interim between Mr. Montgomery being relieved
16 as counsel and Mr. Holland's firm being
17 retained, we actually had an appointment
18 scheduled for Mr. Alston to see Dr. Vann. That
19 appointment was last week. He was provided
20 notice of the appointment. Mr. Alston
21 cancelled the appointment obviously knowing
22 that this hearing was pending. So I don't
23 begrudge him for doing that, but he cancelled
24 the appointment. We have since rescheduled the
25 appointment for next Friday, May 14th, at 9:00,

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1 Dr. Vann will see him.

2 So simply it's our position that he
3 should go back to Dr. Vann. Whereas we were
4 once amenable to redirect his care, we are no
5 longer willing to do that just because of the
6 time elapse. And, you know, absent really
7 compelling good cause, we don't think that his
8 care should be ordered to be redirected. But
9 in the event it is ordered to be redirected, we
10 would still have to retain the option of
11 designating who it is to be redirected to.

12 So, quite simply, that's our
13 position. It's your discretion, obviously, to
14 do what you're going to do based on the
15 evidence presented. But, again, if you're
16 inclined to order that his care be redirected
17 to Dr. Vann, then we would at least like to
18 retain the right under the statute to choose
19 what that would be.

20 THE COURT: Anything else,
21 Mr. Holland?

22 MR. HOLLAND: I agree with the
23 summary of the time line as presented by
24 opposing counsel, and I will say that Dr. John
25 Keith of Orthopedic Specialties has indicated

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1 he is willing to see Mr. Alston. We do not
2 have a date set up, but would like to think, I
3 believe, relatively soon. And I can present
4 testimony at the appropriate time.

5 THE COURT: Anything else,
6 Mr. Gallagher?

7 MR. GALLAGHER: No, sir.

8 THE COURT: We're going to swear you
9 in, sir. I need you to do a couple things.
10 One is to speak up so everybody hears you. The
11 second is if you're asked a yes or no question,
12 how about give us a verbal yes or no answer.

13 THE WITNESS: Got it.

14 THE COURT: I tend to shake and nod
15 my head, but that doesn't work real well --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- on the record because
18 she has to put that in the record and that
19 slows her down.

20 THE WITNESS: I'm sorry. I'm sorry.

21 THE COURT: So be very concise. Yes
22 or no question, give us a verbal yes or no
23 answer. All right?

24 THE WITNESS: Yes, sir.

25 (NATHANIEL ALSTON, being duly sworn

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1 to tell the whole truth, testified as follows:)

2 THE COURT: Please state your full
3 name for the record.

4 THE WITNESS: My name is Nathaniel
5 Alston.

6 THE COURT: Thank you, Mr. Alston.
7 Mr. Holland, your witness.

8 MR. HOLLAND: Thank you.

9 DIRECT EXAMINATION

10 BY MR. HOLLAND:

11 Q. You live in Greenville?

12 A. Yes. Greenville, South Carolina.

13 Q. And you are 42 years old?

14 A. Yes, sir. Forty-two years old.

15 Q. And who did you work for?

16 A. I worked for All My Son's Moving and
17 Storage.

18 Q. And you were injured at work?

19 A. Yes, sir.

20 Q. And briefly discuss when and how you
21 were injured.

22 A. Well, just moving a family from one
23 residence to the next and got hold of an eight
24 foot cast iron table that they had and it
25 popped my shoulder.

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1 Q. And that's your left shoulder?

2 A. That's my left shoulder.

3 Q. And you felt and heard a pop?

4 A. Yes, sir.

5 Q. Did you go to Doctor's Care?

6 A. Yes, sir.

7 Q. Did you treat at Doctor's Care?

8 A. Yes, sir, I did.

9 Q. And through Doctor's Care, were you
10 ordered to take an MRI?

11 A. Yes, sir.

12 Q. And did you -- did you complain at
13 Doctor's Care of having a pain at night?

14 A. Yes, sir.

15 Q. And did they refer you to
16 actually -- did they refer you to Dr. Paylor at
17 Piedmont Orthopedics?

18 A. Yes, sir. And to answer your
19 question about the pain, I did complain about
20 pain at night and we got medication for that
21 pain at night. And, yes, Dr. Paylor was the
22 person that we came up to agreement to go to
23 because he's done my last two surgeries on my
24 right shoulder for the similar situation at
25 hand.

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1 Q. Is this your -- this is not your
2 first time dealing with workers' compensation?

3 A. No, sir.

4 Q. Did Dr. Paylor treat you last time?

5 A. Yes, sir.

6 Q. Do you have a good relationship with
7 Dr. Paylor?

8 A. I have an outstanding relationship
9 with him. He treated me like somebody. He
10 allowed me to feel that comfort when I went to
11 him. I felt like I was going to be taken care
12 of and it's going to be okay and he was very
13 honest with me.

14 Q. Do you know if Dr. Paylor gave you a
15 rating last time?

16 A. No, sir. Dr. Paylor didn't give me
17 a rating at all. Matter of fact, Dr. Carroll
18 Burnett with pain management gave me a rating
19 the last time.

20 Q. Did you ultimately see Dr. Vann in
21 Dr. Paylor's office?

22 A. If I seen...

23 Q. Did you see Dr. Vann?

24 A. Yes, I seen Dr. Vann.

25 Q. How many times did you see him?

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1 A. Once.

2 Q. What was the length of the visit?

3 A. Less than ten minutes.

4 Q. Did you consider that meeting short?

5 A. Very short.

6 Q. Do you feel like Dr. Vann was short
7 with you?

8 A. Very short with me.

9 Q. Did you bring an MRI and a copy --
10 excuse me. Did you bring a copy of the MRI
11 with you?

12 A. A copy of the MRI and the disk with
13 me.

14 Q. Did you try to give it to Dr. Vann?

15 A. Yes.

16 Q. Did he examine you?

17 A. No, sir, he didn't even examine me.

18 Q. Did he ask if you had any questions?

19 A. No, not even any questions.

20 Q. Did you report to him that you did
21 not have night pain?

22 A. No, sir.

23 Q. Does his report say there is no
24 night pain?

25 A. That's what his report says, but

(113)

1 that's not what happened. At Piedmont
2 Orthopedics, I take medication for that similar
3 thing for the night pain so I can sleep at
4 night because of the pain. There's a list of
5 medication in that Piedmont -- I mean, not
6 Piedmont, Doctor's Care report. Dr. Pommerenke
7 gave me all my medication, my pain medicine, my
8 sleep medicine for the night and all that
9 stuff.

10 Q. Why do you not want to treat with
11 Dr. Vann?

12 A. Well, Dr. Vann did not present
13 himself to me as if he had any care. He wasn't
14 honest about nothing. His conversation was
15 very limited, if any at all. So me and my wife
16 was there and we both felt the same way, like
17 this doctor don't care. He obviously has an
18 issue with something and I don't know him to
19 say it's me. But whatever it is, there was a
20 problem with this guy.

21 Q. Do you have anything personal
22 against Dr. Vann?

23 A. No, sir. I don't even know him.

24 Q. What is all this about? Do you just
25 want to feel better?

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1 A. I just want to get this shoulder
2 fixed so I can take care of my wife and she can
3 be happy, man, and we can live better than
4 this. This is too much stress on us right now.

5 Q. If you could choose your doctor, who
6 would you choose?

7 A. I would choose Dr. Paylor because he
8 was awesome. He did his job. He did surgery.
9 None of this. We were on the same page. He
10 took care of me. That guy was awesome.

11 Q. Do you want a doctor you have a good
12 rapport with?

13 A. Yes, I do.

14 Q. Do you want a doctor that you feel
15 like has time for you?

16 A. Yes, definitely.

17 Q. Are you aware if a Dr. John Keith is
18 available to see you?

19 A. Yes. I am aware that this Dr. John
20 Keith is available. Matter of fact, I called
21 and left a message to set up an appointment to
22 see him as soon as possible.

23 Q. Would you be happy to see him?

24 A. I would be blessed to see him and I
25 pray that he's a good guy.

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1 Q. Would you be happy to just get a
2 second set of eyes to look on you?

3 A. That's it. A second set of eyes
4 that can fix the problem or that will fix the
5 problem and not mask it as if ain't nothing
6 wrong.

7 Q. Are you trying to delay this
8 process?

9 A. No, sir. I want it to be over with
10 fast as possible. I mean, I'm done. I'm
11 tired. I'm stressed. I'm tired. My wife is
12 tired. I'm tired. We done, man. We're beat
13 down with this whole thing right here. Four
14 months, man. A bunch of promises and nothing
15 happening, man. Oh, man, it's just horrible.
16 It's horrible, man.

17 I've never experienced this before.
18 I'm a grown man and these folks treating me
19 like I some kid, you know. I'm hurt. Fix me.
20 I didn't do nothing wrong. I worked hard for
21 them people. I traveled state to state moving
22 families. I ran a crew. I was the crew chief
23 leader helping other people develop. I did my
24 job and I did it very well. For me to be going
25 through this, it's embarrassing and it just

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1 hurts, man. It just hurts.

2 MR. HOLLAND: No further questions.

3 THE COURT: Mr. Gallagher.

4 CROSS-EXAMINATION

5 BY MR. GALLAGHER:

6 Q. Mr. Alston, is it your testimony,
7 sir, that Dr. Vann did not perform a physical
8 examination?

9 A. I'm positive. My wife is in here to
10 testify to that. We both was in the room. He
11 didn't touch me.

12 Q. So when his record indicates that he
13 tested strength, atrophy, examined for swelling
14 and other abnormalities that all those
15 indications in his record are not true?

16 A. Are false. He didn't touch me. Not
17 at all. Not at all.

18 Q. Do you know why a doctor would put
19 something in a report if he didn't do it?

20 A. I don't know why he would put that
21 in his report, but I know he should have put
22 that MRI in that report that tells exactly
23 what's going on. He didn't put that in that
24 report. What he wrote down in there and what
25 Dr. Pommerenke got from pain management is two

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1 different things. He did the exam on me. He
2 checked me out thoroughly. Dr. Vann didn't
3 touch me. My wife here and God be the witness
4 to that, that man did not touch me.

