

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Aisha Taylor, Commissioner
T. Scott Beck, Commissioner
Avery B. Wilkerson, Commissioner

RECEIVED

Appellate Case No. 2017-001246

OCT 13 2017

Dorothy Miller, Employee, Respondent,

SC Court of Appeals

v.

Husqvarna, Employer, and Ace American Insurance Company, Appellants.

**RECORD ON APPEAL
VOLUME I**

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American Insurance Company, Appellants

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WCC FILE No. 1318602

Defendants

ORDER RELIEVING CLAIMANT'S ATTORNEY

Wilson from any settlement proceeds or award proceeds by Defense counsel as these have been approved by the Commission and consented to by Claimant.

AND IT IS SO ORDERED.

Mike Campbell
Commissioner Mike Campbell

May 5, 2016

_____, SC

I SO MOVE AND CONSENT:

Dorothy Miller
Dorothy Miller, Claimant

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 Barbara Cheeseboro on May 5, 2016

I SO MOVE AND CONSENT:

J. Christopher Wilson
J. Christopher Wilson, Attorney for Claimant

I CONSENT:

for E. B. Hapesh
Shelby Hapesh's, Attorney for Employer/Carrier

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

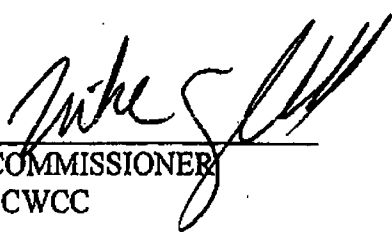
Dorothy Miller, ,	)	
	)	
Claimant	)	
	)	
vs.	)	ORDER APPROVING
	)	ATTORNEY FEES
Husqvarna,	)	
	)	
Employer	)	
	)	WCC FILE No. 1318602
Ace American Insurance Company,	)	
	)	
Defendants	)	

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of \$0.00 and costs of \$1209.72 in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED.

Date: _____

5/3/16



COMMISSIONER
SCWCC

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1318602

Dorothy Miller,

Employee/Claimant,

-vs-

Husqvarna,
Employer,

and

Ace American Insurance Company,
Carrier,
Defendants.

HEARING:

Held on August 17, 2016, in Columbia, South Carolina, per notices timely and properly served upon all parties of interest.

APPEARANCES:

Richard C. Alexander, Esq., Shelly Leeke Law Firm, North Charleston, South Carolina, appearing on behalf of the Claimant.

Shelby G. Hapeshis, Esq., Huff & Hapeshis, L.L.C., Irmo, South Carolina, appearing on behalf of the Defendants.

PURPOSE OF HEARING:

To determine issues set forth in Defendants' Form 21.

DECISION & ORDER:

By R. Michael Campbell, II, Commissioner

FILED:

November 9, 2016

The following items were timely and properly submitted into evidence by the Claimant pursuant to the Administrative Procedures Act:

APA # DESCRIPTION DATES PAGES

APA#	PROVIDER	TYPE OF REPORT	DATED	NO. OF PAGES	PAGES
23	Charleston Hand Group – William Muirhead, M.D.	Medical Records	7/16/2015	2 pages	1903-1904
24	Southeast Neuropathy and Treatment Center	Medical Records	7/28/2015-2/23/2016	11 pages	1905-1915
25	Carolina Shoulder and Knee Specialists –Kevin Nahigian, M.D.	Medical Records	7/17/2015-3/9/2016	25 pages	1916-1940
26	Carolina Shoulder and Knee Specialists –Kevin Nahigian, M.D.	Medical Opinion	3/18/2016	2 pages	1941-1942
27	Carolina Shoulder and Knee Specialists –Kevin Nahigian, M.D.	Medical Opinion	6/4/2016	3 pages	1943-1945
28	Carolina Shoulder and Knee Specialists –Kevin Nahigian, M.D.	Medical Opinion	7/16/2016	2 pages	1946-1947

The following items were timely and properly submitted into evidence by the Defendants pursuant to the Administrative Procedures Act:

APA # DESCRIPTION DATES PAGES

Tab	Medical Provider	Date	Page No.
1	TRMC	11/06/05-07/17/15	1-709
2	Orangeburg Primary-Dr. Singleton	11/09/05-01/08/14	710-735
4	Family Health Center <i>(records are kept in reverse order, as provided)</i>	09/08/08-08/03/15	736-779
5	SC Orthopaedic Institute-Dr. J. Buckaloo	01/21/14-09/22/15	780-811
6	ADI	07/27/10-02/03/14	812-815

7	Palmetto Spine: Dr. Zgleszewski	02/04/14	816-820
8	Midlands Orthopaedic: Dr. M. Ugino	08/27/14	821-825
9	Charleston Hand Group: Drs. Shealy and Murihead	10/15/14-07/16/15	826-853
10	MP Spine and Orthopaedic Specialists -Dr. Alexander, Jr.	11/11/14	854-857
11	Berkeley Hospital	01/02/15	858-859
12	Sports Plus	05/16/15-06/30/15	860-884
EXHIBITS			
16	ISO Report		892-908
17	Personnel File from Husqvarna		909-991
21	**Medical Questionnaire from Dr. J. Buckaloo	06/13/16	1819-1820

STIPULATIONS

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was properly and timely served upon all parties of interest.
3. Claimant's average weekly wage is \$361.18, yielding a compensation rate of \$240.79.
4. Venue, set in Richland County, is proper as agreed by the parties.
5. Both parties agree that the Claimant suffered an admitted injury by accident to her right arm on October 8, 2013 but there are other disputed issues.

STATEMENT OF THE CASE

This matter was before the undersigned Commissioner on August 17, 2016 in Columbia, South Carolina. The hearing was to determine issues set forth in Defendants' Form 21. The purpose of the hearing was to determine if employer/carrier is entitled to pay compensation to the Claimant, if employer/carrier is entitled to a credit for temporary total disability benefits paid in excess of award, and if the claimant suffered compensable repetitive trauma injuries.

The Claimant contends she injured her right wrist due to pulling down on an air gun while working an assembly line on October 8, 2013. The Claimant also contends she sustained bilateral rotator cuff tears as a result of repetitive trauma injuries caused by years of overhead assembly line work. The Claimant also contends she sustained bilateral rotator cuff tears as a result of repetitive trauma injuries caused by years of overhead assembly line work while employed by the Employer. She seeks a finding of compensability of her right and left shoulder injuries and seeks a finding of entitlement to future medical treatment and reimbursement for past medical treatment. She further denies she has reached maximum medical improvement and denies the Defendants are entitled to stop payment of temporary total disability benefits.

The Defendants contend the Claimant has been released at maximum medical improvement for her admitted right wrist injury with restrictions to the right elbow, wrist, and hand of no repetitive work and lifting less than one pound with the right upper extremity and that any finding of disability should be in line with the impairment rating of 7% given by Dr. William Muirhead. The Defendants deny compensability of the alleged right and left shoulder injuries.

Defendants' APAs and Exhibits were incorrectly numbered due to a clerical error and APA 3 does not exist. Claimant's Counsel objected to Exhibits 13-15, 17-20, and 22. Defendants' Counsel agreed to remove Exhibits 13-15, 18-20, and 22. Exhibits 18 and 22 are the Claimant's deposition and Dr. Nahigian's deposition, respectively, which were both submitted separately as sealed copies to the undersigned. Exhibit 17 was not excluded and the undersigned agreed to give it the proper weight necessary.

EVIDENCE SUMMARY

The Claimant testified on her own behalf. At the time of the hearing, the Claimant, Dorothy Miller, was 58-years-old. She testified that she has obtained a GED and has been working various

labor jobs since age 14. Her prior work experience includes a car wash attendant, food service jobs, and various production and assembly line work.

The Claimant has worked for Husqvarna off and on since 1994. Her position with Husqvarna is a machine operator. The Claimant suffered an acute injury to her right arm when she pulled down on an overhead air gun. She felt a severe pain in her right wrist at that time. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96). The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05).

On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that the claimant was not at MMI currently and suggested a work hardening program. (Defendant's APA #8, pp. 821-22). The Claimant was referred to the Charleston Hand Group where she began

treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26). On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833).

The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59). The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49). From May 13, 2015 through June 30, 2015, the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81). On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83).

On July 16, 2015, the Claimant returned to Dr. Muirhead where she was noted to have continued pain in the CMC joint and discomfort in the forearm, but the primary location of her pain was the right shoulder secondary to a rotator cuff tear. Dr. Muirhead recommended a referral to a specialist for her shoulder, but because the shoulder injury was not found to be compensable by the Defendants, the Claimant reported her primary was treating her for the shoulder injuries. At that point, Dr. Muirhead found the Claimant had reached MMI for her right elbow, wrist, and hand. He

opined that she had a 7% permanent impairment to the right upper extremity and work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion (Defendant's APA #9, pp. 847; 851-53).

On September 22, 2015, the Claimant presented to Dr. Buckaloo complaining of bilateral shoulder pain for multiple years. This visit was not covered by or at the direction of the Defendants. Dr. Buckaloo noted decreased range of motion bilaterally in the shoulders, and he reviewed a July 17, 2015 MRI of the left shoulder and a July 28, 2015 MRI of the left shoulder that showed various tears and degenerative issues bilaterally that Dr. Buckaloo opined were age indeterminate but certainly chronic based on the atrophy of the associated supraspinatus muscle belly of the shoulders (Defendant's APA #5, pp. 807-11).

On November 11, 2015, the Claimant began treatment with Dr. Nahigian of Carolina Shoulder and Knee Specialists for her bilateral rotator cuff tears. Dr. Nahigian's treatment notes mentioned the cause of injury being overhead use of air guns (Claimant's APA #25, pp. 1923). His physical examination and review of radiology reports confirmed rotator cuff tears, and because she had exhausted conservative treatment, he proceeded with right shoulder arthroscopy, rotator cuff repair, distal clavicle resection, and subacromial decompression on December 8, 2015 (Claimant's APA #25, pp. 1923-27). The claimant underwent post-operative appointments with Dr. Nahigian for her right shoulder, but she has been unable to proceed with treatment on her left shoulder due to financial constraints (Claimant's APA #25, pp. 1930; 1934-40).

Dr. Nahigian has provided multiple opinion statements since March 2016 where he has stated that the Claimant's bilateral rotator cuff tears are work-related. On March 14, 2016, Dr. Nahigian completed a questionnaire at the request of Charles McCutchen, Esq. where he opined, to a reasonable degree of medical certainty, that the proximate cause of the Claimant's bilateral rotator

cuff tears was repetitive actions arising out of her employment. While Dr. Nahigian stated that no additional medical treatment or surgeries would be needed and she has reached maximum medical improvement, he clarified during his deposition that he thought questions 3, 4, and 5 were pertaining only to the right shoulder, which he had already repaired (Claimant's APA #26, pp. 1941-42; Dr. Nahigian's Deposition, p. 48, ll. 17-25, p. 49, ll. 1-6).

On May 26, 2016, Counsel for the Claimant sent a questionnaire to Dr. Nahigian where he responded, to a reasonable degree of medical certainty, that the Claimant suffered bilateral rotator cuff tears due to repetitive trauma injuries and that there was a direct causal relationship between the condition under which the work was performed and the injuries sustained. He stated that his opinion was based on the Claimant's history and symptoms reported as well as signs shown on physical examination. He opined that she would benefit from additional treatment (Claimant's APA #27, pp. 1943-45). #28, pp. 1946-47).

On June 27, 2016, Dr. Nahigian participated in a deposition where he testified that, to a reasonable degree of medical certainty, there was a causal connection between the Claimant's work and the repetitive trauma injuries to her bilateral shoulders. He testified that the damage in her right shoulder included severe changes to the right AC joint that are common with people doing her type of work (Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 20-21; p. 45, ll. 18-23; p. 46, ll. 2-14). In a July 1, 2016 follow up questionnaire after the deposition, Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the facts and information presented at his deposition, that nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the claimant would require future medical treatment for her left shoulder including but not limited to an MRI, surgery, and therapy. (Claimant's APA #28, pp. 1946-47).

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant sustained an admitted injury to the right wrist arising out of and in the course and scope of her employment when she pulled down on an air gun while working on an assembly line. (H.T. p. 4, ll. 5-9; Defendant's APA #5, p. 780).
3. The Claimant has alleged repetitive trauma exacerbations to her preexisting bilateral shoulder conditions including bilateral rotator cuff tears due to years of overhead work. (H.T. p. 8, l. 1-23; Defendant's APA #5, pp. 807-11).
4. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96).

5. The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05).
6. On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that the claimant was not at MMI currently and suggested a work hardening program. (Defendant's APA #8, pp. 821-22).
7. The Claimant was referred to the Charleston Hand Group where she began treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26).
8. On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833). The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59).
9. The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49).

From May 13, 2015 through June 30, 2015, the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81).

10. On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83).
11. On July 16, 2015, authorized treating physician Dr. William Muirhead of Charleston Hand Group completed a 14B where he placed the Claimant at maximum medical improvement for her right elbow, wrist, and hand and assigned a 7% permanent impairment rating. Additionally, Dr. Muirhead released the Claimant with work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion. Dr. Muirhead opined that the Claimant would not require future medical care for her right elbow, wrist, and hand. (Defendant's APA #9, p. 853).
12. On September 22, 2015, the Defendants obtained a one-time examination with Dr. Jerrold Buckaloo of South Carolina Orthopedic Institute. Dr. Buckaloo opined that the Claimant's MRIs of the shoulders were consistent with chronic retracted supraspinatus tendon injuries. Dr. Buckaloo also opined that while the bilateral shoulder injuries were age-indeterminate, they were certainly chronic given the atrophy of the associated supraspinatus muscle belly of the shoulder. (Defendants' APA #5, p. 811).