5 Q. Are you saying another provider or
6 another doctor or another some sort of
7 professional at Piedmont Orthopedics did
8 perform an examination?

9 A. Not Piedmont Orthopedics. Doctor's
10 Care. Dr. Pommerenke. I'm sorry. I got the
11 hospitals mixed up.

12 Q. Dr. Vann indicated in his treatment
13 plan that he recommended therapy. Do you
14 recall that? Did he tell you that?

15 A. He said something about therapy. He
16 said something about therapy and "I'm not
17 giving you no pain pills because I don't do
18 pain pills." He said that walking out the
19 door.

20 Q. Did he tell you that he would
21 recommend that you avoid overhead lifting and
22 ten pound restrictions?

23 A. Nope. He walked out the door after
24 that, "I'm not going to give you no pain
25 medicine. You can go buy it from

KIMBERLY T. POWER, CCP

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1 over-the-counter," type conversation and walked
2 out the door. And his nurse came to me and my
3 wife and gave us this work restriction and she
4 was telling us about it, that I don't think the
5 company is going to work you because such a
6 minimal something, blah, blah, blah. And I'm
7 like, what in the world are you talking about?
8 I mean, the only person I spoke to on that,
9 what you call that work note, was the lady, the
10 nurse.

11 Q. Did Dr. Vann tell you that if the
12 conservative treatment that he recommended
13 failed that he would discuss surgery with you?

14 A. Dr. Vann made a comment about --
15 this is all when he was walking out the door.
16 He said, "I'm not giving you no pain medicine.
17 You can buy it over the counter. You probably
18 just got bone spurs in there. It's just
19 inflamed. Buy some ibuprofen," and walked out
20 the door. That's it. He treated me bad in
21 front of my wife and I ain't liked that. I
22 ain't liked that at all.

23 Q. Do you have any reason to believe
24 that any other doctor you might see would treat
25 you any differently?

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1 A. Yeah, because I had one. Dr. Paylor
2 treated me awesome. Treated me like somebody
3 shook my hand. Made me feel comfortable and
4 did a great job on my shoulder.

5 Q. Do you have any reason to believe
6 that Dr. Vann is not a duly qualified physician
7 to perform an orthopedic evaluation and
8 treatment of your shoulder?

9 A. Well, he did not follow up on that
10 MRI and he used an x-ray and didn't do the MRI.
11 So something's wrong.

12 Q. Do you know for a fact he didn't
13 review the MRI?

14 A. Man, I asked him if he want to see
15 it. He said, "I seen it already," and went to
16 the desk.

17 Q. So he told you he had reviewed your
18 MRI?

19 A. That's what he said, "I seen it
20 already." But he didn't even put the MRI in
21 his notes. He just puts this x-ray. He made
22 me do an x-ray after I told him I done an x-ray
23 and MRI with Doctor's Care. Why is that? I
24 don't know. What was his intentions? I think
25 he showed it up in the paperwork.

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1 Q. There wasn't any reason to redo an
2 MRI if he already had one?

3 A. No. We talking about an x-ray. It
4 wasn't no reason to do another x-ray or another
5 MRI because I already had an MRI done. There
6 wasn't no reason for him touching with me with
7 none of that stuff other than looking at that
8 MRI and actually following with it. That's
9 what they said wrong with me. That's what I
10 want you to fix.

11 Q. So is your whole problem with
12 Dr. Vann and his record is that he just doesn't
13 reference what the MRI --

14 A. No. He --

15 Q. Let me finish the -- please let me
16 finish before you answer. My question, sir,
17 is: Is your problem with him that he just
18 simply didn't reference the MRI in his report?

19 A. My problem with Dr. Vann is he's
20 dishonest.

21 Q. He's dishonest?

22 A. He's dishonest. And when you
23 dishonest, I don't want to deal with you. I
24 mean, anybody. If I lie to you, would you want
25 to deal with me?

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1 Q. And your opinion that Dr. Vann is
2 dishonest is based on the fact that he put
3 things in his records about results from
4 physical examinations that he never conducted?

5 A. He never. That's one of them. But
6 the MRI that's showing everything that's going
7 on in my shoulder don't match with none of his
8 notes. What he's saying in there is totally
9 different. And then another doctor that seen
10 me, Pommerenke, notes matches with the MRI.
11 There's a problem there.

12 Q. You're not a medical doctor, are
13 you, Mr. Alston?

14 A. No, sir, not by far.

15 Q. Well, how do you know that whatever
16 Dr. Vann notes in this report is inconsistent
17 with what the MRI shows?

18 A. Because I read. I read the MRI. I
19 asked Dr. Pommerenke about it. I asked him
20 explain to me what this is. He explained to me
21 the whole detail about what's what and that
22 he's not on the same page.

23 Q. Do you know whether he -- regardless
24 of what the MRI says, do you know whether or
25 not even assuming that Dr. Vann read the MRI

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1 that his recommendation for treatment would
2 have been the same?

3 A. No, no, no, no. It wouldn't be the
4 same. I've been through this before. I seen
5 that stuff. I seen that.

6 Q. You had shoulder surgery before?

7 A. Yeah, two surgeries.

8 Q. And before they did surgery, did
9 they not exhaust some conservative treatment?
10 Didn't you exhaust some conservative treatment
11 options before they resorted to surgery?

12 A. I did some treatment like, what,
13 physical?

14 Q. Yes.

15 A. Yeah, I did that.

16 Q. And isn't that exactly what Dr. Vann
17 recommended in this case?

18 A. He said it in his notes, yeah. He
19 said it in his notes.

20 Q. So what Dr. Vann is recommending
21 doing, physical therapy and some other
22 conservative measures before doing surgery, is
23 exactly what Dr. Paylor had done in your prior
24 situation?

25 A. I guess that's the way the process

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1 should be. That's the way it should be. But
2 at the same time, Dr. Vann wasn't. It's just
3 not honest, man. I mean, I don't know how you
4 coming about this. The doctor wasn't honest,
5 man. And let's just be real.

6 I want my shoulder fixed and the
7 doctor ain't honest. I don't have the
8 technique you got to ask all these questions,
9 but, man, just fix my shoulder. That doctor
10 ain't honest. That's all I want, man, fix my
11 shoulder so I can live my life. I don't want
12 to be here. I want to go home. I want to
13 live. Me and my wife want to be happy. All
14 this stuff right here, I ain't like this, man.

15 Q. And you know Dr. Vann will see you
16 next week?

17 A. I don't want to deal with somebody
18 that lied to me. Why would I do that? That
19 man is not going to be honest with me. He
20 didn't do it in his paperwork.

21 MR. GALLAGHER: All right, sir.

22 THE COURT: Other questions,
23 Mr. Holland?

24 MR. HOLLAND: No, sir.

25 THE COURT: Thank you, Mr. Alston.

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1 THE WITNESS: Sir, and I apologize
2 for my emotions. I'm sorry.

3 THE COURT: That's okay. Any other
4 witnesses?

5 MR. HOLLAND: No, Your Honor.

6 THE COURT: That's your case?

7 MR. HOLLAND: Yes.

8 THE COURT: All right. Witnesses,
9 Mr. Gallagher?

10 MR. GALLAGHER: I have no witnesses.

11 THE COURT: Then that concludes this
12 hearing.

13 (The hearing concluded at 3:02 p.m.)
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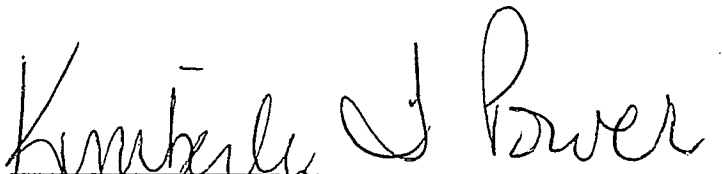
CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter
and Notary Public for the State of South
Carolina at Large, do hereby certify:

That the foregoing transcript of
proceedings was taken before me on the date and
at the time and location stated on Page 1 of
this transcript; that the witness was duly
sworn to testify to the truth; that the
testimony of the witness and all objections
made at the time of the proceeding were
recorded stenographically by me and were
thereafter transcribed; that the foregoing
transcript of proceedings as typed is a true,
accurate, and complete record of the
proceedings made at the time to the best of my
ability.

I further certify that I am neither
related to nor counsel for any party to the
cause pending or interested in the events
thereof.

Witness my hand, I have hereunto
affixed my official seal this 12th day of July,
2015, Lexington County, South Carolina.


Kimberly T. Power, Court Reporter
Notary Public State of South Carolina
My Commission Expires: 04/24/2025



SOCIAL SECURITY ADMINISTRATION

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Refer to: TAHB
247-21-4044

Office of Disability Adjudication
and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255
Telephone: (877) 670-2722
Date: January 30, 2017

**NOTICE OF AFFIRMATION AND ORDER OF APPEALS COUNCIL
REMANDING CASE TO ADMINISTRATIVE LAW JUDGE**

Samuel Harms
Harms Law Firm, LLC
33 Market Point Drive
Greenville, SC 29607

Re: Nathaniel Alston v. Commissioner of Social Security
U.S.D.C. for the District of South Carolina
Civil Action Number 5:14-cv-02911

What This Order Means

We have again sent this case back to an Administrative Law Judge. In the enclosed order, we explain why we did this and what the Administrative Law Judge will do about this claim.

We are forwarding the claim file to:

Hearing Office Chief Administrative Law Judge
Office of Disability Adjudication and Review
SSA ODAR Hearing Ofc
Suite 200
300 University Ridge
Greenville, SC 29601

What Happens Next

An Administrative Law Judge will contact you to tell you what you need to do.

Suspect Social Security Fraud?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline
at 1-800-269-0271 (TTY 1-866-501-2101).