13. On March 14, 2016, Dr. Kevin Nahigian of Carolina Shoulder and Knee Specialists completed a post-operative questionnaire where he opined to a reasonable degree of medical certainty that the Claimant's bilateral rotator cuff tears were more likely than not the proximate result of her repetitive actions arising out of her employment. While Dr. Nahigian stated that no additional medical treatment or surgeries would be needed and she has reached maximum medical improvement, he clarified during his deposition that he thought questions 3, 4, and 5 were pertaining only to the right shoulder, which he had already repaired (Claimant's APA #26, pp. 1941-42; Dr. Nahigian's Deposition, p. 48, ll. 17-25, p. 49, ll. 1-6)
14. In a May 26, 2016 follow up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that the Claimant's bilateral rotator cuff tears were due to repetitive trauma and are causally related to her employment. He further opined that the Claimant would benefit from additional medical treatment for her shoulders and with time would be without restrictions permanently. (Claimant's APA #27, pp. 1943-44).
15. On May 31, 2016, the Defendants obtained a questionnaire from Dr. Buckaloo in which he opined that the Claimant was diagnosed with bilateral shoulder tendonitis prior to the October 8, 2013 right wrist injury and that most probably the cause of her bilateral shoulder complaints stems from preexisting conditions predating her October 8, 2013 right wrist injury. (Defendants' APA #21, pp. 1819-20).
16. In his June 27, 2016 deposition, Dr. Nahigian testified that, to a reasonable degree of medical certainty, there is a causal connection between the Claimant's work and the repetitive trauma injuries to her bilateral shoulders. He testified that the damage in

her right shoulder included severe changes to the right AC joint that are “very common in laborers, and it’s very common in people of her age group and people that has done repetitive things.” Dr. Nahigian affirmed that his treatment notes stated “[h]er job required many years of overhead activities and use of an airgun and this, no doubt, contributed to her degenerative process” and that opinion was based mostly “. . . on what she has on her findings and tests, whatever, clinical exam and what she has told me.” (Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 17-21; p. 45, ll. 18-23; p. 46, ll. 2-14).

17. In a July 1, 2016 follow-up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the facts and information presented at his deposition, nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the Claimant will require future medical treatment for her left shoulder including, but not limited to, an MRI, surgery, and therapy. (Claimant’s APA #28, pp. 1946-47).
18. As the physician who performed the Claimant’s right shoulder surgery and has most recently treated her, I give the greatest weight to Dr. Nahigian. Dr. Buckaloo only evaluated the Claimant one time on September 22, 2015, compared to Dr. Nahigian who evaluated the Claimant on numerous occasions, performed right shoulder surgery, and gave sworn deposition testimony. Dr. Nahigian’s opinions regarding causation and medical treatment are, therefore, given greater weight.
19. I find, by a preponderance of the evidence, that there is a causal connection established by the medical evidence between the Claimant’s repetitive activities that occurred while employed by the Employer while engaged in the regular duties of her

employment and the injuries to her right and left shoulders based on the deposition testimony, treatment records, and questionnaires answered by Dr. Nahigian. (Claimant's APAs 25-28; Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 20-21; p. 45, ll. 18-23; p. 46, ll. 2-14).

20. The Claimant did sustain a compensable repetitive trauma exacerbation to her right and left shoulders arising out of and in the course and scope of her employment with the Employer.
21. The Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally-related medical treatment as recommended by Dr. Nahigian.
22. The Claimant is entitled to, and the Defendants are responsible for, reimbursement for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
23. I find that the Claimant has not reached maximum medical improvement for her right arm, right shoulder, or left shoulder.
24. I find that a determination of permanency is premature at this time.
25. I find that the Defendants are not entitled to stop payment of temporary total disability benefits at this time.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under § 42-1-140, the Employer was a covered Employer.

2. Under S.C. Code Ann. § 42-1-160, the Claimant sustained a compensable injury to her right arm arising out of and in the course of her employment on October 8, 2013.
3. Under S.C. Code Ann. § 42-1-172, the Claimant sustained repetitive trauma injuries to her left and right shoulders which arose out of and occurred in the course and scope of her employment.
4. Under S.C. Code Ann. § 42-1-40, the Claimant's average weekly wage is \$361.18, yielding a compensation rate of \$240.79, and the Defendants are not entitled to a credit or allowed to stop payments of temporary total disability at this time.
5. Under S.C. Code Ann. § 42-15-60, the Claimant has not reached maximum medical improvement and requires additional treatment for her right arm, right shoulder, and left shoulder.
6. Under S.C. Code Ann. § 42-15-60, the Defendants shall authorize Dr. Nahigian as the treating physician for the right and left shoulder injuries.
7. Under S.C. Code Ann. § 42-15-60, the Defendants shall reimburse the Claimant for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
8. Under S.C. Code Ann. § 42-9-10, the Defendants shall continue payment of temporary total disability benefits.
9. Under S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30, a determination of the permanency of the Claimant's injuries is premature at this time.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant has not reached maximum

medical improvement for her right arm, right shoulder, or left shoulder injuries;

IT IS FURTHER ORDERED that the Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally related medical treatment as recommended by Dr. Nahigian;

IT IS FURTHER ORDERED that Defendants shall reimburse the Claimant for all out-of-pocket causally related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries;

IT IS SO ORDERED!



Commissioner Mike Campbell

Dated: November 9, 2016

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).

November 9, 2016

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

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

W.C.C. FILE NO.: 1318602

DOROTHY MILLER, EMPLOYEE/RESPONDENT,

-VS-

Husqvarna, EMPLOYER,

-and-

Ace American Insurance Company, DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia,
South Carolina on February 21, 2017 per notices timely
and properly served on all parties in interest.

Appellate Panel Decision and Order filed

May 2, 2017

APPEARANCES:

Richard C. Alexander, Esq., Shelly Leeke
Law Firm, North Charleston, South Carolina,
appearing on behalf of the
Claimant/Respondent.

Shelby G. Hapeshis, Esq., Huff & Hapeshis,
L.L.C., Irmo, South Carolina, appearing on
behalf of the Defendants/Appellants.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II on August 17, 2016 in Columbia, South Carolina. The hearing was to determine issues set forth in Defendants' Form 21. The purpose of the hearing was to determine if employer/carrier is entitled to pay compensation to the Claimant, if employer/carrier is entitled to a credit for temporary total disability benefits paid in excess of award, and if the claimant suffered compensable repetitive trauma injuries.

The Claimant contends she injured her right wrist due to pulling down on an air gun while working an assembly line on October 8, 2013. The Claimant also contends she sustained bilateral rotator cuff tears as a result of repetitive trauma injuries caused by years of overhead assembly line work while employed by the Employer. She seeks a finding of compensability of her right and left shoulder injuries and seeks a finding of entitlement to future medical treatment and reimbursement for past medical treatment. She further denies she has reached maximum medical improvement and denies the Defendants are entitled to stop payment of temporary total disability benefits.

The Defendants contend the Claimant has been released at maximum medical improvement for her admitted right wrist injury with restrictions to the right elbow, wrist, and hand including no repetitive work and lifting less than one pound with the right upper extremity. The Defendants further contend that any finding of disability should be in line with the impairment rating of 7% given by Dr. William Muirhead. The Defendants deny compensability of the alleged right and left shoulder injuries.

Defendants' APAs and Exhibits were incorrectly numbered due to a clerical error and APA 3 does not exist. Claimant's Counsel objected to Exhibits 13-15, 17-20, and 22. Defendants' Counsel agreed to remove Exhibits 13-15, 18-20, and 22. Exhibits 18 and 22 are the Claimant's deposition and Dr. Nahigian's deposition, respectively, which were both submitted separately as

sealed copies to the undersigned. Exhibit 17 was not excluded and the undersigned agreed to give it the proper weight necessary.

On November 9, 2016, Commissioner Campbell issued the following:

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant sustained an admitted injury to the right wrist arising out of and in the course and scope of her employment when she pulled down on an air gun while working on an assembly line. (H.T. p. 4, ll. 5-9; Defendant's APA #5, p. 780).
3. The Claimant has alleged repetitive trauma exacerbations to her preexisting bilateral shoulder conditions including bilateral rotator cuff tears due to years of overhead work. (H.T. p. 8, l. 1-23; Defendant's APA #5, pp. 807-11).
4. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal

tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96).

5. The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05).
6. On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that the claimant was not at MMI currently and suggested a work hardening program. (Defendant's APA #8, pp. 821-22).
7. The Claimant was referred to the Charleston Hand Group where she began treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26).
8. On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833). The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59).

9. The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49). From May 13, 2015 through June 30, 2015, the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81).
10. On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83).
11. On July 16, 2015, authorized treating physician Dr. William Muirhead of Charleston Hand Group completed a 14B where he placed the Claimant at maximum medical improvement for her right elbow, wrist, and hand and assigned a 7% permanent impairment rating. Additionally, Dr. Muirhead released the Claimant with work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion. Dr. Muirhead opined that the Claimant would not require future medical care for her right elbow, wrist, and hand. (Defendant's APA #9, p. 853).
12. On September 22, 2015, the Defendants obtained a one-time examination with Dr. Jerrold Buckaloo of South Carolina Orthopedic Institute. Dr. Buckaloo opined that the Claimant's MRIs of the shoulders were consistent with chronic retracted supraspinatus tendon injuries. Dr. Buckaloo also opined that while the bilateral shoulder injuries were age-indeterminate, they were certainly chronic given the

atrophy of the associated supraspinatus muscle belly of the shoulder. (Defendants' APA #5, p. 811).

13. On March 14, 2016, Dr. Kevin Nahigian of Carolina Shoulder and Knee Specialists completed a post-operative questionnaire where he opined to a reasonable degree of medical certainty that the Claimant's bilateral rotator cuff tears were more likely than not the proximate result of her repetitive actions arising out of her employment. While Dr. Nahigian stated that no additional medical treatment or surgeries would be needed and she has reached maximum medical improvement, he clarified during his deposition that he thought questions 3, 4, and 5 were pertaining only to the right shoulder, which he had already repaired (Claimant's APA #26, pp. 1941-42; Dr. Nahigian's Deposition, p. 48, ll. 17-25, p. 49, ll. 1-6)
14. In a May 26, 2016 follow up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that the Claimant's bilateral rotator cuff tears were due to repetitive trauma and are causally related to her employment. He further opined that the Claimant would benefit from additional medical treatment for her shoulders and with time would be without restrictions permanently. (Claimant's APA #27, pp. 1943-44).
15. On May 31, 2016, the Defendants obtained a questionnaire from Dr. Buckaloo in which he opined that the Claimant was diagnosed with bilateral shoulder tendonitis prior to the October 8, 2013 right wrist injury and that most probably the cause of her bilateral shoulder complaints stems from preexisting conditions predating her October 8, 2013 right wrist injury. (Defendants' APA #21, pp. 1819-20).

16. In his June 27, 2016 deposition, Dr. Nahigian testified that, to a reasonable degree of medical certainty, there is a causal connection between the Claimant's work and the repetitive trauma injuries to her bilateral shoulders. He testified that the damage in her right shoulder included severe changes to the right AC joint that are "very common in laborers, and it's very common in people of her age group and people that has done repetitive things." Dr. Nahigian affirmed that his treatment notes stated "[h]er job required many years of overhead activities and use of an air gun and this, no doubt, contributed to her degenerative process" and that opinion was based mostly "... on what she has on her findings and tests, whatever, clinical exam and what she has told me." (Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 17-21; p. 45, ll. 18-23; p. 46, ll. 2-14).
17. In a July 1, 2016 follow-up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the facts and information presented at his deposition, nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the Claimant will require future medical treatment for her left shoulder including, but not limited to, an MRI, surgery, and therapy. (Claimant's APA #28, pp. 1946-47).
18. As the physician who performed the Claimant's right shoulder surgery and has most recently treated her, I give the greatest weight to Dr. Nahigian. Dr. Buckaloo only evaluated the Claimant one time on September 22, 2015, compared to Dr. Nahigian who evaluated the Claimant on numerous occasions, performed right shoulder surgery, and gave sworn deposition testimony. Dr. Nahigian's opinions regarding causation and medical treatment are, therefore, given greater weight.

19. I find, by a preponderance of the evidence, that there is a causal connection established by the medical evidence between the Claimant's repetitive activities that occurred while employed by the Employer while engaged in the regular duties of her employment and the injuries to her right and left shoulders based on the deposition testimony, treatment records, and questionnaires answered by Dr. Nahigian. (Claimant's APAs 25-28; Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 20-21; p. 45, ll. 18-23; p. 46, ll. 2-14).
20. The Claimant did sustain a compensable repetitive trauma exacerbation to her right and left shoulders arising out of and in the course and scope of her employment with the Employer.
21. The Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally-related medical treatment as recommended by Dr. Nahigian.
22. The Claimant is entitled to, and the Defendants are responsible for, reimbursement for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
23. I find that the Claimant has not reached maximum medical improvement for her right arm, right shoulder, or left shoulder.
24. I find that a determination of permanency is premature at this time.
25. I find that the Defendants are not entitled to stop payment of temporary total disability benefits at this time.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under § 42-1-140, the Employer was a covered Employer.
2. Under S.C. Code Ann. § 42-1-160, the Claimant sustained a compensable injury to her right arm arising out of and in the course of her employment on October 8, 2013.
3. Under S.C. Code Ann. § 42-1-172, the Claimant sustained repetitive trauma injuries to her left and right shoulders which arose out of and occurred in the course and scope of her employment.
4. Under S.C. Code Ann. § 42-1-40, the Claimant's average weekly wage is \$361.18, yielding a compensation rate of \$240.79, and the Defendants are not entitled to a credit or allowed to stop payments of temporary total disability at this time.
5. Under S.C. Code Ann. § 42-15-60, the Claimant has not reached maximum medical improvement and requires additional treatment for her right arm, right shoulder, and left shoulder.
6. Under S.C. Code Ann. § 42-15-60, the Defendants shall authorize Dr. Nahigian as the treating physician for the right and left shoulder injuries.
7. Under S.C. Code Ann. § 42-15-60, the Defendants shall reimburse the Claimant for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
8. Under S.C. Code Ann. § 42-9-10, the Defendants shall continue payment of temporary total disability benefits.
9. Under S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30, a determination of the permanency of the Claimant's injuries is premature at this time.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant has not reached maximum medical improvement for her right arm, right shoulder, or left shoulder injuries;

IT IS FURTHER ORDERED that the Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally related medical treatment as recommended by Dr. Nahigian;

IT IS FURTHER ORDERED that Defendants shall reimburse the Claimant for all out-of-pocket causally related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries;

IT IS SO ORDERED!