See Next Page

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If You Have Any Questions

If you have any questions, you may call, write, or visit any Social Security office. If you do call or visit an office, please have this notice with you. The telephone number of the local office that serves your area is (877)274-5423. Its address is:

Social Security
319 Pelham Rd
Greenville, SC 29615-9911

Kenneth Matheny
Administrative Appeals Judge

cc:
Mr. Nathaniel Alston
327 Jacqueline Ln
Greenville, SC 29607-4618

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SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW

AFFIRMATION AND ORDER OF APPEALS COUNCIL

REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

In the case of

Claim for

Nathaniel Alston
(Claimant)

Period of Disability and
Disability Insurance Benefits
Supplemental Security Income

(Wage Earner) (Leave blank if same as
above)

247-21-4044

(Social Security Number)

The U.S. District Court for the District of South Carolina (Civil Action Number 5:14-cv-02911) remanded this case to the Commissioner of Social Security for further administrative proceedings. Thereafter, the Administrative Law Judge issued a decision on August 31, 2016 finding the claimant disabled starting March 22, 2010 and ending February 20, 2014. The claimant filed written exceptions to that decision.

Under the authority of 20 CFR 404.984 and 416.1484, the Appeals Council assumes jurisdiction of this case and affirms the Administrative Law Judge's finding that the claimant was disabled March 22, 2010 through February 20, 2014. Further, the Appeals Council vacates the Administrative Law Judge's decision only with respect to the issue of disability the period from February 21, 2014 onwards, and remands this case to an Administrative Law Judge for resolution of the following issue during that period:

- The hearing decision leaves an unadjudicated period. The hearing decision indicates that the claimant, through his representative, requested a closed period of disability from March 22, 2010 through February 20, 2014, and only adjudicates this period. However, at the July 7, 2016 hearing, the claimant rescinded this request, noting that while he had returned to work on February 20, 2014, he was reinjured in December 2014 and had not worked again since the new injury (July 7, 2016 Hearing Recording at 11:30:00 a.m.). Thus, the hearing decision leaves the period starting February 21, 2014 unadjudicated for the claimant. The claimant argues that the period from February 2014 through December 2014 represents an unsuccessful work attempt. However, because this period was longer than six months, it cannot be an unsuccessful work attempt under the regulations (20 CFR 416.974). Further consideration of the unadjudicated period is necessary.

See Next Page

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Upon remand, the Administrative Law Judge will:

- Evaluate the unadjudicated period starting February 21, 2014 and determine whether the claimant is disabled.

In compliance with the above, the Administrative Law Judge will take any further action needed to complete the administrative record and issue a new decision on the issue of disability beginning on February 21, 2014.

APPEALS COUNCIL

/s/ Kenneth Matheny

Kenneth Matheny
Administrative Appeals Judge

/s/ Rainbow F Lloyd

Rainbow F Lloyd
Administrative Appeals Judge

Date: January 30, 2017



SOCIAL SECURITY ADMINISTRATION

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Refer To:
247-21-4044
Nathaniel Alston

Office of Disability Adjudication and Review
Suite 200
300 University Ridge
Greenville, SC 29601
Tel: (866)827-6721 / Fax: (864)467-1690

May 4, 2016

Nathaniel Alston
327 Jacqueline Ln
Greenville, SC 29607-4618

NOTICE OF HEARING

Please bring this notice of hearing with you to the hearing.

I have scheduled your hearing for:

Day: Thursday **Date:** July 7, 2016 **Time:** 10:00 AM
Eastern (ET)

Room: A **Address:** 300 University Ridge
Suite 200
Greenville, SC 29601

It Is Important That You Attend Your Hearing

I have set aside this time for you to tell me about your case. If you do not attend the hearing and I do not find that you have a good reason, I may **dismiss** your request for hearing. I may do so without giving you further notice.

You may ask us if you want to appear by telephone. I will grant your request if I find that extraordinary circumstances prevent you from appearing in person or by video teleconferencing.

You **must** bring valid picture identification (ID) to your hearing. Examples of acceptable picture ID include a:

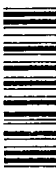
- Current and valid U.S. State driver's license;
- U.S. State-issued identity card;
- Current U.S. passport; or

Form HA-83 (04-2015)
Claimant

Suspect Social Security Fraud?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline
at 1-800-269-0271 (TTY 1-866-501-2101).

See Next Page



If you want to see your file before the date of your hearing, please call this office and make arrangements. If your file is electronic, you may ask for a copy on a compact disc. You may also review your file on the day of your hearing if you come in at least 30 minutes before the time set for your hearing. Please call us in advance if you will need more than 30 minutes to review your file.

Issues I Will Consider

The hearing concerns your application of October 18, 2010, for a Period of Disability and Disability Insurance Benefits under sections 216(i) and 223(a) of the Social Security Act (the Act). The hearing also concerns your application of February 19, 2013, for Supplemental Security Income (SSI). I will consider whether you are disabled under section 216(i), section 223(d), and section 1614(a)(3) of the Act.

Under the Act, I will find you disabled for those benefits or SSI if you have a physical or mental condition(s) that:

- Keeps you from doing any substantial gainful work; **and**
- Has lasted 12 straight months, can be expected to last 12 straight months, or can be expected to result in death.

I will follow a step-by-step process to decide whether you are disabled. I will stop the process at the first step I can make a decision. The steps in this process look at:

- Any work you have done after your condition(s) began;
- The severity of your condition(s);
- Whether you can do the kind of work you did in the past; and
- Whether you can do any other kind of work considering your age, education, and work experience.

I will also consider whether you have enough earnings under Social Security to be insured for a Period of Disability and Disability Insurance Benefits. If you do, I must decide whether you became disabled while you were insured.

Our regulations explain the rules for deciding whether you are disabled and, if so, when you became disabled. These rules are in the Code of Federal Regulations, Title 20, Chapter III, Part 404, Subpart B, Subpart P and Part 416, Subpart I.

More About the Issues

THIS IS A COURT REMAND



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Travel Costs

We can pay certain travel costs when you, your representative, or needed witnesses must travel more than 75 miles to the hearing. A sheet is enclosed to tell you about our rules for paying travel costs. Please call this office if you want more information.

The Decision

After the hearing, I will issue a written decision and mail it to you. The decision will explain my findings of fact and conclusions of law. I will base my decision given all the evidence of record, including the testimony at your hearing.

If You Have Any Questions

If you have any questions, please call, (866)827-6721, or write this office. For your convenience, our address is on the first page of this notice.

Sincerely,

Alice Jordan
Administrative Law Judge

Enclosures:

Form HA-504 (Acknowledgement of Receipt of Notice of Hearing)
Form HA-L84 (Vocational Expert Letter)

cc: Samuel Harms
Harms Law Firm, Llc
33 Market Point Drive
Greenville, SC 29607





SOCIAL SECURITY ADMINISTRATION

Refer To:
247-21-4044
Nathaniel Alston

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Office of Disability Adjudication and Review
Suite 200
300 University Ridge
Greenville, SC 29601
Tel: (866)827-6721 / Fax: (864)467-1690

April 29, 2016

Benson Hecker
506 Pettigru St
Greenville, SC 29601

Dear Benson Hecker:

The claimant named below has an application pending for disability benefits. A hearing for the claimant is scheduled, date and time shown below.

Name of Claimant: Nathaniel Alston

Birth date: 11/24/1972

SSN: 247-21-4044

Date and Time: Thursday, July 7, 2016 at 10:00 AM Eastern (ET)

You are requested to appear and give testimony as a vocational expert in the above hearing.

Address: 300 University Ridge
Suite 200
Room: A
Greenville, SC 29601

Your testimony will primarily cover the following period:

March 22, 2010 through the present.

Your presence throughout the hearing is desired since your testimony will be based, in part, on the testimony given by the claimant and any other witnesses, including a medical advisor if needed. Copies of the pertinent exhibits (and a list of these exhibits) tentatively selected for inclusion in the record of this case will be mailed under separate cover if not enclosed with this notice. Please bring this material to the hearing.

For additional information concerning your testimony, please see the attachment to this form letter.

Your charges for this service should be submitted in accordance with your contract with the Social Security Administration.

Sincerely,

Alice Jordan
Administrative Law Judge

Enclosures

AO 450 (SCD 04/2010) Judgment in a Civil Action

S.S.# 247-21-4044

UNITED STATES DISTRICT COURT

for the

District of South Carolina

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Nathaniel Alston

Plaintiff

v.

Carolyn W. Colvin, Acting Commissioner of Social

Security

Defendant

Civil Action No. 5:14-2911-RBH

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$___), which includes prejudgment interest at the rate of ___ %, plus postjudgment interest at the rate of ___ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

☒ other: The Commissioner's decision is reversed and this case is remanded to the Commissioner for further administrative action.

This action was (check one):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable R. Bryan Harwell, United States District Judge, adopting the Report and Recommendation of the Honorable Kaymani D. West, United States Magistrate Judge.

Date: August 10, 2015

Robin L. Blume
CLERK OF COURT

s/Glenda J. Nance

Signature of Clerk or Deputy Clerk

S.S.# 247-21-4044

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

(135)

Nathaniel Alston,

)

Civil Action No.: 5:14-cv-02911-RBH

)

Plaintiff,

)

)

v.

)

ORDER

)

Carolyn W. Colvin, Acting
Commissioner of the Social
Security Administration,

)

)

)

)

Defendant.

)

)

Plaintiff Nathaniel Alston seeks judicial review of a final decision of the Commissioner of the Social Security Administration denying his claims for disability insurance benefits and supplemental security income. The matter is before the Court for review of the Report and Recommendation (R & R) of United States Magistrate Judge Kaymani D. West, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) for the District of South Carolina. *See* R & R, ECF No. 25. The Magistrate Judge recommends the Court reverse the Commissioner's decision and remand for further administrative proceedings based on the administrative law judge's (1) failure to afford proper weight to the opinion of Dr. Carol W. Burnette; and (2) failure to resolve the conflicts in the vocational expert's testimony. R & R at 1, 22-27.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

S.S. # 247-21-4044

(136)

Neither party has filed objections to the R & R.¹ In the absence of objections to the R & R, the Court is not required to give any explanation for adopting the Magistrate Judge's recommendations. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)).