Within the statutory period, the Defendants filed a Form 30 Application for Review in the case setting forth their grounds for appeal, copies of which were furnished to all interested parties prior to oral argument before the Appellate Panel on February 21, 2017. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In their Form 30 Application for Review, the Defendants questioned whether Commissioner Campbell erred in finding as a matter of fact and law that the Claimant sustained a compensable injury by accident to her shoulders, the Claimant met her burden of proof for establishing compensable repetitive trauma injuries to her shoulders, the Claimant is entitled temporary total disability benefits, the Claimant met her burden of proof for establishing her entitlement to temporary total disability benefits, the Claimant is entitled to reimbursement for medical treatment previously sought for her shoulders, the Claimant is entitled to medical

treatment for her shoulders, the Claimant met her burden of proof for establishing her entitlement to medical treatment for her shoulders, in appointing Dr. Nahigian as the authorized treating physician, and in not finding the Claimant was at maximum medical improvement and the Defendants were entitled to an overpayment. In their Brief to the Appellate Panel, the Defendants requested that the Order of the Single Commissioner be reversed in its entirety, that the Claimant be found at maximum medical improvement for her accepted right arm injury, and that the Defendants be reimbursed for overpayment of benefits.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. 42-17-50 (1985), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusion of Law consistent with or inconsistent with those of the Hearing Commissioner. While it is well-established that the Commission is the ultimate finder in workers' compensation cases and is not necessarily bound by the Hearing Commissioner's Findings of Fact, "it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion..." *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967); *Muir v. C.R. Bared, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (S.C. Ct. App. 1999).

Based upon a review of the foregoing, the Panel has determined that the Hearing Commissioner did not err in his Findings of Fact, Rulings of Law, and Orders. The Appellate Panel of the Full Commission finds that the overwhelming weight of the evidence in the record supports finding the Claimant has sustained repetitive trauma injuries to her bilateral shoulders, is entitled to additional medical treatment for her bilateral shoulders by Dr. Nahigian, has not reached maximum medical improvement, is entitled to ongoing temporary total disability benefits, and is entitled to reimbursement for medical expenses she incurred to date for her bilateral shoulders. The Appellate

Panel hereby **AFFIRMS** the Hearing Commissioner's Decision and Order and enters the following Findings of Fact and Order as its own.

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant sustained an admitted injury to the right wrist arising out of and in the course and scope of her employment when she pulled down on an air gun while working on an assembly line. (H.T. p. 4, ll. 5-9; Defendant's APA #5, p. 780).
3. The Claimant has alleged repetitive trauma exacerbations to her preexisting bilateral shoulder conditions including bilateral rotator cuff tears due to years of overhead work. (H.T. p. 8, l. 1-23; Defendant's APA #5, pp. 807-11).
4. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96).

5. The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05).
6. On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that the claimant was not at MMI currently and suggested a work hardening program. (Defendant's APA #8, pp. 821-22).
7. The Claimant was referred to the Charleston Hand Group where she began treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26).
8. On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833). The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59).
9. The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49).

From May 13, 2015 through June 30, 2015, the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81).

10. On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83).
11. On July 16, 2015, authorized treating physician Dr. William Muirhead of Charleston Hand Group completed a 14B where he placed the Claimant at maximum medical improvement for her right elbow, wrist, and hand and assigned a 7% permanent impairment rating. Additionally, Dr. Muirhead released the Claimant with work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion. Dr. Muirhead opined that the Claimant would not require future medical care for her right elbow, wrist, and hand. (Defendant's APA #9, p. 853).
12. On September 22, 2015, the Defendants obtained a one-time examination with Dr. Jerrold Buckaloo of South Carolina Orthopedic Institute. Dr. Buckaloo opined that the Claimant's MRIs of the shoulders were consistent with chronic retracted supraspinatus tendon injuries. Dr. Buckaloo also opined that while the bilateral shoulder injuries were age-indeterminate, they were certainly chronic given the atrophy of the associated supraspinatus muscle belly of the shoulder. (Defendants' APA #5, p. 811).

13. On March 14, 2016, Dr. Kevin Nahigian of Carolina Shoulder and Knee Specialists completed a post-operative questionnaire where he opined to a reasonable degree of medical certainty that the Claimant's bilateral rotator cuff tears were more likely than not the proximate result of her repetitive actions arising out of her employment. While Dr. Nahigian stated that no additional medical treatment or surgeries would be needed and she has reached maximum medical improvement, he clarified during his deposition that he thought questions 3, 4, and 5 were pertaining only to the right shoulder, which he had already repaired (Claimant's APA #26, pp. 1941-42; Dr. Nahigian's Deposition, p. 48, ll. 17-25, p. 49, ll. 1-6)
14. In a May 26, 2016 follow up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that the Claimant's bilateral rotator cuff tears were due to repetitive trauma and are causally related to her employment. He further opined that the Claimant would benefit from additional medical treatment for her shoulders and with time would be without restrictions permanently. (Claimant's APA #27, pp. 1943-44).
15. On May 31, 2016, the Defendants obtained a questionnaire from Dr. Buckaloo in which he opined that the Claimant was diagnosed with bilateral shoulder tendonitis prior to the October 8, 2013 right wrist injury and that most probably the cause of her bilateral shoulder complaints stems from preexisting conditions predating her October 8, 2013 right wrist injury. (Defendants' APA #21, pp. 1819-20).
16. In his June 27, 2016 deposition, Dr. Nahigian testified that, to a reasonable degree of medical certainty, there is a causal connection between the Claimant's work and the repetitive trauma injuries to her bilateral shoulders. He testified that the damage in

her right shoulder included severe changes to the right AC joint that are “very common in laborers, and it’s very common in people of her age group and people that has done repetitive things.” Dr. Nahigian affirmed that his treatment notes stated “[h]er job required many years of overhead activities and use of an air gun and this, no doubt, contributed to her degenerative process” and that opinion was based mostly “. . . on what she has on her findings and tests, whatever, clinical exam and what she has told me.” (Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 17-21; p. 45, ll. 18-23; p. 46, ll. 2-14).

17. In a July 1, 2016 follow-up questionnaire, Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the facts and information presented at his deposition, nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the Claimant will require future medical treatment for her left shoulder including, but not limited to, an MRI, surgery, and therapy. (Claimant’s APA #28, pp. 1946-47).
18. As the physician who performed the Claimant’s right shoulder surgery and has most recently treated her, we give the greatest weight to Dr. Nahigian. Dr. Buckaloo only evaluated the Claimant one time on September 22, 2015, compared to Dr. Nahigian who evaluated the Claimant on numerous occasions, performed right shoulder surgery, and gave sworn deposition testimony. Dr. Nahigian’s opinions regarding causation and medical treatment are, therefore, given greater weight.
19. We find, by a preponderance of the evidence, that there is a causal connection established by the medical evidence between the Claimant’s repetitive activities that occurred while employed by the Employer while engaged in the regular duties of her

employment and the injuries to her right and left shoulders based on the deposition testimony, treatment records, and questionnaires answered by Dr. Nahigian. (Claimant's APAs 25-28; Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 20-21; p. 45, ll. 18-23; p. 46, ll. 2-14).

20. The Claimant did sustain a compensable repetitive trauma exacerbation to her right and left shoulders arising out of and in the course and scope of her employment with the Employer.
21. The Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally-related medical treatment as recommended by Dr. Nahigian.
22. The Claimant is entitled to, and the Defendants are responsible for, reimbursement for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
23. We find that the Claimant has not reached maximum medical improvement for her right arm, right shoulder, or left shoulder.
24. We find that a determination of permanency is premature at this time.
25. We find that the Defendants are not entitled to stop payment of temporary total disability benefits at this time.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under § 42-1-140, the Employer was a covered Employer.

2. Under S.C. Code Ann. § 42-1-160, the Claimant sustained a compensable injury to her right arm arising out of and in the course of her employment on October 8, 2013.
3. Under S.C. Code Ann. § 42-1-172, the Claimant sustained repetitive trauma injuries to her left and right shoulders which arose out of and occurred in the course and scope of her employment.
4. Under S.C. Code Ann. § 42-1-40, the Claimant's average weekly wage is \$361.18, yielding a compensation rate of \$240.79, and the Defendants are not entitled to a credit or allowed to stop payments of temporary total disability at this time.
5. Under S.C. Code Ann. § 42-15-60, the Claimant has not reached maximum medical improvement and requires additional treatment for her right arm, right shoulder, and left shoulder.
6. Under S.C. Code Ann. § 42-15-60, the Defendants shall authorize Dr. Nahigian as the treating physician for the right and left shoulder injuries.
7. Under S.C. Code Ann. § 42-15-60, the Defendants shall reimburse the Claimant for all out-of-pocket causally-related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries.
8. Under S.C. Code Ann. § 42-9-10, the Defendants shall continue payment of temporary total disability benefits.
9. Under S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30, a determination of the permanency of the Claimant's injuries is premature at this time.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant has not reached maximum

medical improvement for her right arm, right shoulder, or left shoulder injuries;

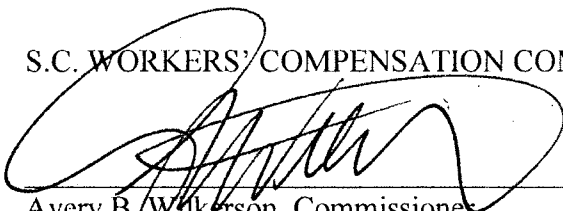
IT IS FURTHER ORDERED that the Defendants are to authorize Dr. Nahigian as the treating physician and the Claimant is entitled to all causally related medical treatment as recommended by Dr. Nahigian;

IT IS FURTHER ORDERED that Defendants shall reimburse the Claimant for all out-of-pocket causally related medical expenses, including but not limited to office visits, surgery, medications, co-pays, and mileage, incurred as a result of the compensable right arm, right shoulder, and left shoulder injuries;

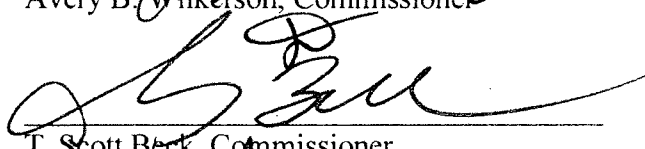
IT IS SO ORDERED!

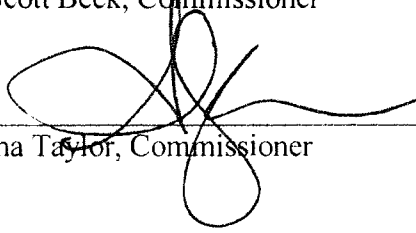
Full affidavit - [Signature]

S.C. WORKERS' COMPENSATION COMMISSION


Avery B. Wilkerson, Commissioner

WE CONCUR:


T. Scott Beck, Commissioner


Aisha Taylor, 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 Hollmon on May 2, 2017

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

EMPLOYER (NAME & ADDRESS INCL ZIP) Husqvarna - 3601 HIGHWAY 33 - OLD CAMERON ROAD ORANGEBURG SC 291161687		CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG NUMBER 19772	REPORT PURPOSE CODE UNK
INDUSTRY CODE		EMPLOYER FEIN	JURISDICTION SC	JURISDICTION CLAIM NUMBER
INSURED REPORT NUMBER		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		
LOCATION # 3601		PHONE # (803)536-3285		
CARRIER/CLAIMS ADMINISTRATOR				
CARRIER (NAME, ADDRESS, & PHONE #)		POLICY PERIOD TO		
CHECK IF APPROPRIATE ☐ SELF INSURANCE		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) Gallagher Bassett 8210 University Executive Park Dr. - #250 Charlotte NC 28292 (704) 547-1586		
CARRIER FEIN UNK	POLICY/SELF-INSURED NUMBER		ADMINISTRATOR FEIN 36-3365500	
AGENT NAME & CODE NUMBER UNK UNK				
EMPLOYEE/WAGE				
NAME (LAST, FIRST, MIDDLE) MILLER, DOROTHY		DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE HIRED 11/16/2011 SC
ADDRESS (INCL ZIP) 105 GIZMO RD ORANGEBURG, SC 29115 USA		SEX ☐ Male ☒ Female ☐ Unknown	MARITAL STATUS ☐ Unmarried/Single/Divorced ☒ Married ☐ Separated ☐ Unknown	OCCUPATION/JOB TITLE ASSEMBLER
PHONE (803)937-0720		# OF DEPENDENTS 2	EMPLOYMENT STATUS ACTIVE	
RATE PER: \$9.00		☐ DAY ☐ MONTH ☒ OTHER: HOURLY	DAYS WORKED/WEEK 5	FULL PAY FOR DAY OF INJURY? ☒ YES ☐ NO
				DID SALARY CONTINUE? ☒ YES ☐ NO
OCCURRENCE/TREATMENT				
TIME EMPLOYEE BEGAN WORK 05:00	☒ AM ☐ PM	DATE OF INJURY/ILLNESS 10/02/2013	TIME OF OCCURRENCE ☐ CANNOT BE DETERMINED 09:00	LAST WORK DATE
CONTACT NAME/PHONE NUMBER MARILYN TILLEY (803)533-4869		TYPE OF INJURY/ILLNESS SPECIFIC INJURY - STRAIN		DATE EMPLOYER NOTIFIED 10/02/2013
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? ☒ YES ☐ NO		TYPE OF INJURY/ILLNESS CODE 52		DATE DISABILITY BEGAN 10/02/2013
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED CONSUMER OUTDOOR-ORANGEBURG, SC - HIGHWAY 33		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED AIR GUN		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED TIGHTENING BOLTS		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED TIGHTENING BOLTS		
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL. EE is experiencing pain from using an air gun to her right wrist and hand.				CAUSE OF INJURY CODE 59
DATE RETURN(ED) TO WORK 10/02/2013	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? ☐ YES ☐ NO		
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) GREGORY SINGLETON 1620 BROUGHTON ST ORANGEBURG SC 29115		WERE THEY USED? ☐ YES ☐ NO		
HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS) ORANGEBURG PRIMARY PREVENTIVE 1620 BROUGHTON ST ORANGEBURG SC 29115		INITIAL TREATMENT 0 ☐ No Medical Treatment 1 ☐ MINOR BY EMPLOYER 2 ☒ MINOR CLINIC/HOSP 3 ☐ EMERGENCY CARE 4 ☐ HOSPITALIZED > 24 HOURS 5 ☐ FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED		
OTHER				
WITNESSES (NAME & PHONE #)				
DATE ADMINISTRATOR NOTIFIED	DATE PREPARED 10/08/2013	PREPARER'S NAME & TITLE MARILYN TILLEY via Phone (HEALTH ADMINISTRATOR)		PHONE NUMBER (803)533-4869

WCC FORM 12A
REV. DATE 04/06

SEE INSTRUCTIONS FOR IMPORTANT INFORMATION.