After a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Court adopts and incorporates by reference the R & R [ECF No. 25] of the Magistrate Judge. **IT IS THEREFORE ORDERED** that the Commissioner's decision is **REVERSED** and that this case is **REMANDED** to the Commissioner for further administrative action.

IT IS SO ORDERED.

Florence, South Carolina
August 10, 2015

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

¹ The Commissioner filed a notice specifying she would not file objections to the R & R. *See* ECF No. 27.

S.S. # 247-21-4044

(139)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Nathaniel Alston,

Plaintiff,

C/A No. 5:14-2911-RBH-KDW

vs.

REPORT AND RECOMMENDATION

Carolyn W. Colvin, Acting Commissioner
of Social Security Administration,

Defendant.

This appeal from a denial of social security benefits is before the court for a Report and Recommendation ("Report") pursuant to Local Civil Rule 73.02(B)(2)(a) (D.S.C.). Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying his claim for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") pursuant to the Social Security Act ("the Act"). The issues before the court are whether the decision is supported by substantial evidence, and whether the Commissioner's decision contains an error of law. For the reasons that follow, the undersigned recommends that the Commissioner's decision be reversed and remanded for further administrative action.

I. Relevant Background

A. Procedural History

Plaintiff applied for DIB in October 2010, pursuant to Title II of the Act, 42 U.S.C. §§ 401-403, alleging a disability onset date of March 22, 2010. Tr. 251-58. His application was denied initially on November 30, 2010, and on reconsideration on May 2, 2011. Tr. 124, 139. On June 22, 2011, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), Tr.

S.S. # 247-21-4044

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220, and an administrative hearing was held on May 18, 2012, Tr. 52-98. In a decision dated August 7, 2012, the ALJ found that Plaintiff was not disabled as defined by the Act. Tr. 143-52. On October 10, 2012, Plaintiff requested review of the decision by the Appeals Council. Tr. 231. On July 23, 2013, the Appeals Council remanded the case to the ALJ to consider Plaintiff's ~~obesity, evaluate his mental impairments, consider whether Plaintiff met Listing 12.05C,~~ consider Plaintiff's "maximum" residual functional capacity ("RFC"), and, if warranted, obtain supplemental evidence from a vocational expert ("VE") to "clarify the effect of the assessed limitations on the claimant's occupational base." Tr. 202-05. The Appeals Council noted that Plaintiff had filed a subsequent claim for SSI under Title XVI of the Act on October 3, 2012,¹ and instructed the ALJ on remand to consider whether the subsequent claim should be consolidated with the current claim. Tr. 205.

The ALJ held a second administrative hearing on December 13, 2013, Tr. 99-123, and in a decision dated January 16, 2014 that incorporated Plaintiff's application for SSI, the ALJ again found that Plaintiff was not disabled within the meaning of the Act, Tr. 22-32. Plaintiff's March 17, 2014 request for review of the decision, Tr. 18, was denied by the Appeals Council on April 18, 2014, Tr. 14-16. On April 25, 2014, Plaintiff requested the Appeals Council reopen the Request for Review to consider Plaintiff's Appeals Council Brief. Tr. 6-13. The Appeals Council considered the additional information and on June 12, 2014, denied Plaintiff's request for review, Tr. 1-5, making the ALJ's January 2014 decision the final decision of Defendant (the Commissioner) for purposes of judicial review. Plaintiff brought this action seeking judicial review of the Commissioner's decision in a Complaint filed on July 22, 2014. ECF No. 1.

¹ Plaintiff's application for SSI can be found at Tr. 288-93.

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B. Plaintiff's Background

Plaintiff was born on November 24, 1972. Tr. 60. He completed school through the eleventh grade and attended special education classes. *Id.*, Tr. 321-22. At the time of the May 2012 hearing Plaintiff lived in a house with his fiancée. Tr. 77. Plaintiff's past relevant work (~~"PRW"~~) included construction helper/laborer, carpet installation helper, general laborer for a temporary employment agency, tow truck driver, and from 2007 until his injury in March 2010, he was employed as a route driver for a beer distribution company. Tr. 322. Plaintiff stopped working on March 22, 2010, because of his condition, which he described as "2 surgeries on clavicle." Tr. 321. In a later Disability Report Plaintiff indicated changes in his condition from March 1, 2013, that included "more problems with depression, anxiety, and some auditory hallucinations. My should[er] is still hurt very bad and really affects my lifting." Tr. 429.

C. The Administrative Hearings

1. First Administrative Hearing

Plaintiff's first administrative hearing was held on May 18, 2012, before ALJ John S. Lamb. Tr. 54. Plaintiff appeared with counsel and testified, and vocational expert Benson Hecker² also testified. *Id.*

a. Plaintiff's Testimony

Plaintiff testified that he was born in 1972 and had an eleventh grade education. Tr. 60. Plaintiff stated he quit school in the eleventh grade because he "made some bad choices when he was young." *Id.* Plaintiff noted that he later went to trade school and obtained his CDL (commercial driver's license). Tr. 61. Plaintiff testified that he "went straight through the course with no problems." *Id.* Plaintiff confirmed that his alleged onset date was March 22, 2010, and

² The hearing transcript refers to Dr. Hecker as a medical expert. However, his resume notes he has a Ph.D. and is licensed or certified as a vocational expert. Tr. 230.

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that he had not worked since that date. *Id.* Plaintiff's date last insured was June 30, 2011. Tr. 62.

The ALJ questioned that date but noted that Plaintiff was not employed continuously in the preceding years. Tr. 63-64. The ALJ noted that Plaintiff "wasn't employed at all in 2006. He had limited employment in 2007, no employment in 2004, and [in] 2003 he only earned \$1,500." Tr.

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Plaintiff testified that he suffered an injury to his shoulder when unloading his truck. Tr. 64-66. The next morning he got approval from his supervisor to go to the doctor and was given a cortisone shot. Tr. 67-68. Plaintiff tried going to therapy but testified "it was just worse." Tr. 68. Plaintiff underwent an MRI that showed Plaintiff had arthritis in his shoulder, a bicep tending tear, and a torn rotator cuff. *Id.* Plaintiff underwent surgery and therapy after the surgery. *Id.* Plaintiff testified that although he worked hard in the therapy it was not successful. Tr. 68-69. Plaintiff stated he underwent a second MRI that showed he still had a bicep tear and rotator cuff tear. Tr. 69. Plaintiff stated he had a second surgery but the doctor told Plaintiff he was unable to repair his bicep or shoulder and recommended he go back to therapy. *Id.* Plaintiff stated that when he went back to therapy "it was worse the second time around than it was the first. The swelling would not go down." *Id.* Plaintiff returned to the doctor who referred Plaintiff to pain management. Tr. 70. No further surgery was recommended. *Id.*

Plaintiff testified that he could barely move his right hand. Tr. 70. The ALJ asked who prescribed the sling he was using and Plaintiff responded that all his doctors had. *Id.* Plaintiff testified that he did not have an impairment of his left hand or shoulder but "it just hurts every time [he tries] to do things because it pulls on [that] side of [his] body." Tr. 71. The ALJ asked Plaintiff if he had any mental impairment and Plaintiff testified that due to the medication he takes he has "gained mental and psychological problems." *Id.* Plaintiff stated that he cannot

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function, think, or focus too long on his medications. *Id.* Plaintiff stated he has difficulty reading and writing now, but did not used to have difficulty. Tr. 71-72. Plaintiff testified that he “was able to read decently. I was pretty good.” Tr. 72. Plaintiff stated that he takes Tramadol, Celebrex, and Klonopin, and that “one of them is a psyche med, and that med in itself paranoids [him].” *Id.* Plaintiff testified that his “life has become unbalanced and definitely unmanageable.”

Id.

The ALJ noted that the record contained a reference to Plaintiff’s intelligence level and ordered a mental consultative examination to include IQ studies. Tr. 72-73. The ALJ stated that he did not think there was any retardation, but thought there might be other problems related to Plaintiff’s pain that was “affecting [his] intelligence level now.” Tr. 73. Plaintiff stated that he was sent to a “psyche doctor” who rated him with post traumatic stress disorder stemming “from an incident that happened on [his] job as well where [he] got robbed and jumped by two guys while at a store delivering, maybe three or four month[s] before this situation of [his] shoulder happen[ed].” Tr. 74. That incident was part of a separate workers compensation claim. Tr. 75.

The ALJ asked Plaintiff if he had any other impairments, and Plaintiff responded that he had “shared everything” with the ALJ. Tr. 6. Plaintiff stated that he lived with his fiancée in a house he was renting, he did not do any household chores, and he did not do any shopping. Tr. 77.

In response to questions from his attorney Plaintiff testified that on an average day his pain level, with medication, was at eight on a ten-point scale. Tr. 78. Plaintiff stated that his pain is constant, although the TENS unit³ “eases it as much as possible.” *Id.* Plaintiff stated he wears

³ TENS stands for (Transcutaneous Electrical Nerve Stimulation) and the units are predominately used for nerve related pain conditions (acute and chronic conditions). TENS machines works by sending stimulating pulses across the surface of the skin and along the nerve strands. The stimulating pulses help prevent pain signals from reaching the brain. TENS devices also help

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the TENS unit and his sling every day to keep that part of his body from getting “re-injured or hurting it in any form or fashion.” Tr. 79. Plaintiff stated that he was right-handed but had no use of his right arm. *Id.* Plaintiff testified that he could probably hold a 12-ounce water bottle with his right arm. *Id.* He stated he would be unable to lift any weight with his right arm for two hours out of an eight-hour day. *Id.* Plaintiff confirmed that he has work restrictions of no extending his neck because a doctor noticed swelling and a reaction to pain when he moved his neck. Tr. 80. Plaintiff stated that because of his pain he would be unable to work a full-time work schedule. *Id.* Plaintiff stated that his left arm was not strong, but he thought he could lift “something simple as some soda can or maybe a bottle of juice, a half a gallon of milk at the most maybe with [his] left hand.” Tr. 81. Plaintiff stated he would not be able to lift anything for long because it would start “pulling at the right side” of his shoulder. *Id.* Plaintiff stated that standing was a “major problem” because it required him to balance, and also his medications made him dizzy. Tr. 82. Plaintiff testified that he would not be able to work at all while taking his medications because they are made for “strictly numbing out as much pain as possible.” Tr. 83. Plaintiff testified that he had problems sitting because any chair pushes the back of his shoulder blade which causes pain. *Id.* Plaintiff stated that his fingers were numb from sitting in the hearing. *Id.* Plaintiff testified that he could sit for “maybe 20 minutes” before the pain became unbearable or distracting. Tr. 84. Plaintiff stated he could not do a “sit-down job” where he had to sit for approximately six hours out of an eight-hour day. *Id.* When asked about his motivation level Plaintiff stated that he was depressed and his motivation was “very low.” Tr. 84-85. Plaintiff stated that the antidepressant was not helping him and that it took him “out of [his] character” and put him in a “dark mode.” Tr. 85. Plaintiff testified that he has problems interacting with people and at times felt suicidal or

stimulate the body to produce higher levels of its own natural painkillers, called “Endorphins.” See <http://tensunits.com/> (last visited July 9, 2015).

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homicidal. *Id.* Plaintiff testified that every job he had previously held had involved heavy lifting or labor-intensive work. Tr. 87.

b. VE Testimony

VE Benson Hecker testified at the hearing. Tr. 90. He characterized Plaintiff's past work as follows: ~~labor work for a temporary company, unskilled, medium to heavy; helper of carpet,~~ heavy, SVP of three; laborer construction, heavy, unskilled; and route driver, medium, SVP of three. Tr. 91. The VE also noted that Plaintiff "operated a tow truck for a short while." *Id.* The VE testified that Plaintiff had no transferable job skills. *Id.* The ALJ posed the following hypothetical:

[A] hypothetical individual the claimant's age, education, and past work experience, who is right arm dominant, who has a rigorous capacity for [inaudible], light work with never use of a ladder, rope, or scaffold, or crawl. No lifting overhead with the right upper extremity. Lifting of the right upper extremity is limited to only five pounds, no restrictions on the left upper extremity.

Tr. 91. The ALJ asked if such an individual could return to PRW and the VE responded in the negative because the individual was limited to light work and limited to five pounds with the dominant right upper extremity. Tr. 92. The VE noted that light work involves lifting about 20 pounds and ten pounds occasionally. *Id.* The VE confirmed that the individual would be unable to do any other formal [sic] work activity in significant numbers in the local or national economy. *Id.* The ALJ asked about work at the sedentary level and the VE stated that if the individual "could effectively use his dominant upper extremity of fingering and handling on a frequent basis, certainly there would be unskilled work that he could perform at the sedentary level." Tr. 93. The VE identified the following available jobs: "sorter, nationally 410,000, South Carolina, 8,200. Surveillance monitor, 79,000 nationally, 790 South Carolina. An assembler, nationally 229,000, 2,700 South Carolina." *Id.*

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The ALJ modified the hypothetical to limit the individual to "simple, routine, and repetitive tasks with no ongoing public contact and low stress defined as only occasional change in work setting or decision-making." Tr. 93-94. The ALJ asked if the individual would still be able to perform the jobs the VE identified and the VE responded he would. Tr. 94. The ALJ asked if the "combination of medical impairment was so severe to make him miss three or more workdays in a month, would he be precluded from engaging in work activity." *Id.* The VE responded there would be no work available. *Id.*

Plaintiff's attorney modified the ALJ's second hypothetical so that the individual would have no use of the right arm or the right hand. Tr. 95-96. The VE stated there would be no work available in the regional or national economy. Tr. 96. Plaintiff's attorney asked if there would be work available based on hypothetical one or two if the restriction of "no repetitive or sustained cervical spine flexation or extension" was added. *Id.* The VE stated that if it pertained only to the cervical spine, "the only job that would be doable would be surveillance monitor because that's not repetitive work." *Id.* The VE identified that Dictionary of Occupational Titles ("DOT") number as 379.367-010. *Id.*

2. Second Administrative Hearing

A second administrative hearing was held on December 13, 2013, before the same ALJ. Tr. 101. Plaintiff appeared with counsel, and VE Cary Washington was also present. *Id.* The ALJ noted that the hearing was based on an Appeals Council remand and that a subsequent Title XVI application for SSI had been incorporated into the case. Tr. 102. Plaintiff's attorney and the ALJ discussed the record evidence related to Plaintiff's intelligence testing and his school records as it related to Listing 12.05C. Tr. 104-11. Plaintiff's attorney noted that, in addition to Plaintiff's intelligence issues, the Appeals Council had also remanded for consideration of Plaintiff's

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impairment ratings and restrictions by Dr. Burnette and Dr. Harper, and Plaintiff's obesity. Tr. 111-12.

a. Plaintiff's Testimony

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Plaintiff testified that he was approximately six feet tall and weighed about 275 pounds.

~~Tr. 113. Plaintiff's attorney noted that on November 20, 2012, Plaintiff weighed 265.9 pounds,~~
so that in one year he had gained almost ten pounds. *Id.* Plaintiff attributed his weight gain to a
“lot of stress. Not being able to carry myself like I used to. The injuries that I sustained. The
depression.” *Id.* Plaintiff stated that his obesity affected his ability to walk because he gets tired
after five or ten minutes, his ability to sleep because it impacts his breathing; and, in addition to
his shoulder injury, it affects his ability to dress himself. Tr. 114. Plaintiff stated he could walk
for about ten minutes before he would become fatigued or exhausted. *Id.* Plaintiff stated that he
did not think he would be able to walk or stand for six hours in an eight-hour day. *Id.* Plaintiff
testified that he has consistent sharp pain in his neck due to his shoulder injury. *Id.* Plaintiff
stated that he has pain in his left arm because his surgery put strain on his left side, and when he
uses his left it puts strain on his right shoulder. Tr. 115. Plaintiff testified he may be able to lift
ten pounds with his left arm before his right shoulder area would begin to hurt. *Id.* Plaintiff stated
that with his weight gain he did not think he could sustain a working pace eight hours a day, 40
hours a week, or an equivalent work schedule. *Id.* Plaintiff stated he gained about 40 or 45
pounds since his worker's comp injury. Tr. 116. Plaintiff testified that he has been trying to get
his life back; he tried to get a job to support himself and his wife but was turned down. Tr. 117.
Plaintiff testified that he constantly feels suicidal. Tr. 118.

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b. VE Testimony

VE Washington characterized Plaintiff's past work as follows: carpet installer helper, heavier work activity, SVP of 3; labor/construction work, heavier work activity, SVP of 2; beer distributorship/route driver of a truck, medium work activity but heavy at times, SVP of 3; and tow truck driver, medium work activity, SVP of 3. Tr. 120. The ALJ posed the following hypothetical:

[A] hypothetical individual of the claimant's age, education, and prior work experience who's restricted to sedentary work activity as defined by the Social Security regulations and in the Dictionary of Occupational Titles. He can never use ladders, ropes, or scaffolds, or crawl. He is limited to frequent fingering and handling in his right dominant hand, with no lifting overhead with the right upper extremity, or lifting with the right upper extremity limited to five pounds. No limitation on the left upper extremity. He is limited to simple, routine, repetitive tasks with no on-going public contact and low stress, defined as only occasional change in work setting or decision making.

Tr. 120-21. The ALJ asked if such an individual could perform any former work activity and the VE responded in the negative. Tr. 122. The ALJ asked if he could do anything else, and the VE responded with the following jobs: quotation clerk, sedentary, unskilled, SVP of 2, DOT number 237.367-046, in South Carolina approximately 6,000, nationally 100,000; addresser, sedentary, unskilled, SVP of 2, DOT number 209.587-010, in South Carolina, 3,000, nationally 125,000; and weight tester, sedentary, unskilled, DOT number 539.485-010, in South Carolina approximately 5,000, nationally 175,000. *Id.*

The ALJ modified the hypothetical to change fingering and handling of the right upper extremity from frequent to occasional. Tr. 122-23. The VE testified that change would preclude the work he indicated or any other competitive work. Tr. 123.

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II. Discussion

A. The ALJ's Findings⁴

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In his January 16, 2014 decision, the ALJ made the following findings of fact and conclusions of law:

1. The claimant meets the insured status requirements of the Social Security Act through June 30, 2011.
2. The claimant has not engaged in substantial gainful activity since March 22, 2010, the alleged onset date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*).
3. The claimant has the following severe impairments: status post two right shoulder surgeries, depression, post-traumatic stress disorder, antisocial personality trait (20 CFR 404.1520(c) and 416.920(c)).
4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).
5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a) except he can never use ropes, ladders, scaffolds, or crawl. He is limited to frequent handling and fingering in his right dominant hand with no lifting overhead with the right upper extremity and lifting with the right upper extremity is limited to five pounds, no limitation on the left upper extremity. The claimant is limited to simple, routine, repetitive tasks with no ongoing public contact and low-stress defined as only occasional change in work setting or decision making.
6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).
7. The claimant was born on November 24, 1972 and was 37 years old, which is defined as a younger individual age 18-44, on the alleged disability onset date (20 CFR 404.1563 and 416.963).
8. The claimant has a limited education and is able to communicate in English (20 CFR 404.1564 and 416.964).

⁴ The ALJ issued two unfavorable decisions in this matter. The first decision, dated August 7, 2012, Tr. 143-52, was remanded back to the ALJ by the Appeals Council on July 23, 2013, Tr. 202-06. The findings listed in this Report are from the ALJ's second decision.

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9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569, 404.1569(a), 416.969 and 416.969(a)).

11. The claimant has not been under a disability, as defined in the Social Security Act, from March 22, 2010, through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

Tr. 24-32.

B. Legal Framework

1. The Commissioner's Determination-of-Disability Process

The Act provides that disability benefits shall be available to those persons insured for benefits, who are not of retirement age, who properly apply, and who are "under a disability," defined as:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months[.]