REPRINTED WITH PERMISSION OF IAIABC

118697198 10/08/2013

Supplementals

Report# 118697198

Additional State Information

For which state are payroll taxes withheld for the employee? SOUTH CAROLINA

Additional Employee Contact Information

What is the claimant's cell number?

Additional Dissemination Information

Would you like a fax or email copy of this report? EMAIL

What is the Recipient's Name?

What is the Recipient's Email Address? marilyn.tilley@husqvarnagroup.com

Additional Information

Type of Medical Treatment MINOR: CLINIC/HOSPITAL

OSHA Information

Was the Employee treated in an Emergency Room? NO

Was the Employee hospitalized overnight as an In-patient? NO

OSHA Case #, Log 300 #, or equivalent #: 19772

Time Employee began work? 5:00 AM

Identify the object or the substance that directly harmed the Employee: AIR GUN

What was employee doing when incident occurred? (be specific) TIGHTENING UP BOLTS USING THE AIR GUN

Notes

Notes/Additional Comments NONE

Additional Escalation Criteria

Does this claim meet any escalation criteria below? NO

Data Entry Team Only

FMS#

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



WCC File #: New claim
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Dorothy Miller SSN: [REDACTED] Employer's Name: Husqvarna
Address: 105 Gizmo Road Address: 172 Old Ellöree Road
City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29111
Home Phone: (803) 937-0720 Work Phone: () Insurance Carrier: Ace American Insurance Company
Preparer's Name: J. Christopher Wilson Law Firm: Wilson & Luginbill, LLC Preparer's Phone #: (803) 245-7799

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

Date of Injury or Illness: 10/08/13

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

1. The claimant sustained an injury to right wrist (Part(s) of Body Injured) on 10/08/13 (Month/Day/Year) in Orangeburg county, state of SC.
2. Body part(s) affected are: right wrist.
3. Briefly describe how the accident occurred. Claimant was using an air gun and wrist started hurting.
4. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
5. The relationship of employer and employee existed at the time of injury.
6. At the time of the injury the claimant was performing services arising out of and in the course of employment.
7. Notice of the accidental injury was given to the Employer on 10/08/13 (Month/Day/Year) in the following manner:
Verbally to supervisor

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: right wrist

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
10/08/13 to present as applicable

☒ 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:
Scarring due to surgery

10a. At the time of the injury, the Claimant was paid weekly wages of \$360.00, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
none

11. Further grounds or unusual aspects of claim:
none

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 attached

11b. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

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

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: _____

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

☐ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to see attached certificate of service

address _____ on the _____ day of _____ 20____ 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: [Signature] attorney Title chris@wiklawfirm.com Email 10/22/14 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

0041

Dorothy Miller Medical Providers
10/08/13 work injury

TRMC
3000 St. Matthews Road
Orangeburg, SC 29115

Midlands Orthopaedics
1910 Blanding Street
Columbia, SC 29201-3520

SC Orthopaedic Institute
1175 Cooke Road, Suite 215
Orangeburg, SC 29115

Orangeburg Primary Preventative &
1620 Broughton Street
Orangeburg, SC 29116

Duckett Physical Therapy &
Sports Rehabilitation Center
P.O. Box 2429
Orangeburg, SC 29115

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



WCC File #: **1318602 AMENDED**
Carrier File #: **002754-031923-WC-01**
Carrier Code #: **01223**
Employer FEIN #: **261596414**

Claimant's Name: Dorothy Miller SSN: [REDACTED] Employer's Name: Husqvarna
Address: 105 Gizmo Road Address: 172 Old Elmore Road
City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29115
Home Phone: (803) 937-0720 Work Phone: () - Insurance Carrier: Ace American Insurance Company
Preparer's Name: J. Christopher Wilson Law Firm: Wilson & Luginbill, LLC Preparer's Phone #: (803) 245-7799

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

Date of Injury or Illness: 10/08/13

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

1. The claimant sustained an injury to right wrist, right arm and both shoulders (Part(s) of Body Injured) on 10/08/13 (Month/Day/Year) in Orangeburg county, state of SC.
2. Body part(s) affected are: right wrist, right arm and both shoulders
Briefly describe how the accident occurred: Claimant was using an air gun and wrist, arm and shoulders started hurting
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/08/13 (Month/Day/Year) in the following manner:
Verbally to supervisor

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

☒ (a) medical examination and treatment for: Right and left shoulder

☒ (b) additional medical examination and treatment for: right wrist, right arm

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 10/08/13 to present as applicable

☒ 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:
Scarring due to surgery

10a. At the time of the injury, the Claimant was paid weekly wages of \$360.00, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
none

11. Further grounds or unusual aspects of claim:
none

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 attached

11b. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

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

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: _____

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

☐ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to see attached certificate of service

address _____ on the 22 day of July, 2013 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 [Signature]

attorney
Title

chris@wiklawfirm.com
Email

07/27/2015
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

Filing Claim
0043 *[Signature]*

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737.5675 www.wcc.sc.gov



WCC File #: 1318602
Carrier File #: 002754-031923-WC-01
Carrier Code #:
Employer FEIN #:

Claimant's Name: Dorothy Miller SSN: [REDACTED] Employer's Name: Husqvarna
Address: 105 Gizmo Road, Address: P.O. Box 1687, 172 Old Ellore Road
City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29116
Home Phone: (803-937-0720) Work Phone: Insurance Carrier: Ace American Insurance Company
Preparer's Name: Shelby G. Hapeshis, Esquire Law Firm: Huff Law Firm, LLC Preparer's Phone #: (803) 252-2322

The date of injury reported on Form 12A is: 10/8/13 (m/d/yyyy)

Check appropriate section(s). The Employer's Representative requests a hearing to:

- I. ☒ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 07/16/15 (m/d/yyyy) (copy of medical report must be attached).

Compensation payments are current as of 08/04/15 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.

A Form 17 was offered and refused on 08/11/15 (m/d/yyyy).

- II. ☐ **Address suspension, termination, or reduction of temporary disability payments for any cause.**

☐ a. At any time pursuant to § 42-9-260(E).

☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

- III. ☒ **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant received a 7% impairment to the right upper extremity by Dr. Murihead on 07/16/15

Claimant reached maximum medical improvement on 07/16/15 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V. ☐ **Determine amount of compensation for claims involving a fatality.**

☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.

☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

- VI. ☐ **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.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.

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 J. Christopher Wilson at Wilson Luginbill & Kirkland, LLC, 3056 Railroad Avenue, P.O. Box 1150, Bamberg, SC 29003 on the 14 day of August, 2015, by

☒ first class postage ☐ certified mail ☐ personal service.

A \$25.00 filing fee and updated Form 18 is required.

Shelby G. Hapeshis
Preparer's Signature

Attorney
Title

shapeshis@colalaw.com
Email

8/12/15
Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov Refer to Regulations 67-211, 67-504, 67-505, 67-506, and 67-510.

South Carolina Workers' Compensation Commission

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

WCC File #: **1318602**Carrier File #: **002754-031923-WC-01**

Carrier Code #:

Employer FEIN #:

Claimant's Name: Dorothy Miller SSN: [REDACTED] Employer's Name: Husqvarna
 Address: 105 Gizmo Road Address: P.O. Box 1687, 172 Old Ellore Road
 City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29116
 Home Phone: (803-937-0720) Work Phone: _____ Insurance Carrier: Ace American Insurance Company
 Preparer's Name: Shelby G. Hapeshis, Esquire Law Firm: Huff & Hapeshis, LLC Preparer's Phone #: (803) 252-2322

The date of injury reported on Form 12A is: 10/8/13 (m/d/yyyy)**Check appropriate section(s). The Employer's Representative requests a hearing to:**

- I. ☒ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 07/16/15 (m/d/yyyy) (copy of medical report must be attached).Compensation payments are current as of 04/12/16 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.A Form 17 was offered and refused on 04/14/16 (m/d/yyyy).II. ☐ **Address suspension, termination, or reduction of temporary disability payments for any cause.**☐ a. At any time pursuant to § 42-9-260(E).☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

III. ☒ **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant received a 7% impairment to the right upper extremity by Dr. Murihead on 07/16/15

Claimant reached maximum medical improvement on 07/16/15 (m/d/yyyy) (copy of medical report must be attached).IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**V. ☐ **Determine amount of compensation for claims involving a fatality.**☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.VI. ☐ **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.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.

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: see attached certificate of service on the 15 day of APRIL 2016 by ☒ first class postage ☒ certified mail ☐ personal service.

A \$25.00 filing fee and updated Form 18 is required.

Preparer's Signature

Attorney
Titleshapeshis@huffandhapeshis.com
Email

Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov.
 Refer to Regulations 67-211, 67-504, 67-505, 67-506, and 67-510.



Claimant's Name: Dorothy Miller SSN: _____ Employer's Name: Husqvarna
Address: 1268 Douglas MacArthur Street Address: P.O. Box 1687
City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29116
Home Phone: _____ Work Phone: _____ Insurance Carrier: ACE American Insurance Co.
Preparer's Name: Shelby G. Hapeshis Law Firm: Huff & Hapeshis Preparer's Phone #: 803-252-2232

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 10/08/2013 (m/d/yyyy)

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

See attached addendum

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

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Chip Alexander, Esquire-Shelly Leeké Law Firm
address 3614 Ashley Phosphate Road, North Charleston, SC 29418 on the 21 day of November 2013
by first class postage certified mail personal service.

Shelby G. H.
Preparer's Signature

Attorney
Title

shapeshis@huffandhapeshis.com
Email

11/21/13
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32 if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Dorothy Miller v. Husqvarna
WCC File No. 1318602

Form 30 Addendum

1. Did the Single Commissioner err in finding as fact that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the preponderance of the evidence does not support the fact that the Claimant sustained an injury from the accident?
2. Did the Single Commissioner err in finding as fact that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the Claimant did not meet his burden of proof that he sustained an injury from the accident?
3. Did the Single Commissioner err in concluding as a matter of law that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the preponderance of the evidence does not support the fact that the Claimant sustained an injury from the accident?
4. Did the Single Commissioner err in concluding as a matter of law that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the Claimant did not meet his burden of proof that he sustained an injury from the accident?
5. Did the Single Commissioner err in finding as fact that the Claimant is entitled to temporary total disability benefits, the error being that the preponderance of the evidence does not support the finding?
6. Did the Single Commissioner err in finding as fact that the Claimant is entitled to temporary total disability benefits, the error being that the Claimant did not meet his burden of proof?

7. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to temporary total disability benefits, the error being that the preponderance of the evidence does not support the finding?
8. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to temporary total disability benefits, the error being that the Claimant did not meet his burden of proof?
9. Did the Single Commissioner err in finding as fact that the Claimant is entitled to medical treatment, the error being that the preponderance of the evidence does not support the finding?
10. Did the Single Commissioner err in finding as fact that the Claimant is entitled to medical treatment, the error being that the Claimant did not meet his burden of proof?
11. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to medical treatment for her arms and shoulders, the error being that the preponderance of the evidence does not support the finding?
12. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to medical treatment for her arms and shoulders, the error being that the Claimant did not meet his burden of proof?
13. Did the Single Commissioner err in appointing Dr. Nahigian as the authorized treating facility, the error being that the defendants have the right to choose the treating physician pursuant to McKinney v. Kimberly Clark Corp.?
14. Did the Single Commissioner err in determining that the claimant was not at MMI for her wrist injuries and the defendants were not entitled to an overpayment, the error being that this finding is not supported by the evidence and is an error of law?

15. Did the Single Commissioner err in determining that the defendants are responsible for all previously sought medical treatment for the arms and shoulders, the error being that this finding is not supported by the evidence and is an error of law?



Claimant's Name: Dorothy Miller Employer's Name: Husqvarna
Address: 1268 Douglas McArthur Street Address: PO Box 1687, 172 Old Elloree Road
City: Orangeburg State: SC Zip: 29115 City: Orangeburg State: SC Zip: 29116
Home Phone: (803) 997-2522 Work Phone: _____ Carrier: Ace American Insurance Company
Preparer's Name: Chip Alexander Preparer's Phone #: (843) 297-8485

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

☒ Injury ☐ Illness ☒ Repetitive Trauma

1. Compensation Rate: \$ 240.80 2. AWW: 361.18 Date of Injury: 10/08/2013
3. Type of injury and body part(s): Right Arm, Right Shoulder, Left Shoulder
4. Facts in controversy: 1) Whether Claimant sustained a repetitive trauma injury to the left and right shoulders in the course and arising out of her employment with the Employer. 2) Whether Claimant is entitled to past, present, and future temporary total disability benefits. 3) Whether Claimant has reached MMI for her right arm and, if so, as of what date. 4) Extent of disability to Claimant for the accepted injury to the right arm
5. Legal issues involved: (1) Nature and extent of injury- § 42-1-160; § 42-1-172; All consequences of an injury are compensable; Mullinax v. Winn Dixie Stores, 458 S.E. 2d 76 (Ct. App. 1995); Whitfield v. Daniel Construction, 83 S.E.2d 460 (1954). (2) Claimant is entitled to past, present and ongoing medical treatment- § 42-15-60; Dodge v. Brucoli, 514 S.E.2d 593 (Ct. App. 1999). (3) The Claimant's entitlement to past, present and future temporary compensation- § 42-9-10; (4) If at MMI the Claimant's entitlement to disability - § 42-9-30 (14) Linen v. Ruscon Construction Co., 332 S.E.2d 211 (1985); Bateman v. Town & Country, 336 S.E.2d 890 (Ct. App. 1985); McCollum v. Singer, 386 S.E.2d 471 (Ct. App. 1989) and 67-1101.
6. Unusual aspects: Claimant request record be held open for submission of medical questionnaire from Dr. Nahigian
7. Witnesses (designate if expert):* Claimant; any and all witnesses listed by the Defendant
8. Exhibits: Any and all exhibits listed by the Defendant
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of the Claimant.
10. Name, address, and specialty, if any, of the treating physician: Dr. Kevin Nahigian; Orthopaedic Specialist 810 Mallet Hill Rd., Columbia, SC; Regional Medical Center, 3000 St. Matthews Rd., Orangeburg, SC; Dr. Muirhead Charleston Hand Group 1483 Tobias Gadson Blvd., Charleston, SC; Midlands Orthopaedics 1910 Blanding St., Columbia, SC; Duckett Physical Therapy PO Box 2429 Orangeburg, SC
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Muirhead - 7% right arm; 7/16/15
12. I am amending my Form 50/51 in the following manner: n/a

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801.8.
☐ 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 the form are accurate and true to the best of my knowledge.