42 U.S.C. § 423(d)(1)(A); *see also* 42 U.S.C. § 1382c(a)(3)(A).

To facilitate a uniform and efficient processing of disability claims, regulations promulgated under the Act have reduced the statutory definition of disability to a series of five sequential questions. *See, e.g., Heckler v. Campbell*, 461 U.S. 458, 460 (1983) (discussing considerations and noting "need for efficiency" in considering disability claims). An examiner must consider the following: (1) whether the claimant is working; (2) whether the claimant has a severe impairment; (3) whether that impairment meets or equals an impairment included in the

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Listings;⁵ (4) whether such impairment prevents claimant from performing PRW; and (5) whether the impairment prevents the claimant from performing specific jobs that exist in significant numbers in the national economy. *See* 20 C.F.R. § 404.1520, § 416.920. These considerations are sometimes referred to as the “five steps” of the Commissioner’s disability analysis. If a decision regarding disability may be made at any step, no further inquiry is necessary. 20 C.F.R. § 404.1520(a)(4) and § 416.920(a)(4) (providing that if Commissioner can find claimant disabled or not disabled at a step, Commissioner makes determination and does not go on to the next step).

A claimant is not disabled within the meaning of the Act if he can return to PRW as it is customarily performed in the economy or as the claimant actually performed the work. *See* 20 C.F.R. Subpart P, § 404.1520(a), (b); § 416.920(a), (b); Social Security Ruling (“SSR”) 82-62 (1982). The claimant bears the burden of establishing his inability to work within the meaning of the Act. 42 U.S.C. § 423(d)(5).

Once an individual has made a prima facie showing of disability by establishing the inability to return to PRW, the burden shifts to the Commissioner to come forward with evidence that claimant can perform alternative work and that such work exists in the regional economy. To satisfy that burden, the Commissioner may obtain testimony from a VE demonstrating the existence of jobs available in the national economy that claimant can perform despite the

⁵ The Commissioner’s regulations include an extensive list of impairments (“the Listings” or “Listed impairments”) the Agency considers disabling without the need to assess whether there are any jobs a claimant could do. The Agency considers the Listed impairments, found at 20 C.F.R. part 404, subpart P, Appendix 1, severe enough to prevent all gainful activity. 20 C.F.R. § 404.1525. If the medical evidence shows a claimant meets or equals all criteria of any of the Listed impairments for at least one year, he will be found disabled without further assessment. 20 C.F.R. § 404.1520(a)(4)(iii); § 416.920(a)(4)(iii). To meet or equal one of these Listings, the claimant must establish that his impairments match several specific criteria or be “at least equal in severity and duration to [those] criteria.” 20 C.F.R. § 404.1526; § 416.926; *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990); *see Bowen v. Yuckert*, 482 U.S. 137, 146 (1987) (noting the burden is on claimant to establish his impairment is disabling at Step 3).

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existence of impairments that prevent the return to PRW. *Walls v. Barnhart*, 296 F.3d 287, 290 (4th Cir. 2002). If the Commissioner satisfies that burden, the claimant must then establish that he is unable to perform other work. *Hall v. Harris*, 658 F.2d 260, 264–65 (4th Cir. 1981); *see generally Bowen*, 482 U.S. at 146. n.5 (regarding burdens of proof).

2. The Court's Standard of Review

The Act permits a claimant to obtain judicial review of “any final decision of the Commissioner made after a hearing to which he was a party.” 42 U.S.C. § 405(g). The scope of that federal court review is narrowly tailored to determine whether the findings of the Commissioner are supported by substantial evidence and whether the Commissioner applied the proper legal standard in evaluating the claimant’s case. *See id.*, *Richardson v. Perales*, 402 U.S. 389, 390 (1971); *Walls v. Barnhart*, 296 F.3d at 290 (citing *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990)).

The court’s function is not to “try these cases de novo or resolve mere conflicts in the evidence.” *Vitek v. Finch*, 428 F.2d 1157, 1157–58 (4th Cir. 1971); *see Pyles v. Bowen*, 849 F.2d 846, 848 (4th Cir. 1988) (citing *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986)). Rather, the court must uphold the Commissioner’s decision if it is supported by substantial evidence. “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402 U.S. at 390, 401; *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005). Thus, the court must carefully scrutinize the entire record to assure there is a sound foundation for the Commissioner’s findings, and that her conclusion is rational. *See Vitek*, 428 F.2d at 1157–58; *see also Thomas v. Celebrezze*, 331 F.2d 541, 543 (4th Cir. 1964). If there is substantial evidence to support the decision of the Commissioner, that

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decision must be affirmed “even should the court disagree with such decision.” *Blalock v. Richardson*, 483 F.2d 773, 775 (4th Cir. 1972).

C. Analysis

Plaintiff asserts that the ALJ erred (1) in finding Plaintiff did not meet Listing 12.05C, (2) by failing to follow the treating physician rule, and (3) by relying on VE testimony that conflicts with the DOT. Pl.’s Br. 4, ECF No. 15. The Commissioner argues that substantial evidence supports the ALJ’s finding that Plaintiff’s impairments do not meet or medically equal Listing 12.05C, substantial evidence supports the ALJ’s analysis of Dr. Burnette’s opinion, and that the ALJ fulfilled his duty with regard to conflicts between the VE’s testimony and the DOT. Def.’s Br. 1, ECF No. 20.

1. Listing 12.05C

“For a claimant to show that his impairment matches a listing, it must meet all of the specified medical criteria.” *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990). It is not enough that the impairments have the diagnosis of a listed impairment; the claimant must also meet the criteria found in the Listing of that impairment. 20 C.F.R. §§ 404.1525(d), 416.925(d).

The introduction to Section 12.00 of the Listings clarifies how the structure for 12.05 differs from other mental disorder listings: “Listing 12.05 contains an introductory paragraph with the diagnostic description for intellectual disability. It also contains four sets of criteria (paragraphs A through D). If your impairment satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, we will find that your impairment meets the listing.” 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00(A). Listing 12.05 refers to intellectual disability⁶ and states:

⁶ Formerly defined as mental retardation.

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Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied. . . .

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function. . . .

20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.05.

In *Hancock v. Astrue*, the Fourth Circuit held that the first prong of Listing 12.05 analysis “requires a showing of ‘deficits in adaptive functioning initially manifested during the developmental period.’” *Hancock*, 667 F.3d 470, 473 (4th Cir. 2012). The second prong “requires the satisfaction of one of four additional requirements.” *Id.* The court held that “even if the ALJ’s finding concerning Prong 2 of Listing 12.05C did not rest on substantial evidence, we would still be required to affirm the ALJ’s decision if his finding with regard to Prong 1 was based on substantial evidence.” *Id.* at 475.

a. Deficits in Adaptive Functioning

The Fourth Circuit has provided instruction on the factors that determine deficits in adaptive functioning noting the deficits “can include limitations in areas such as communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.” *Jackson v. Astrue*, 467 F. App’x 214, 218 (4th Cir. 2012) (citing *Atkins v. Virginia*, 536 U.S. 304, 309 n.3 (2002)).

Here, the ALJ found that Plaintiff “does not have the requisite deficits necessary to meet listing 12.05C.” Tr. 26. In making this finding the ALJ noted that Plaintiff “was capable of taking the GED and passing. He was also capable of getting a commercial driver’s license to

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drive a truck.”⁷ *Id.* In considering the severity of Plaintiff’s mental impairments, the ALJ found that Plaintiff had mild restriction in his ADLs and noted Plaintiff drives to his appointments and maintains regular contact with friends. *Id.* The ALJ acknowledged Plaintiff’s daily functioning was limited, but noted that it was “mainly physical.” *Id.* The ALJ also found that Plaintiff had ~~moderate difficulties in social functioning and cited the report of Dr. Harper⁸ that indicated~~ Plaintiff “appeared capable of interacting appropriately with coworkers and supervisors in a work setting, but might function best in a job that does not require interaction with the public.” *Id.* (citing Ex. 22F). The ALJ further found that Plaintiff had moderate difficulties regarding concentration, persistence, or pace. The ALJ noted that in his consultative evaluation with Dr. Harper she found that

[Plaintiff] was pleasant and communicated quite adequately. However, he tended to be overly detailed in his responses. There are concerns that overuse of medications might be affecting his mental capabilities. However, he is capable of sharing the responsibility of paying bills with his fiancée (Exhibit 22F).

Tr. 27. The ALJ also referred to a mental status examination performed at Greenville Mental Health Center on April 19, 2013, that found Plaintiff to be cooperative and alert, his appearance and speech were normal, and his judgment and insight were fair. *Id.* The report further noted Plaintiff did not experience delusions and had no suicidal or homicidal ideations, and his thought process was logical and goal directed. *Id.* (citing Exs. 35F, 37F).

⁷ The undersigned notes that in his first administrative hearing Plaintiff testified that after making some “bad choices” when he was younger, he went to trade school and gained his CDL. Plaintiff testified: “That’s when I realized that without an education, without some type of trade in life, you can’t make it. You won’t be able to provide for a family if you have one or you wouldn’t be able to get a real good decent job that pays well, you know? So when I went to truck driving school, that Indiana Truck Driving School [phonetic], in Charleston, South Carolina, I passed on an alumni level. I went straight through the course with no problems.” Tr. 61.

⁸ Renuka R. Harper, Ph.D. completed a Disability Evaluation of Plaintiff on June 11, 2012. Tr. 749-54.

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In his analysis of Plaintiff's RFC, the ALJ noted Plaintiff's ability to "perform simple addition, subtraction, multiplication and division" during his evaluation by Dr. Harper. Tr. 29. The ALJ gave some weight to Dr. Harper's opinion that Plaintiff would have "difficulty maintaining adequate pace on a job based on his processing speed at the time of testing," and the ALJ limited Plaintiff to "only simple routine repetitive tasks." Tr. 29-30. The ALJ also noted that because Plaintiff indicated "some decline in his interest in socializing" Dr. Harper found him to be moderately limited in independent functioning and social functioning. Tr. 30. As a consequence the ALJ limited Plaintiff's RFC to "no ongoing public interaction." *Id.*

Plaintiff did not address deficits in adaptive functioning in his initial Brief;⁹ however, on Reply he cites to school records indicating mental and academic deficiencies which he contends make it "clear that the Plaintiff experienced deficits in adaptive functioning before age 22, satisfying the first prong of the listing."¹⁰ Pl.'s Reply 4-5, ECF No. 22. The Commissioner contends that the evidence of record does not support a finding that Plaintiff experienced deficits in adaptive functioning noting that "Plaintiff concedes that he was a healthy, well-functioning adult working at a good job prior to his shoulder injury. Plaintiff's allegations throughout the entirety of his disability claim have been that he cannot work due to his shoulder injury—not due to any mental impairment." Def.'s Br. 14.