I certify I have served the document pursuant to Reg. 67-211 by delivering a copy to Shelby G. Hapeshis, Esq. via e-mail and Commissioner Mike Campbell via upload on the 3rd day of June, 2016 by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature] Email: chip@leekelaw.com
Date of hearing: June 14, 2016 Time needed for hearing: 1 hour

Questions about the use of the 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 the 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.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Dorothy Miller,

Claimant,

vs.

Husqvarna,

Employer,

and

Ace American Insurance Company.

Carrier.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO. 1318602

BRIEF OF APPELLANT EMPLOYER

STATEMENT OF THE CASE

This matter was before the Single Commissioner on August 17, 2016 in Columbia, South Carolina. The hearing was to determine issues set forth in Defendants' Form 21. This is an admitted accident to the claimant's **right hand injury (wrist)** which occurred on October 8, 2013 and the defendants filed a Form 21 stating the claimant was at MMI for that body part and to pay permanency and request overpayment of temporary total disability.

The claimant contends in a Form 50 filed July 2015, years after the initial accident, and a year after she last worked for the employer, that her shoulders are also injured. She further states that she is not at MMI for her wrist and wants additional treatment. Defendants denied compensability to the shoulders because the medical records show that she has had shoulder problems since 2005 and consistently complained of shoulder problems until the date of accident.

She never mentions problems with her shoulders as a result of her job in any medical record until 2015. In fact, the claimant states on numerous occasions that her problems with her shoulders were the result of a whiplash injury in 2009 and she has been in pain ever since. (Def.'s APA p. 465).

The purpose of the hearing was to determine if employer/carrier is entitled to pay compensation to the Claimant, if employer/carrier is entitled to a credit for temporary total disability benefits paid in excess of award, and if the claimant suffered compensable repetitive trauma injuries. An order was issued on November 9, 2016, which found that the claimant was not at MMI for her wrist issue and found that the shoulders were compensable because "the claimant suffered a repetitive trauma **exacerbations** to her **preexisting** bilateral shoulder conditions" including bilateral rotator cuff tears due to years of overhead work. The hearing commissioner ordered payment of all medical treatment, directed treatment through Dr. Nahigian, and payment of temporary total disability benefits. Defendants appealed.

Statement of Issues on Appeal

1. Did the Single Commissioner err in finding as fact that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the preponderance of the evidence does not support the fact that the Claimant sustained an injury from the accident?
2. Did the Single Commissioner err in finding as fact that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the Claimant did not meet his burden of proof that he sustained an injury from the accident?
3. Did the Single Commissioner err in concluding as a matter of law that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the preponderance of the evidence does not support the fact that the Claimant sustained an injury from the accident?
4. Did the Single Commissioner err in concluding as a matter of law that the Claimant sustained a compensable injury by accident to her shoulders, the error being that the Claimant did not meet his burden of proof that he sustained an injury from the accident?
5. Did the Single Commissioner err in finding as fact that the Claimant is entitled to temporary total disability benefits, the error being that the preponderance of the evidence does not support the finding?

6. Did the Single Commissioner err in finding as fact that the Claimant is entitled to temporary total disability benefits, the error being that the Claimant did not meet his burden of proof?
7. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to temporary total disability benefits, the error being that the preponderance of the evidence does not support the finding?
8. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to temporary total disability benefits, the error being that the Claimant did not meet his burden of proof?
9. Did the Single Commissioner err in finding as fact that the Claimant is entitled to medical treatment, the error being that the preponderance of the evidence does not support the finding?
10. Did the Single Commissioner err in finding as fact that the Claimant is entitled to medical treatment, the error being that the Claimant did not meet his burden of proof?
11. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to medical treatment for her arms and shoulders, the error being that the preponderance of the evidence does not support the finding?
12. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to medical treatment for her arms and shoulders, the error being that the Claimant did not meet his burden of proof?
13. Did the Single Commissioner err in appointing Dr. Nahigian as the authorized treating facility, the error being that the defendants have the right to choose the treating physician pursuant to McKinney v. Kimberly Clark Corp?
14. Did the Single Commissioner err in determining that the claimant was not at MMI for her wrist injuries and the defendants were not entitled to an overpayment, the error being that this finding is not supported by the evidence and is an error of law?
15. Did the Single Commissioner err in determining that the defendants are responsible for all previously sought medical treatment for the arms and shoulders, the error being that this finding is not supported by the evidence and is an error of law?

EVIDENCE SUMMARY

The Claimant is 58 years old. The claimant contends that she injured her wrist on October 8, 2013 with Husqvarna while using an airgun. The claimant has not worked at Husqvarna since May of 2014 when she went out of work for problems related to her wrist. However, she did testify that she has sat with the elderly for money in the last year and solicited further work doing the same on Facebook.

The wrist is the only accepted body part in the case. However, she amended her form 50 in July of 2015 for the first time contending that she had a bilateral shoulder injury even though she was not working for the employer at the time.

The claimant went through extensive treatment with her wrist and had two surgeries. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96). The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05). At no time during any of the extensive treatment by Dr. Buckaloo did the claimant complain of shoulder problems as a result of her work.

On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that **he cannot find an organic reason for her continued complaints and symptoms and discharged her from the office with no impairment** (Defendant's APA #8, pp. 821-22).

The Claimant was referred to the Charleston Hand Group where she began treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26). On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833).

The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59). The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49). From May 13, 2015 through June 30, 2015.

On July 16, 2015, Dr. Muirhead found the Claimant had reached MMI for her right elbow, wrist, and hand. He opined that she had a 7% permanent impairment to the right upper extremity and work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion (Defendant's APA #9, pp. 847; 851-53). She was released at MMI several times, but the latest release was by Dr. Muirhead on July 16, 2015.

The claimant initially has treated with Dr. Buckaloo since before this date of injury. Dr. Buckaloo stated in his medical record of 2013 that any shoulder complaints are not related to the work injury and are pre-existing (Def's APA p. 807). Dr. Buckaloo in a questionnaire of June 13, 2016, again stated that the shoulders were not related to the claimant's work or work injury. (Def's APA p. 1819).

On November 11, 2015, years after the date of accident and a year after she last worked for Husqvarna, the claimant, under her private insurance, sought treatment with Dr. Nahigian for her shoulder problems (Claimant's APA #25, pp. 1923). On December 8, 2015, the claimant received surgery for her left shoulder (Claimant's APA #25, pp. 1923-27). Dr. Nahigian diagnosed her with left shoulder impingement, but did not recommend surgery for her left shoulder.

On March 14, 2016, Dr. Nahigian completed a questionnaire at the request of Charles McCutchen, Esq., one of the claimant's two prior attorneys, that to a reasonable degree of medical certainty, the proximate cause of the Claimant's bilateral rotator cuff tears was repetitive actions arising out of her employment. This questionnaire was completed two years after the claimant last worked at Husqvarna and does not mention any aggravation of a pre-existing condition.

Dr. Nahigian was deposed on June 27, 2016. At his deposition, he was presented with all of the claimant's prior shoulder treatment of which he had no knowledge. (Dep. of Dr. Nahigian p. 8-12). He further stated that Problems he was seeing her for could be the product of a MVA w/whiplash injury (Dep. of Dr. Nahigian pp. 13-17). Dr. Nahigian stated that the MRI is suggestive of a longstanding injury. She did not tell him duration of overhead work before returning to neutral position; has no idea what type of airgun was used; no idea as to the weight of the airgun; no idea as to the level of the airgun, the force needed to use the air gun; or the frequency of air gun use in an 8 hour date. He testified that he "Cannot state to reasonable degree of medical certainty how long the tear was present in the rotator cuff." He further testified that her job can be contributory, but no way can he say it's the only reason why this occurred.

Immediately prior to the hearing, and in direct contradiction to his sworn testimony, Dr. Nahigian answers a questionnaire from the claimant's attorney on July 1, 2016. In that questionnaire Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the

facts and information presented at his deposition, that nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed.

It is undisputed that the claimant has an extensive history of shoulder problems and has specifically related her problems to a whiplash injury of 2009. It is undisputed that she has had shoulder problems prior to this injury and NO DOCTOR has stated that she had an aggravation of pre-existing condition.

The first MRI taken of the claimant's shoulders was on July 17, 2015, years after the claimant worked for Husqvarna. The claimant has treated for her shoulder issues since 2005 and never mentioned a work related issue with her shoulders until July of 2015.

In fact, her first mention of shoulder problems, after our date of injury, was December 12, 2014, years later, and while the claimant was out of work. At that 2014 visit, she specifically denies any trauma or injury. The claimant's shoulder problems were so severe that surgery was already contemplated on August 30, 2013, two months before her date of injury. (Def.'s APA p. 756).

On September 22, 2015, the Claimant presented to Dr. Buckaloo complaining of bilateral shoulder pain for multiple years. Dr. Buckaloo specifically stated that the problems were degenerative in her shoulders. Dr. Buckaloo noted decreased range of motion bilaterally in the shoulders, and he reviewed the MRI's and stated that the MRI's showed various tears and degenerative issues bilaterally that Dr. Buckaloo opined were age indeterminate but certainly chronic based on the atrophy of the associated supraspinatus muscle belly of the shoulders (Defendant's APA #5, pp. 807-11).

The claimant was the only witness to testify at the hearing. She testified that she has worked off and on with Husqvarna and has worked for Federal Mobile in 1999 and 2000. She testified

that she has worked for two months since the accident sitting with the elderly and has solicited further work for sitting with the elderly on Facebook. After stating to the contrary, she was presented with a Facebook post regarding her sitting and she admitted that she could do that job 5-6 hours a day rather than the 2-3 hours she previously testified to. (HT p. 35-p.36 line 9). She stated that she stopped sitting with the elderly client in July of 2016 because the client passed away. (HT p. 34 lines 8-15). She was getting paid for that work. In addition to looking for work sitting, the claimant is also in vocational rehabilitation.

The claimant denied any prior treatment to her shoulder, but then admitted that it was not true and that she was actually recommended to have surgery. She admitted that she lied about prior treatment to her hand and shoulder in her deposition. (HT p. 47-48). The claimant admitted at the hearing that her deposition testimony that she had only been arrested one time in thirty years was also untrue after she was presented with an arrest record. She was arrested for criminal domestic violence in 2010. (HT p. 49). The claimant stated that she had never had prior injections to her shoulder before the accident and then admitted that was not true.

ARGUMENTS

1. The Hearing Commissioner erred in determining that the claimant has repetitive trauma exacerbations to her preexisting bilateral shoulder conditions including bilateral rotator cuff tears due to years of overhead work.

(Questions Presented 1-4; 11, 12, & 15)

The Hearing Commission found as fact (2) that the Claimant has alleged repetitive trauma **exacerbations** to her **preexisting** bilateral shoulder conditions including bilateral rotator cuff tears due to years of overhead work. (H.T. p. 8, l. 1-23; Defendant's APA #5, pp. 807-11). Because this finding incorporates two separate facets of workers compensation law: 1. aggravation of a pre-existing condition and 2. repetitive Trauma. As such, I will address each fact separately.

The claimant did not meet the legal requirements of an aggravation of a pre-existing condition. Under S.C. Code 42-9-35, the claimant has the burden of meeting specific requirements.

- (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that:
- (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or
 - (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

No doctor has stated that the claimant suffered an aggravation of a pre-existing condition and no medical questionnaire was offered stating the same. Therefore the finding that she had an aggravation of her pre-existing condition was erroneous. Further, even if there were an aggravation no one has determined to what extent it came if any from a work injury.

The claimant also did not meet the requirements of a repetitive trauma injury. The first time that the repetitive nature of the claimant's job was ever brought into question was in the claimant's 2015 appointment with Dr. Nahigian. She never mentioned anything about the repetitive nature of her job with regards to her shoulder in the numerous years prior to this date of injury. (Dep. of Dr. Nahigian p. 10) All shoulder complaints mentioned by the claimant are listed below:

<i>Date</i>	<i>Provider</i>	<i>Narrative</i>	<i>APA</i>
11/09/05	Dr. Singleton	Follow up after ER visit, noticed low back/right arm pain. Assessment: CT head, PT evaluation 1. headache 2. lumbar/cervical strain, right arm pain	710
11/22/05	Dr. Singleton	Follow up after MVA, still complains of low back, head, face pain. Assessment: continue meds/PT 1. Headache 2. Cervical strain 3. Lumbar strain 4. Right arm pain	711

12/22/05	Dr. Singleton	Follow up after MVA, still complains of low back pain off/on, wants another x ray of back. Assessment: Improved, d/c Motrin, Rx Lodine 1. Headache 2. Cervical strain 3. Lumbar strain 4. Right arm pain 5. Costochondritis	714
01/06/06	Dr. Singleton	Follow up after MVA-doing a lot better Assessment: Released, d/c Motrin, Rx Lodine 1. Headache 2. Cervical strain 3. Lumbar strain 4. Right arm pain	715
09/08/08	Family Health Dr. W. Deas	also needs something for arthritis pain in her shoulders. Exam: right shoulder pain/stiffness	778
09/23/08	Family Health J. Degen	 pain in shoulders/low back, pressure, intermittent, aggravated by lifting	777
12/17/09	TRMC	presents after MVA, rear-ended IMPRESSION: Shoulder sprain	45
12/29/09	Family Health Dr. Apraku	Presents after MVA, pain in neck/back, headaches, shoulders and abdominal pain. Exam: tenderness on palpation/spasms of shoulders	774
04/19/10	Family Health Dr. W. Deas	pain down right arm and some down left arm for approximately 3 weeks; bilateral arm pain Assessment: Inflammatory myopathy (myositis)	771
05/04/10	Family Health C. Jackson	Pain head, neck, shoulders, arms and down left leg. Complains of pain in joints with "chill feeling" for 5-6 months following MVA.	768
06/26/10	TRMC	PT: pain from base of skull down into bilateral upper trapz	196
06/29/10	TRMC	PT: pain to both shoulders and down forearms.	186
08/19/10	Family Health	Patient presents for review of MRI and follow up after MVA in December 2009; MRI showed mild disc protrusion at C5/6.	763
07/19/11	Family Health	Patient presents with continuous abdominal and neck pain-says her whiplash injury is acting up again-needs prescription	761
10/22/11	TRMC	Patient presents with severe pain in right shoulder. States right arm has been hurting "for a while". History of arthritis, left arm hurts "on and off some"...	315
02/12/12	TRMC	severe pain in bilateral shoulders, decreased ROM due to pain x 2 weeks. History of arthritis... Follow up with Dr.	351

		Marro for shoulder pain.	
04/29/12	TRMC	bilateral arm pain, worse with movement, toradol injection Impression: Shoulder pain, Rx Lortab	395
09/27/12	TRMC	severe pain to both shoulders. Pain to both shoulders that radiates down arms x 1 week. States "got whiplash a few years ago and has trouble with pain ever since"	465
12/19/12	Family Health	Exam reveals full ROM neck/back and bilateral frozen shoulders with pain on partial abduction. Assessment: Shoulder tendonitis	759
02/08/13	Family Health	presents with right and left arm/shoulder pain, neck pain and right/left hand stiffness/pain and pain in back (thoracic area) on inhalation... Assessment: -Muscle spasm in neck/shoulder	757
03/29/13	Family Health	Patient complains of right shoulder-joint/hand pain x 4 days. Right shoulder and left shoulder after whiplash 1 1/2 years ago-... Exam: tenderness/pain in shoulders, right shoulder-active/passive motion was abnormal. Assessment: Arthralgia of shoulder region; Shoulder tendonitis Plan: Toradol injection, consult with ortho surgery in Columbia for right shoulder pain. Rx: Hydrocodone	756
08/21/13	Family Health	Still having spasms in neck/shoulder muscles-restart Flexeril.	754
08/30/13	TRMC	presents with severe pain in bilateral arms from shoulders down.	580
11/21/13	Family Health	Still has spasms in neck and shoulder muscles-has been unable to afford pain and asthma medications. Complains of pain in right and left shoulder, neck, right and left leg, right foot pain. Exam: shoulders-muscle spasms. Discussed Trigger-Point Therapy	750
02/10/15	Family Health	complains of Neck and arm pain after whiplash injury, intermittent knee/leg pain. Also hand/finger arthritis with pain in arms	744
04/30/15	Family Health	 spasms in right neck and shoulder muscles-restart Flexeril.	741
06/24/15	Family Health	Presents with pain in right arm from shoulder to wrist, also pain in neck and fingers are numb. Had surgery on arm-was going to PT but didn't go today... Pain in right neck/shoulder areas with numbness. Had shoulder surgery in past and also has right ulna nerve injury. Has a lot of spasms in right neck/shoulder muscles. Compliance with PT is stressed.	739
07/06/15	Family Health	Patient presents after ER visit on 07/02/15-xrays showed	738

		torn rotator cuff tear-needs referral to Ortho. Pain located in right shoulder-sharp. Exam: shoulder joints have full ROM, no instability or weakness. Right shoulder-tenderness on palpitation at cuff insertion, pain on active and external motion/rotation; Left shoulder-normal exam. Assessment: -Pain in right shoulder joint(s) X ray from ER showed rotator cuff tear, sling applied, refer to Ortho.	
07/13/15	Family Health	Also had visit here on 07/06/15-rotator cuff tear-needs referral to Ortho. Will get shoulder MRI's via TRMC charity program. Exam: Pain-persistent, sharp, dull, burning, throbbing Assessment: -Chronic left rotator cuff sprain (capsule) -Left rotator cuff tendonitis -Pain in finger joints -Muscle spasms...	736
08/03/15	Family Health	presents for routine follow up-continues bilateral shoulder pain... Pain located in right and left shoulders-throbbing/aching. MRIs showed complete tears of supraspinatus tendons-says she got injured on the job. Will refer her back to her workplace to arrange WC. Assessment: -Partial tear of right rotator cuff tendon -Left rotator cuff tendonitis	736
09/22/15	SCOF: Dr. Buckaloo	bilateral shoulder pain x years, presents today to evaluate recently obtained MRI confirming chronic rotator cuff tears w/retraction and atrophy of associated muscle. Reports she believes that her 30 years of work at Husqvarna was partially responsible for her rotator cuff condition. Reports that she does not present today for Workmen's Comp. RIGHT SHOULDER MRI Comparison Plain film dated 07/02/15. Clinical Hx: Shoulder pain for years w/limited ROM; evaluate for rotator cuff tear. IMPRESSION: 1. Full-thickness fullwidth tearing of the supraspinatus	807

		tendon with approximately 3 cm of tendinous retraction. Atrophy of the supraspinatus muscle: 2. Tendinopathy of the infraspinatus tendon with some muscle atrophy. Tearing of the anterior fibers should be considered. 3. Degeneration and probable tearing of the superior labrum. 4. Soft tissue fullness of the rotator cuff interval w/mild associated edema, query symptoms of frozen shoulder. 5. Tendinopathy of the subscapularis tendon. LEFT SHOULDER MRI: IMPRESSION: 1. Complete tear of the supraspinatus tendon, retracted to the level of acromioclavicular joint. Atrophy of the supraspinatus muscle belly noted. 2. Acromioclavicular hypertrophy. 3. Tendinopathy of the infraspinatus tendon w/muscular atrophy. 4. Small nondisplaced degenerative tear of the superior labrum. Pt reports she is currently not pursuing surgical options, is having pain and difficulty w/overhead activities for which she reports is a chronic condition. ... Rotator cuff images by MRI are consistent with chronic retracted supraspinatus tendon injuries. The age of injury is unknown but certainly chronic given the atrophy of the associated supraspinatus muscle belly of the shoulder.	
11/11/15	Dr. Nahigian	Patient is seen for initial evaluation of right shoulder injury from using air guns on assembly line for 30 years, onset 2013. Assessment: Complete tear of right rotator cuff, AC joint arthrosis Treatment: exhausted conservative management. Proceed with shoulder arthroscopy, repair, resection and decompression. Patient has a very significant only retracted tear and understands it may not be repairable.	1909
06/13/16	SCOE: Dr. Buckaloo	Questionnaire: 1. Based upon review of med records, can state to a reasonable degree of medical certainty that CL suffered from bilateral shoulder pain, arthritis/arthralgias, muscle spasms, "frozen" shoulder symptoms and was diagnosed w/bilateral shoulder tendonitis prior to the 10/08/13	1319

	incident: 2. Based upon treatment/evaluation he provided and upon review of CL's med records, can state to a reasonable degree of medical certainty that the most probable cause of CL's bilateral complaints stem from pre-existing conditions, predating the accident of 10/08/13.	
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While Dr. Nahigian states that the claimant suffered from a repetitive injury with regards to her shoulder, he admitted that he did not know: duration of overhead work before returning to neutral position; has no idea what type of airgun was used; no idea as to the weight of the airgun; no idea as to the level of the airgun, the force needed to use the air gun; or the frequency of air gun use in an 8 hour date. He testified that he "cannot state to reasonable degree of medical certainty how long the tear was present in the rotator cuff." (HT p. 43 lines 20-23). He discussed in length the fact that the claimant had pre-existing arthritis and degenerative issues. (HT p. 43). He further testified that her job can be contributory, but no way can he say it's the only reason why this occurred and that the problems pre-existed her date of injury (HT p. 51 lines 8-13)

Under § 42-1-172 (A): "Repetitive trauma injury" means an **injury which is gradual in onset and caused by the cumulative effects** of repetitive traumatic events.

This tear which became evident in 2015, did not show up until a year after the claimant stopped working for Husqvarna. However, the surgery was already contemplated for the claimant's shoulder in 2013. Moreover, the job duties were not the cause as the claimant herself stated in numerous medical records that her shoulder began and continued hurting after her 2009 whiplash incident. The claimant herself states in a medical record of 2015 that the shoulder problems were the result of a whiplash injury. She has complained of shoulder pain since 2005. The record also shows that she has had shoulder pain since 2008 in the form of Arthritis and was

treatment with Dr. Apraku for the pain. She treated for a whiplash injury in 2009 and has visited the doctor consistently for shoulder problems since that date. In September of 2012, she again complains that her shoulder problems are for her whiplash injury and she has not been the same since. On August 30, 2013, less than two months before her alleged date of accident with the employer, she presented with severe shoulder pain to TRMC and mentions nothing about her work. (Def.'s APA p. 580). At her visit in February 2015 at Family Health Centers, she mentions her neck pain cause was the motor vehicle accident and states nothing about a work injury. (Def.'s APA p. 744). As stated above she had extensive treatment for her shoulder and there was no mention of any work injury to her shoulder.

Dr. Buckaloo, who treated the claimant numerous times for her wrist problems specifically stated that the claimant had pre-existing shoulder issues and the issues were degenerative and not work related in his treatment note of 2013. Moreover, the claimant returned to Dr. Buckaloo on September 22, 2015, Dr. Buckaloo opined that while the bilateral shoulder injuries were age-indeterminate, they were certainly chronic given the atrophy of the associated supraspinatus muscle belly of the shoulder. He never stated that the claimant sustained an aggravation to her shoulders as a result of the work injury. (Defendants' APA #5, p. 811). He again reiterated that the claimant's problems with her shoulders were not work related in his questionnaire of 2016. He specifically stated that that the bilateral shoulder complaints stem from preexisting conditions predating her October 8, 2013 right wrist injury. (Defendants' APA #21, pp. 1819-20).

The Hearing Commissioner gave more weight to Dr. Nahigian's opinion rather than Dr. Buckaloo's because Dr. Nahigian did her shoulder surgery and Dr. Buckaloo only saw the claimant one time. This statement is untrue. Dr. Buckaloo treated the claimant for years for her work injuries as well as for a neck problem she was having in 2010 in which she had radicular pain.

He knew of her medical history and was present at the onset of the claim. He stated to a reasonable degree of medical certainty that the injury was not work related. Moreover, Dr. Buckalbo's medical records correspond with this questionnaire.

Dr. Nahigian's opinion changed three times as to whether the shoulder problems were work related. In fact, Dr. Nahigian had no knowledge of the claimant having prior shoulder problems before the 2013 date of injury. Dr. Nahigian himself admitted at his deposition that he had virtually no knowledge of the claimant's job duties. As such, the claimant did not meet her burden of proving a repetitive trauma accident.

2. The Commissioner erred in determining that the claimant was entitled to temporary total disability benefits and medical benefits
(Questions Presented 5-12, 14, and 15)

The claimant received extensive medical treatment for her wrist, which is the only accepted body part in this claim. The claimant was found at MMI and released by numerous doctors. Therefore, the claimant is not entitled to TTD and medical benefits with regard to her wrists. Moreover, the claimant cannot show an inability to earn wages as she testified that she has worked since the date of MMI sitting with the elderly and was pursuing further work doing the same. It is clear that the claimant is not entitled to further benefits and the defendants should receive credit for the TTD paid after the last date of MMI.

The claimant did not meet her burden of proving a compensable aggravation caused by repetitive trauma to her shoulder entitling her to medical benefits and TTD as discussed above. Also, there is no evidence that any shoulder problems are keeping her from work as she has worked since the date of accident, is pursuing other jobs, and is vocational rehabilitated. The Commissioner's finding of TTD and medical benefits was in error.

3. The Commissioner erred in determining that Dr. Nahigian is the authorized treating physician.

(Question Presented #13)

The Single Commissioner erred in determining that Dr. Nahigian should provide medical treatment. There was no basis for this appointment and this was error because this is not a situation under 42-15-60(a), that calls for the Commission to appoint a treating physician because the shoulder is a denied body part and treatment has been authorized for the wrist.

(A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge, to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. The refusal of an employee to accept any medical, hospital, surgical, or other 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 refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service. **If in an emergency, on account of the employer's failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, if ordered by the commission.**

The Employer did not fail to provide medical care as specified in this section because they were not obligated to do so under the statute with regard to the shoulders/arm. Further, they already provided extensive treatment to the claimant's wrists. Therefore, there is no reason for

the commission to order the direction of treatment by a specific physician. Pursuant to *McKinney v. Kimberly Clark Corp.*, 658 S.E.2d 112 (App. 2008), the defendants have the right to choose the physician.

CONCLUSION

For the reasons set forth above, the defendants respectfully request that the Order of the Single Commissioner be reversed in its entirety; that the claimant be found at MMI for her accepted body part and defendants be reimbursed for overpayment of benefits.

Respectfully Submitted,



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Attorneys for Defendant(s)

January 24, 2017

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL**

DOROTHY MILLER,
Claimant/Respondent,

v.

HUSQVARNA,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Carrier,

Appellants.

W.C.C. FILE NO. 1318602

BRIEF OF THE RESPONDENT

STATEMENT OF THE CASE

This matter is before the Commission's Appellate Panel pursuant to the Defendants' Form 30, requesting review of Hearing Commissioner Campbell's November 9, 2016 Decision and Order. A hearing was held on August 17, 2016 in Columbia, South Carolina to determine issues set forth in Defendants' Form 21. The purpose of the hearing was to determine if Defendants were entitled to pay compensation to the Claimant, if Defendants were entitled to a credit for temporary total disability benefits paid in excess of award, and if the Claimant suffered compensable repetitive trauma injuries.