While work history cannot preclude benefits where the Listing 12.05C criteria are otherwise met, it can be relevant in determining whether a claimant manifested deficits in

⁹ Plaintiff contends the ALJ's decision does not state Plaintiff failed to meet the first prong of the listing and the Commissioner should be barred from making this argument. Pl.'s Reply 4. The undersigned disagrees, as the ALJ stated in his decision that Plaintiff does not have the requisite deficits.

¹⁰ Although Plaintiff's school records indicate Plaintiff had educational deficiencies, the undersigned also notes testimony from the first administrative hearing when Plaintiff testified that he completed the driver training course for his CDL with no problems, Tr. 61, and before he started taking his various medications he had no difficulty reading, Tr. 71-72.

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adaptive functioning prior to age 22. Compare *Luckey v. U.S. Dep't of Health and Human Servs.*, 890 F.2d 666, 669 (4th Cir. 1989) (finding "Secretary may not rely upon previous work history to prove non-disability where the section 12.05(C) criteria are met") with *Hancock*, 667 F.3d at 475-76 (concluding that the ALJ's finding that the claimant did not manifest requisite deficits in adaptive functioning was supported by substantial evidence where the ALJ considered, among many other factors, that the claimant had worked several jobs). The undersigned finds that the ALJ's rationale for finding Plaintiff does not meet the listing for intellectual disability based on lack of significant limitations in adaptive functioning is supported by substantial evidence as he not only cited Plaintiff's ability to obtain a CDL license and drive a truck, he also analyzed the severity of Plaintiff's mental impairments and functioning in making his RFC assessment. See *Harts v. Astrue*, C/A No. 0:10-1893-CMC-PJG, 2012 WL 529982, at *6 n.3 (D.S.C. Jan. 30, 2012) (distinguishing *Luckey* because the ALJ used the claimant's work history as only one factor to support his finding of no significant deficits in adaptive functioning) adopted by 2012 WL 529980 (D.S.C. Feb. 17, 2012).

b. Valid verbal, performance, or full scale IQ of 60 through 70

Plaintiff contends he has at least two IQ scores that show an IQ level listing and therefore meets Listing 12.05C. Pl.'s Br. 10. The Commissioner contends that Plaintiff "cannot show that he had a *valid* verbal, performance, or full scale IQ of 60 through 70." Def.'s Br. 14 (emphasis in original).

The record contains three separate IQ test results: one from a school psychologist dated January 11, 1978; a second from a vocational consultant dated March 27, 2012; and a third from a psychologist dated June 11, 2012. Exs. 36F, 15E, 22F. The ALJ gave "some weight" to Plaintiff's IQ score of 69 from 1978 when Plaintiff "was in the 8th grade and 6 years old" but

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noted that “if it was closer to age 22 [he] would find it more valid.” Tr. 26. The ALJ considered the IQ test completed by the vocational consultant in March 2012, but found the “higher IQ results reported by Dr. Harper [in June 2012] to be more accurate, she is PhD.” *Id.*

Plaintiff argues the ALJ impermissibly created “his own standard for evaluating objective testing” when he gave only “some weight” to the 1978 test score. Pl.’s Br. 9 (citing case law indicating an individual’s IQ is presumed to remain constant throughout his life). The undersigned notes that the 1978 Psychological Evaluation Report contains several significant inconsistencies that make reliance on it questionable. The evaluation date is listed as “1-11-78.” Tr. 826. The child’s birthdate is listed as “4-27-64,” his chronological age as “13 years, 8 months,” his grade as “8” at “Courtenay Middle” School, and his mother’s name is listed as “Ester Alston.” *Id.* The evaluator noted she verified the child’s date of birth and correct spelling of the mother’s name in a phone conversation on the day of the evaluation. *Id.* Plaintiff actually was born on November 24, 1972, Tr. 60, which would mean in January 1978 he would have been five years old.¹¹ Plaintiff’s mother’s name is listed as Rosalee Alston in his school records.¹² See Tr. 836, 839, 854. Plaintiff’s school records also indicate he attended James Island Middle School, not Courtenay Middle School.¹³ See Tr. 832, 836. The 1978 Evaluation Report also refers to a child who “has never been retained” or “socially promoted” and who “has never been enrolled in special education.” Tr. 826-27. This is contrary to Plaintiff’s school records which indicate he was retained at least twice in elementary school and spent some portion of the school day in special education classes. Tr. 831, 839-47. By all indications, the 1978

¹¹ In his Decision, the ALJ refers to these IQ results noting Plaintiff “was in the 8th grade and 6 years old.” Tr. 26.

¹² In his initial Disability Report-Adult, Plaintiff identifies his mother as Julia Alston. Tr. 320.

¹³ In his initial Disability Report-Adult, Plaintiff notes that he attended James Island Middle School from 1986-1988. Tr. 322.

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Psychological Evaluation was for a child other than Plaintiff and, accordingly, the IQ scores cannot be attributed to Plaintiff.

On March 27, 2012, vocational consultant Joel D. Leonard, CRC, CVE,¹⁴ completed a Vocational Evaluation: Prospective Feasibility & Impact Assessment of Plaintiff subsequent to ~~Plaintiff's workers compensation claim. Tr. 377-85. Plaintiff "was administered the Wide Range~~ Achievement Test – Fourth Revision (WRAT-4) and the Wide Range Intelligence Test (WRIT) in order to assess his intellectual and academic standing." Tr. 379. Plaintiff's scores on the WRIT indicated an IQ equivalent of 65/verbal, 69/visual, and 62/general. Tr. 380.

On June 11, 2012, Renuka R. Harper, Ph.D., a licensed clinical psychologist, completed a Disability Evaluation of Plaintiff. Tr. 749-54. Dr. Harper tested Plaintiff using the Wechsler Adult Intelligence Scales – Fourth Edition (WAIS-IV) and the Wide Range Achievement Test – Fourth Edition (WRAT-IV). On the WAIS-IV Plaintiff's composite scores were 74/verbal comprehension, 88/perceptual reasoning, 80/working memory, 65/processing speed, and 73/full scale IQ. Tr. 752.

The ALJ recognized that "two different tests were given" but found "the higher IQ results reported by Dr. Harper to be more accurate, she is PhD." Tr. 26. "This circuit permits an ALJ to weigh conflicting IQ test results" *Hancock*, 667 F.3d at 474. Plaintiff argues that because Leonard's scores were not shown to be invalid and the ALJ did not deem the test results invalid, Plaintiff has met the second prong because he has a valid listing level IQ score. Pl.'s Reply 7. As set forth above, to meet Listing 12.05C Plaintiff must satisfy both prong 1 and prong 2. *See Hancock*, 667 F.3d at 475. Even if Plaintiff can show a valid listing level IQ score, if the ALJ's findings regarding Plaintiff's adaptive deficits are based on substantial evidence, the ALJ's decision would have to be affirmed. Because the undersigned finds that the ALJ's findings

¹⁴ Certified Rehabilitation Counselor and Certified Vocational Evaluator.

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regarding Plaintiff's adaptive functioning is supported by substantial evidence, his decision that Plaintiff does not meet Listing 12.05C should be affirmed.

2. Opinion of Carol W. Burnette, M.D.

Plaintiff asserts that the ALJ did not follow the treating physician rule and failed to give proper weight to the opinion of Dr. Burnette. Pl.'s Br. 10. Plaintiff notes that the ALJ discounted Dr. Burnette's opinion because he incorrectly concluded it was given before Plaintiff completed physical therapy when in fact Dr. Burnette's opinion was rendered a year after Plaintiff completed physical therapy. Plaintiff asserts that "[s]ubstantial evidence does not support the weight assigned when it is based on a factual error in reading the record." *Id.* at 11. The Commissioner argues that substantial evidence supports the ALJ's analysis of Dr. Burnette's opinion and that the ALJ's mistake regarding the date of the opinion is "at most, a harmless error that would not affect the outcome of the ALJ's analysis of Dr. Burnette's opinion." Def.'s Br. 17.

On March 31, 2011, Dr. Burnette of Piedmont Comprehensive Pain Management Group conducted an Impairment Evaluation of Plaintiff. Tr. 532-35. After reviewing Plaintiff's medical records and conducting a physical examination of Plaintiff, Dr. Burnette assessed Plaintiff with severe chronic right shoulder, neck, and arm pain. Tr. 535. She noted that Plaintiff appeared to be at "maximal medical improvement in relation to the right shoulder." *Id.* She assigned him a "permanent 41% right upper extremity impairment rating, which is equal to 25% whole person impairment." *Id.* Dr. Burnette noted the basis for this rating was Plaintiff's "severely restricted shoulder range of motion." *Id.* She noted Plaintiff would "possibly benefit from further evaluation of the cervical spine and right upper extremity," would "need continued pain medications indefinitely and would probably benefit from counseling." *Id.* Dr. Burnette's

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recommended work restrictions included “no use of the right upper extremity and no activities requiring sustained or repetitive cervical flexion or extension.” *Id.*

On April 16, 2011, Dr. Burnette completed a South Carolina Workers’ Compensation Commission Physician’s Statement. Tr. 740. She noted that Plaintiff was able to return to work with the following restrictions: “no use of the right arm or hand; no repetitive or sustained cervical spine flexion or extension. Pain may be too severe to be able to tolerate more than a very limited work schedule.” *Id.*

In his decision, the ALJ noted the following:

Dr. Burnette completed an Impairment Evaluation/Physicians Statement on March 31, 2011 and April 16, 2011 (Exhibits 9F/4, 19F/5, 20F/4). She reported the claimant was a maximum medical improvement. She gave him a 41 percent impairment to his right arm and 25 percent whole person impairment. Nevertheless, it refers to disability standards used by other disability agencies that are not binding on Social Security. I must make my decision using the appropriate Social Security laws and regulations. In this case, the medical evidence does not support a finding of disability.