The Claimant contended she injured her right wrist due to pulling down on an air gun while working an assembly line on October 8, 2013. The Claimant also contended she sustained bilateral rotator cuff tears as a result of repetitive trauma injuries caused by years of overhead assembly line

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work. The Claimant also contended she sustained bilateral rotator cuff tears as a result of repetitive trauma injuries caused by years of overhead assembly line work while employed by the Employer. She sought a finding of compensability of her right and left shoulder injuries and a finding of entitlement to future medical treatment and reimbursement for past medical treatment. She further denied she had reached maximum medical improvement and denied the Defendants are entitled to stop payment of temporary total disability benefits. Claimant requested the issue of permanency be held in abeyance until a determination of compensability was made.

The Defendants contended the Claimant had been released at maximum medical improvement for her admitted right wrist injury with restrictions to the right elbow, wrist, and hand of no repetitive work and lifting less than one pound with the right upper extremity and that any finding of disability should be in line with the impairment rating of 7% given by Dr. William Muirhead. The Defendants denied compensability of the alleged right and left shoulder injuries.

The Respondent respectfully contends that no error exists and seeks a full affirmation of Hearing Commissioner Campbell's findings of fact and conclusions of law.

EVIDENCE SUMMARY

The Claimant testified on her own behalf. At the time of the hearing, the Claimant, Dorothy Miller, was 58-years-old. She testified that she has obtained a GED and has been working various labor jobs since age 14. Her prior work experience includes a car wash attendant, food service jobs, and various production and assembly line work.

The Claimant has worked for Husqvarna off and on since 1994. Her position with Husqvarna is a machine operator. The Claimant suffered an acute injury to her right arm when she pulled down on an overhead air gun. She felt a severe pain in her right wrist at that time. She initially underwent trial physical and occupational therapy that failed, and she was referred to Dr. Buckaloo at SC

Orthopaedic Institute. (Defendant's APA #5, p. 780). Dr. Buckaloo had x-rays of the right hand and wrist performed that revealed some chronic deformities and osteoarthritis. She then underwent NVC testing and MRI that revealed an essentially negative MRI of the wrist but did show DeQuervain's tenosynovitis and right focal median neuropathy. Dr. Buckaloo recommended, and the Claimant received, an injection and night splint for her wrist. The injection provided little relief, but the Claimant did not wish to pursue surgery at the time. She attempted to return to work but continued symptoms forced her to seek additional treatment. In May 2014, the claimant underwent a right carpal tunnel release and DeQuervain's tendon sheath release. (Defendant's APA #5, pp. 785-96). The Claimant participated in occupational therapy after surgery, and despite attempting to return to work with restrictions, her symptoms persisted and she was given additional restrictions and ordered back to physical therapy for strengthening. (Defendant's APA #5, pp. 804-05).

On August 27, 2014, Dr. Ugino of Midlands Orthopaedic performed an independent medical examination where he noted the Claimant suffers from persistent problems including severe pain radiating along the volar aspect of the forearm. Upon examination, Dr. Ugino opined that the claimant was not at MMI currently and suggested a work hardening program. (Defendant's APA #8, pp. 821-22). The Claimant was referred to the Charleston Hand Group where she began treatment on October 15, 2014 with Dr. Shealy and Dr. Muirhead for continued right hand pain and swelling status post carpal tunnel release and DeQuervain's release. Based on examination, she was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome, and she was recommended for testing to reevaluate the status of the median and ulnar nerves in the cubital tunnel. (Defendant's APA #9, pp. 825-26). On November 18, 2014, EMG testing results revealed moderate to severe ulnar neuropathy consistent with cubital tunnel syndrome in the right elbow and surgery was recommended. (Defendant's APA #9, pp. 833).

The Claimant underwent a right cubital tunnel release on January 2, 2015 performed by Dr. Muirhead (Defendant's APA #11, pp. 858-59). The claimant underwent additional follow up treatment including physical therapy and injections for symptoms including numbness, tingling and pain with Dr. Muirhead and The Charleston Hand Group. (Defendant's APA #9, pp. 838-49). From May 13, 2015 through June 30, 2015, the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81). On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83).

On July 16, 2015, the Claimant returned to Dr. Muirhead where she was noted to have continued pain in the CMC joint and discomfort in the forearm, but the primary location of her pain was the right shoulder secondary to a rotator cuff tear. Dr. Muirhead recommended a referral to a specialist for her shoulder, but because the shoulder injury was not found to be compensable by the Defendants, the Claimant reported her primary was treating her for the shoulder injuries. At that point, Dr. Muirhead found the Claimant had reached MMI for her right elbow, wrist, and hand. He opined that she had a 7% permanent impairment to the right upper extremity and work restrictions of lifting less than one pound, no impact or vibrating tools, and limited repetitive motion (Defendant's APA #9, pp. 847; 851-53).

On September 22, 2015, the Claimant presented to Dr. Buckaloo complaining of bilateral shoulder pain for multiple years. This visit was not covered by or at the direction of the Defendants. Dr. Buckaloo noted decreased range of motion bilaterally in the shoulders, and he reviewed a July 17, 2015 MRI of the left shoulder and a July 28, 2015 MRI of the left shoulder that showed various tears

and degenerative issues bilaterally that Dr. Buckaloo opined were age indeterminate but certainly chronic based on the atrophy of the associated supraspinatus muscle belly of the shoulders (Defendant's APA #5, pp. 807-11).

On November 11, 2015, the Claimant began treatment with Dr. Nahigian of Carolina Shoulder and Knee Specialists for her bilateral rotator cuff tears. Dr. Nahigian's treatment notes mentioned the cause of injury being overhead use of air guns (Claimant's APA #25, pp. 1923). His physical examination and review of radiology reports confirmed rotator cuff tears, and because she had exhausted conservative treatment, he proceeded with right shoulder arthroscopy, rotator cuff repair, distal clavicle resection, and subacromial decompression on December 8, 2015 (Claimant's APA #25, pp. 1923-27). The claimant underwent post-operative appointments with Dr. Nahigian for her right shoulder, but she has been unable to proceed with treatment on her left shoulder due to financial constraints (Claimant's APA #25, pp. 1930; 1934-40).

Dr. Nahigian has provided multiple consistent opinion statements since March 2016 where he has stated that the Claimant's bilateral rotator cuff tears are work-related. On March 14, 2016, Dr. Nahigian completed a questionnaire at the request of Charles McCutchen, Esq. where he opined, to a reasonable degree of medical certainty, that the proximate cause of the Claimant's bilateral rotator cuff tears was repetitive actions arising out of her employment. While Dr. Nahigian stated that no additional medical treatment or surgeries would be needed and she has reached maximum medical improvement, he clarified during his deposition that he thought questions 3, 4, and 5 were pertaining only to the right shoulder, which he had already repaired (Claimant's APA #26, pp. 1941-42; Dr. Nahigian's Deposition, p. 48, ll. 17-25, p. 49, ll. 1-6).

On May 26, 2016, Counsel for the Claimant sent a questionnaire to Dr. Nahigian where he responded, to a reasonable degree of medical certainty, that the Claimant suffered bilateral rotator

cuff tears due to repetitive trauma injuries and that there was a direct causal relationship between the condition under which the work was performed and the injuries sustained. He stated that his opinion was based on the Claimant's history and symptoms reported as well as signs shown on physical examination. He opined that she would benefit from additional treatment (Claimant's APA #27, pp. 1943-45). #28, pp. 1946-47).

On June 27, 2016, Dr. Nahigian participated in a deposition where he testified that, to a reasonable degree of medical certainty, there was a causal connection between the Claimant's work and the repetitive trauma injuries to her bilateral shoulders. He testified that the damage in her right shoulder included severe changes to the right AC joint that are common with people doing her type of work (Dr. Nahigian Deposition, p. 31, ll. 1-2; p. 32, ll. 2-5; p. 34, ll. 6-11; p. 38, ll. 20-21; p. 45, ll. 18-23; p. 46, ll. 2-14). In a July 1, 2016 follow up questionnaire after the deposition, Dr. Nahigian opined, to a reasonable degree of medical certainty, that based on the facts and information presented at his deposition, that nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the claimant would require future medical treatment for her left shoulder including but not limited to an MRI, surgery, and therapy. (Claimant's APA #28, pp. 1946-47).

ARGUMENTS

- I. The Hearing Commissioner's finding of repetitive trauma injuries to the shoulders and an exacerbation of this preexisting condition in the Claimant's shoulders due to bilateral rotator cuff tears is supported by the greater weight of the evidence and the applicable law and should be affirmed by the Appellate Panel.**

The Claimant has worked for Husqvarna off and on since 1994. Her position with Husqvarna is a machine operator. The claimant's bilateral shoulder complaints were not first brought into

question when she saw Dr. Nahigian in November 2015. In fact, the claimant made repeated inquiries about her shoulders after her acute work injury in October 2013, but due to her shoulders not being authorized for treatment, nothing was done to address her complaints. That is, until May 13, 2015 through June 30, 2015 when the Claimant attended therapy with Sports Plus Physical Therapy where she was treated for symptoms in her right arm in addition to symptoms in both shoulders. (Defendant's APA #12, pp. 860-81). She attended regular therapy appointments during this time and was treated for ongoing complaints in her shoulder. On June 30, 2015, the Claimant was released from therapy because she was not making progress on her shoulder range of motion, was not making any functional gains from therapy, and had met her maximum rehab potential. (Defendant's APA #12, pp. 882-83). She was released not because there was nothing more that could be done for her shoulders but because conservative measures had failed and surgery was necessary.

On September 22, 2015, the Claimant presented to Dr. Buckaloo complaining of bilateral shoulder pain for multiple years. This visit was not covered by or at the direction of the Defendants. Dr. Buckaloo noted decreased range of motion bilaterally in the shoulders, and he reviewed a July 17, 2015 MRI of the right shoulder and a July 28, 2015 MRI of the left shoulder that showed various tears and degenerative issues bilaterally that Dr. Buckaloo opined were age indeterminate but certainly chronic based on the atrophy of the associated supraspinatus muscle belly of the shoulders (Defendant's APA #5, pp. 807-11).

On November 11, 2015, the Claimant began treatment with Dr. Nahigian of Carolina Shoulder and Knee Specialists for her bilateral rotator cuff tears. Dr. Nahigian's treatment notes mentioned the cause of injury being overhead use of air guns (Claimant's APA #25, pp. 1923). His physical examination and review of radiology reports confirmed rotator cuff tears, and because she had exhausted conservative treatment, he proceeded with right shoulder arthroscopy, rotator cuff repair,

distal clavicle resection, and subacromial decompression on December 8, 2015 (Claimant's APA #25, pp. 1923-27).

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presented at his deposition, that nothing had changed regarding his opinion from the May 26, 2016 questionnaire he completed. Additionally, Dr. Nahigian opined that the claimant would require future medical treatment for her left shoulder including but not limited to an MRI, surgery, and therapy. (Claimant's APA #28, pp. 1946-47). Dr. Nahigian's opinion does not change back and forth, as the Defendants claim. Dr. Nahigian was presented with questions about the Claimant having prior shoulder complaints, and Defense Counsel attempted to focus on a specific date of onset and whether Dr. Nahigian could state with a reasonable degree of medical certainty when her repetitive trauma injury occurred (Dr. Nahigian Deposition, pp. 13-26; p. 16, l. 8; p. 17, l. 8; p. 21, ll. 10-11; p. 23, l. 14). This focus on a specific date of injury is irrelevant in a repetitive trauma injury case under S.C. Code Ann. § 42-1-172, and Dr. Nahigian's inability to state to a reasonable degree of medical certainty what specific date her bilateral rotator cuff tears occurred on is moot.

Defendants have supplied a graph in their Appellate Brief with various treatment dates in the Claimant's past that are apparently related to her shoulder complaints. However, of the twenty-eight visits Defendants have referenced (and one questionnaire), nine of those visits make no mention of shoulder complaints and another nine were after the admitted right wrist injury. Of the visits Defendants have mentioned, exactly zero of those visits have a physician stating what the cause of Claimant's bilateral shoulder complaints are, except for Dr. Nahigian relating them to the Claimant's work.

Dr. Buckaloo's opinion that the cause of the shoulder injuries predated the October 8, 2013 right wrist injury is, first, in direct contravention to his medical records noting they are age-indeterminate and, second, erroneous, as S.C. Code Ann. § 42-1-172(A) and South Carolina case law make no requirement of having a precise date. Under the statute, it clearly specifies the injury is **gradual** in onset. Because a repetitive trauma injury was disease-like in its gradual onset does not

preclude it from coverage as an injury by accident, and a lack of definite time of injury is not dispositive. *Pee v. Avm, Inc.*, 352 S.C. 167 (2002). Moreover, the Defendants have attempted to rely on the Claimant complaining about shoulder pain after a motor vehicle accident as medical evidence or opinion that detracts from Dr. Nahigian's findings.

Defendants appear to make a claim of this being untimely although no specific argument for that was made during the hearing and should be dismissed for not preserved. However, to address any issue, it is clear that the last day of exposure is the date from which the statute of limitations would be running in a repetitive trauma injury case. *Schurlknight v. City of N. Charleston*, 352 S.C. 175 (2002). The Claimant became aware of the bilateral rotator cuff tears from July 2015 MRIs, and she immediately amended her Form 50, which was well within the two-year period required under the law.

The Respondent respectfully contends that the Hearing Commissioner committed no legal or factual error in this regard. Regardless of finding an exacerbation of a preexisting condition in the rotator cuff tears, he has relied on the medical evidence and opinions available to find repetitive trauma injuries that were directly caused by the Claimant's work under S.C. Code Ann. § 42-1-172(B). Whether the injuries were repetitive trauma tears or whether there was osteoarthritis due to years of overhead work that culminated (at some point) with bilateral rotator cuff tears is inconsequential as the preponderance of the evidence shows the bilateral shoulder injuries are compensable. As such, the November 9, 2016 Decision and Order should be affirmed.

II. The Hearing Commissioner properly found the Claimant was entitled to temporary total disability benefits and medical benefits under S.C. Code Ann. § 42-9-10.