Dr. Burnette reported the claimant was able to return to work however with restrictions. She restricted him to no use of the right upper extremity and no activities requiring sustained or repetitive cervical flexion or extension on March 22, 2010 (Exhibit 9F/4 with duplicates in 20F/4 and 26F/6). I give this opinion little weight. Dr. Burnette’s opinion was given before the claimant went through physical therapy in October 2010, referred by Dr. Paylor in June 2010.

Tr. 28-29. It is obvious the ALJ was mistaken when he stated that Dr. Burnette’s opinion was given before Plaintiff went through physical therapy in 2010. This mistake is especially confusing because in the preceding paragraph the ALJ acknowledged Dr. Burnette’s evaluation was in 2011. Plaintiff argues that despite the presence of other factors that could support the weight attributed to the opinion, “what the ALJ’s finding would have been had the record been considered properly is not something the Defendant can tell the Court and, respectfully, not something the Court should attempt to divine.” Pl.’s Reply 9.

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The ALJ is obligated to evaluate and weigh medical opinions "pursuant to the following non-exclusive list: (1) whether the physician has examined the applicant, (2) the treatment relationship between the physician and the applicant, (3) the supportability of the physician's opinion, (4) the consistency of the opinion with the record, and (5) whether the physician is a specialist." *Johnson v. Barnhart*, 434 F.3d at 654 (citing 20 C.F.R. § 404.1527). However, the weight to be accorded to a medical opinion is in the discretion of the ALJ, as long as his findings are supported by substantial evidence. *Mastro v. Apfel*, 270 F.3d 171, 178 (4th Cir. 2001).

The undersigned notes that the ALJ also considered medical evidence obtained after Dr. Burnette's evaluation including a January 2012 MRI, a December 2012 x-ray, and treating physician Dr. Loudermilk's progress notes¹⁵ from January 2013. Tr. 29 (citing Exs. 21F/2, 26F). The ALJ reviewed the record evidence and found the opinion of Dr. Burnette inconsistent with the record as a whole and cited to factors other than the timing of the opinion that caused him to give less weight to Dr. Burnette's conclusions. However, because the undersigned recommends remand on the issue of conflicts in the VE's testimony as addressed below, the ALJ should also revisit the weight attributed to Dr. Burnette's opinion bearing in mind that the opinion was rendered after Plaintiff completed physical therapy.

3. Conflicts in VE's Testimony

Plaintiff asserts that the occupations testified to by the VE do not match the criteria for the jobs as set forth in the DOT. Pl.'s Br. 11. At the second administrative hearing the VE identified three jobs that Plaintiff could perform based on the ALJ's hypothetical: quotation clerk, addresser, and weight tester. Tr. 122. Plaintiff notes the quotation clerk position cannot be performed by someone limited to no ongoing public contact, and the addresser and weight tester

¹⁵ See Progress Notes of Dr. Eric Loudermilk of Piedmont Comprehensive Pain Management Group, Tr. 812-16.

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positions cannot be performed by someone limited to no overhead reaching with the right arm.

Pl.'s Br. 11-13. The Commissioner contends that the ALJ fulfilled his duty to inquire of the VE regarding possible conflicts between his testimony and the DOT, and having done that, the ALJ was "under no additional duty to independently investigate whether the [VE] was correct, particularly where Plaintiff's counsel raised no objections to the [VE's] testimony at the administrative hearing." Def.'s Br. 21-22. The Commissioner does not address the specific alleged DOT conflicts in her Response Brief.

Social Security Ruling 00-4p provides that when vocational evidence provided by a VE is not consistent with information in the DOT and its companion publication, the Selected Characteristics of Occupations ("SCO"), the ALJ "must resolve this conflict before relying on the VE . . . evidence to support a determination or decision that the individual is not disabled." SSR 00-4p, 2000 WL 1898704, at *4.

In his Decision the ALJ noted that he asked the VE about jobs that existed in the national economy for an individual who had the RFC to perform work in the unskilled sedentary category with additional limitations. Tr. 31. As delineated in the ALJ's RFC assessment, those limitations included the following: "frequent handling and fingering in his right dominant hand with no lifting overhead with the right upper extremity and lifting with the right upper extremity is limited to five pounds, no limitation on the left upper extremity. The claimant is limited to simple, routine, repetitive tasks with no ongoing public contact and low-stress defined as only occasional change in work setting or decision making." Tr. 27.

At step five of the sequential evaluation process the ALJ found:

The [VE] testified that given all of these factors the individual would be able to perform the requirements of representative sedentary, unskilled occupations with SVP of 2 such as quotation clerk (DOT 237.367-046) with 6,000 jobs in South Carolina, 100,000 jobs nationally; addresser (DOT 209.587-010) with 3,000 jobs

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in South Carolina, 125,000 jobs nationally; and weight tester with 5,000 jobs in South Carolina, 175,000 jobs nationally.

Pursuant to SSR 00-4p, I have determined that the [VE's] testimony is consistent with the information contained in the Dictionary of Occupational Titles.

Tr. 31. Plaintiff argues that the DOT description for quotation clerk requires an individual to ~~answer telephone calls from customers and call customers and those duties are inconsistent with~~ the limitation of no ongoing public contact. Pl.'s Br. 11. Plaintiff also asserts that in the SCO the positions of addresser and weight tester require "frequent reaching" and the DOT defines reaching as extending hands or arms in any direction. *Id.* at 12. Because Plaintiff is limited to no overhead reaching Plaintiff contends that he would be unable to perform the jobs of addresser and weight tester. *Id.*

There is a potential conflict between what Plaintiff is capable of performing and what the recommended jobs require. The ALJ questioned the VE about the impact on the available jobs if he limited the individual to occasional fingering and handling, Tr. 122-23, but he did not question the VE as to the inconsistencies in the jobs he cited and the hypothetical with regard to limitations on reaching or ongoing public contact. Therefore, this conflict was not resolved. As the ALJ never discussed with the VE whether the specific limitations were compatible with the cited positions, "it would be speculation for the court to assume the [VE] realized the conflict and necessarily considered it." *Martin v. Astrue*, No. CIV. A. 6:11-1572-TMC, 2012 WL 4479280, at *16 (D.S.C. July 27, 2012) *report and recommendation adopted*, No. CA 6:11-1572-TMC, 2012 WL 4482943 (D.S.C. Sept. 27, 2012). The undersigned recommends that this case be remanded for an explanation as to the conflict or a finding by the ALJ as to whether the occupations of quotation clerk, addresser, and weight tester are in conflict with the testimony of the vocational expert based on the hypothetical and RFC assessment. *See Brown v. Colvin*, No.

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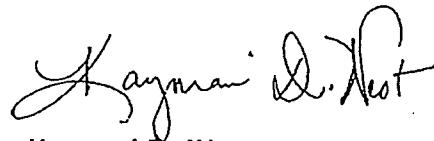
4:12-CV-231 IDCN, 2014 WL 793062, at *6 (D.S.C. Feb. 24, 2014) (remanding case to the ALJ to resolve conflicts as to the inconsistencies in the jobs cited by the VE and the ALJ's hypothetical with regard to lifting restrictions).

III. Conclusion and Recommendation

~~Accordingly, pursuant to the power of the court to enter a judgment affirming, modifying,~~
or reversing the Commissioner's decision with remand in Social Security actions, it is recommended that the Commissioner's decision be reversed and remanded for further administrative action as discussed within.

IT IS SO RECOMMENDED.

July 15, 2015
Florence, South Carolina


Kaymani D. West
United States Magistrate Judge

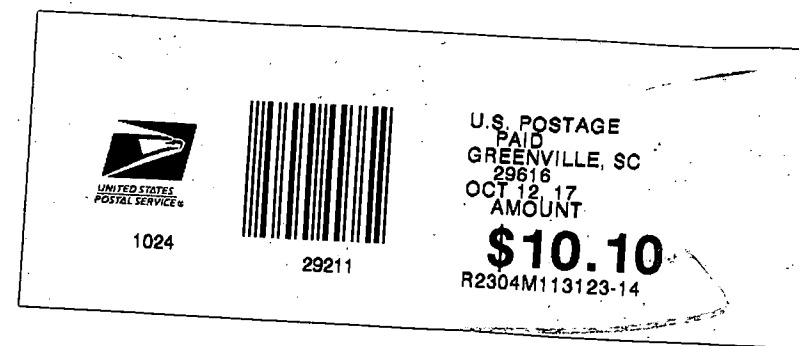
The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."

Mr. Nathaniel Akston

150 Howell Circle Apt 253

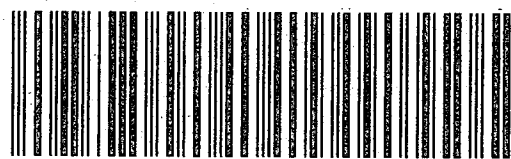
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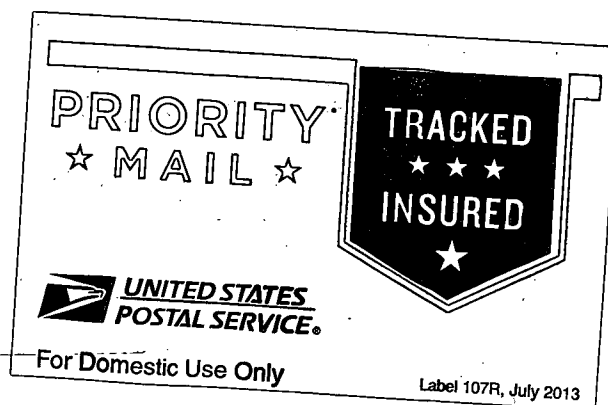


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