The Employer has been unable to accommodate the Claimant's restrictions since she was released for her right arm injury. At the time of her release for the admitted injury, a dispute arose

as to whether the Claimant's bilateral shoulder injuries were compensable, which has led to this extended period of continued temporary total disability benefits. To date, Defendants have not offered any alternative work and Claimant has only sporadically been able to work a few days sitting with an elderly person. There is evidence through her hearing testimony that she has been unable to work. The Claimant has attempted to complete vocational rehabilitation, but due to her injuries, she has been unable to maintain competitive employment.

Through the medical evidence and opinions presented, the Claimant clearly met her burden of proof to show she has suffered compensable injuries that preclude her from working, and there is no evidence that she was offered alternative duty or that she has maintained subsequent employment. As such, the Respondents respectfully contend that the Hearing Commissioner committed no legal or factual error in this regard and the November 9, 2016 Decision and Order should be affirmed.

III. The Hearing Commissioner properly determined Dr. Nahigian would be the authorized treating physician for the claimant's future bilateral shoulder treatment.

The employer's failure to provide medical care under S.C. Code Ann. § 42-15-60(a) forced the Claimant to seek treatment on her own. The Claimant's desire to return to work as soon as possible led to a referral to Dr. Nahigian for the treatment of her shoulder injuries. Defendants effectively created an emergency for the Claimant in needing to repair her shoulders so she could return to work. If the Claimant had delayed the necessary surgical repair of her compensable shoulder injuries, Defendants could be arguing she delayed recovery in an attempt to stay out of work and would not be entitled to benefits.

Defendants have relied up on *McKinney v. Kimberly Clark Corp.*, 658 S.E.2d 112 (App. 2008) to argue the Hearing Commissioner does not have the authority to name a treating physician.

However, the facts of *McKinney* differ from our case, as that claimant in *McKinney* sought treatment for injuries from a chiropractor that exceeded \$48,000 and retroactively wanted that provider appointed so the employer/carrier had to cover the bill. Here, the Claimant sought treatment from a board-certified orthopaedic surgeon, who Defendant's co-counsel even admitted that he had read an unnamed number of reports from presumably related to prior Workers' Compensation claims, which is further testament to his knowledge and prowess (Dr. Nahigian Deposition, p. 3, ll. 24-25). The Defendants will not face prejudice in any regard related to the future cost of treatment, as it will be paid under the fee schedule and would be the same regardless of the surgeon. Fortunately, the Defendants will not face an unnecessary burden in reimbursing past medical treatment under Dr. Nahigian either, as the claimant's outstanding balance with Dr. Nahigian's office was only \$676.68.

The case relied upon by the claimant in *McKinney* sets the precedent here, as the appellate panel in that case designated a treating physician, and the defendants in that case refused to pay for additional treatment and sought further to have the claimant evaluated by another physician. *Risinger v. Knight Textiles*, 353 S.C. 69, 577 S.E.2d 222 (Ct.App.2002). *McKinney* has clearly stated S.C. Code Ann. § 42-15-60 and § 42-9-10 (1976) do not give a unilateral right to claimants to select their treating physician, but it also does not state that the Commissioner does not have the authority to order a treating physician. Dr. Nahigian has already begun treatment for her bilateral shoulder complaints with a repair of the right shoulder, and there is no reason for the Claimant to be required to switch to a new surgeon in the middle of her treatment.

As such, Hearing Commissioner Campbell is afforded the authority to appoint a treating physician. The Respondents respectfully contend that the Hearing Commissioner committed no legal or factual error in this regard and the November 9, 2016 Decision and Order should be affirmed.

CONCLUSION

The Respondent respectfully contends the Hearing Commissioner's findings and conclusions that the Claimant sustained compensable bilateral shoulder injuries is supported by the greater weight of the evidence and the applicable law. Therefore, the Respondents seek a full affirmation of the November 9, 2016 Decision and Order.

Respectfully submitted,

Shelly Leeke, Law Firm, L.L.C.
3614 Ashley Phosphate Rd.
North Charleston, SC 29418

By 
Richard C. Alexander, Esq.
Attorney for the Claimant

February 10, 2017
North Charleston, South Carolina

South Carolina Workers' Compensation Commission
WCC File # 1318602

Dorothy Miller,	)	
	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Dorothy Miller
	)	
Husqvarna,	)	
	)	
Employer,	)	
	)	
Ace American Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	
	)	

Deposition of Dorothy Miller, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 10:23 a.m., Tuesday, September 22, 2015, at Wilson Luginbill & Kirkland, LLC, 3056 Railroad Avenue, Bamberg, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR-M

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Appearances

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Reported By:

Barbara P. Scott, CVR-M

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, has been partially or fully redacted or blacked out.

Stipulations

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

Whereupon,

Dorothy Miller, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Dorothy Miller.

Examination

By Ms. Hapeshis:

Q Ms. Miller, my name is Shelby Hapeshis. I'm here today to ask you some questions. I'm not here to trick you or to trip you up on anything. I talk very fast. If you don't understand anything I'm saying, then just tell me to slow down or to repeat myself. Another thing is the court reporter has to get all of your responses, so you can't -- when I ask questions, you have to answer them verbally, as a yes or no, and you can't shake your head or give any nonverbal responses.

A Okay.

- 1 Q Before we get into the main part of the deposition,
2 I'm going to go ahead and ask some background
3 questions. I'll ask you questions about your
4 education, and then we'll go into the actual
5 accident.
- 6 A Yes.
- 7 Q So, where do you live?
- 8 A Orangeburg, South Carolina.
- 9 Q And what's your address?
- 10 A 1268 Douglas MacArthur Street.
- 11 Q How long have you been there?
- 12 A I've been there at my new -- my new residence about
13 a year and a half.
- 14 Q What type of residence is it, apartment, a home,
15 mobile home?
- 16 A Apartment.
- 17 Q And who lives there with you?
- 18 A Husband and daughter. Sometimes the grandchildren
19 on the weekends.
- 20 Q Okay. And your daughter -- How old is your
21 daughter?
- 22 A Fourteen.
- 23 Q And what's her name?
- 24 A Soniya Miller. S-o-n-i-y-a Miller.
- 25 Q Any other children?

1 A Yes, ma'am.

2 Q How many?

3 A Two more.

4 Q And what are their ages?

5 A Twenty-three and -- Twenty-three and thirty-two.

6 Q What are their names?

7 A Priscilla Miller and Latasha Miller.

8 Mr. Wilson: Hey, Shelby, I don't mean to
9 cut you off midstream. Can we go off the
10 record for one second?

11 Ms. Hapeshis: Mm-hmm.

12 [Off the record at 10:25 a.m.;
13 back on the record at 10:27
14 a.m.]

15 Examination Continues

16 By Ms. Hapeshis:

17 Q Ms. Miller, we went off the record to get some
18 documents for your attorney. During that time, did
19 I ask you any questions off the record about your
20 claim?

21 A No, ma'am.

22 Q Okay. I just wanted to make that clear. All
23 right. You said you have two children and
24 grandchildren occasionally live with you; is that
25 correct?

1 A Three children.
2 Q Three children.
3 A Yes, ma'am.
4 Q Right. Okay. Let's move on to some background --
5 a little background information. Did you graduate
6 from high school?
7 A Yes, ma'am. I have a GED.
8 Q What year did you get that?
9 A I got my GED in 2009.
10 Q Any other training or voc schools or technical
11 schools?
12 A Technical college. Orangeburg-Calhoun Technical
13 College. Started in criminal justice, but I never
14 completed it.
15 Q Any military?
16 A No, ma'am.
17 Q Do you have a driver's licence?
18 A Yes, ma'am.
19 Q Has it ever been suspended?
20 A No, ma'am.
21 Q What type of car do you drive?
22 A A beige 2007 Infiniti.
23 Q Have you ever been arrested?
24 A Yes, ma'am.
25 Q How many times?

1 A Back when I -- About 20- or 30-something years
2 ago, me and my husband, domestic violence.
3 Q Any arrests in the last ten years?
4 A No, ma'am.
5 Q Have you ever been in a motor vehicle accident?
6 A Repeat it, please.
7 Q Have you ever been in a motor vehicle accident?
8 And when I say motor vehicle accident, I'll
9 clarify, either as a driver, a passenger or
10 pedestrian.
11 A Yes, ma'am.
12 Q Okay. How many?
13 A Two.
14 Q When was the last, the most recent, motor vehicle
15 accident?
16 A It was the year when I -- He (indicating Attorney
17 Wilson) had the case. I can't remember the year,
18 but he had the case that year. I can't remember.
19 Q Was it more than a year ago?
20 A More than a year ago, yes, ma'am.
21 Q Was it more than two years ago?
22 A Yes.
23 Q Okay. More than five years ago?
24 A Yes. Closer around five years ago.
25 Q So, you haven't had a car accident in five years;

1 is that correct?

2 A Correct.

3 Q Okay. Tell me what happened in that car accident

4 where -- You said your attorney that's here today

5 represented you for that one; is that correct?

6 A Yes, ma'am.

7 Q Okay. Tell me what happened.

8 A I was at the light on John C. Calhoun Drive, at the

9 red light, and the young lady came behind me in a

10 white Blazer, and she knocked me from under the red

11 light.

12 Q And did you have any injuries from that accident?

13 A Yes, ma'am. I had a whiplash.

14 Q Where did you get treatment for your injury?

15 A I got treated at my family doctor, at Family Health

16 Center.

17 Q What body parts were injured? You said you had

18 whiplash. Any other body parts that were injured?

19 A No, ma'am. Basically he just said I have whiplash.

20 And Dr. Singleton also treated me that time for

21 that, and also Dr. Duckett, physical therapy.

22 Q You went to physical therapy and to -- I think Dr.

23 Singleton's an ortho. You went to Dr. Singleton

24 and physical therapy --

25 A Yes, ma'am.

- 1 Q -- for the motor vehicle accident?
- 2 A Yes, ma'am.
- 3 Q Did you receive any sort of settlement from that
- 4 accident?
- 5 A Yes, ma'am.
- 6 Q Do you remember the amount?
- 7 A 13,000.
- 8 Q Okay. Any other motor vehicle accidents? You
- 9 mentioned there were two.
- 10 A No injuries was on that -- The one was no
- 11 injuries. I was hit in the back again, also, in a
- 12 Toyota, but no -- no injuries.
- 13 Q About what year was that, the second accident?
- 14 A Great goodness. That was back -- way back in --
- 15 That would've been back maybe like 2005 or '6.
- 16 Q And did you receive any sort of settlement in that
- 17 accident?
- 18 A Yes, ma'am.
- 19 Q And what was the amount?
- 20 A Just \$5,000, because it was no injury.
- 21 Q Any other motor vehicle accidents?
- 22 A No, ma'am.
- 23 Q Any slip-and-falls?
- 24 A No, ma'am.
- 25 Q Have you been a party to any other lawsuit besides

1 the one we're here for today and the two motor
2 vehicle accidents?

3 A No, ma'am.

4 Q Have you ever had any other workers' comp claims
5 besides the one we're here for today?

6 A No, ma'am.

7 Q Have you ever had any on-the-job accident?

8 A No, ma'am, never.

9 Q Okay. Prior to this date of accident we're here
10 for today, have you ever received treatment to your
11 right arm?

12 A No, ma'am.

13 Q Before this accident we're here for today, have you
14 ever received treatment for either shoulder?

15 A No, ma'am.

16 Q Prior to this accident we're here for today, have
17 you ever had any treatment for your hands?

18 A None.

19 Q Where are you currently employed?

20 A Husqvarna.

21 Q How long have you worked there?

22 A I worked there a total of -- I went there in 1994
23 to '99. Then I went back two thousand and -- was
24 it three, until now. But at this time -- Excuse
25 me. I'm laid off now. I'm sorry. They laid me

1 off.

2 Q Is it the seasonal layoff or --

3 A (Nods head.)

4 Q Okay. I thought it might be that.

5 A Seasonal layoff.

6 Q Before -- Well, let's go into your job duties
7 there. What is your job title at Husqvarna?

8 A Assembly --

9 Mr. Wilson: (to the deponent) She's
10 asking if you're currently working at
11 Husqvarna now. Have you worked since 2013?

12 The Deponent: Oh.

13 A No, ma'am. I'm sorry.

14 Q Oh. You haven't worked since 2013?

15 A No, ma'am. I'm sorry.

16 Mr. Wilson: (to Ms. Hapeshis) I didn't
17 mean to --

18 Ms. Hapeshis: No. I'm glad you cleared
19 that up.

20 A No, ma'am.

21 Q Okay. You just said Husqvarna was your most recent
22 employer?

23 A Yes, ma'am.

24 Q Okay. Got you. I'm glad you clarified that. What
25 were you doing at Husqvarna in 2013?

1 A Assembly operator and machine operating.
2 Q Any how much money were you making?
3 A At that time, back then, we were just making like
4 -- was it -- \$8 or \$9 a hour.
5 Q How much were you making at the time of your
6 injury?
7 A \$9 a hour still.
8 Q And how many hours a week were you working?
9 A Forty-plus.
10 Q That brought me to another question. Before
11 working at Husqvarna the second time, from 2003,
12 where did you work?
13 A Federal-Mogul Powertrain, CNC Company.
14 Q Where are they located?
15 A Located on -- off the Rowesville Road, Prosperity
16 Drive. They closed down and went to Mexico.
17 Q And is that the reason why you left that job?
18 A Yes, ma'am.
19 Q Okay. And before CNC, where did you work?
20 A Federal-Mogul. The regular Federal-Mogul they call
21 it, the brake pad company.
22 Q And where are they located?
23 A They're located on the Rowesville Road.
24 Q You say Rowesville Road. Is that in Bamberg or
25 Orangeburg?

1 A Orangeburg.

2 Q I apologize. I'm from Kingstree. I don't anything
3 about this area on this side over here. Okay.
4 Before then, where did you work?

5 A I worked at Efco, Efco over here in Barnwell.

6 Q And how long did you work there?

7 A Not very long. Almost a year.

8 Q And why did you leave that job?

9 A I was traveling -- traveling too many miles daily,
10 and I got a job closer to home, the job I just told
11 you about. I got offered to that Federal-Mogul,
12 and I got a job close to home.

13 Q Okay. And before that job, where did you work?

14 A Hanes -- in North Carolina.

15 Q And what did you do for them?

16 A Machine operator.

17 Q And how long did you work for them?

18 A Worked for them maybe about a year.

19 Q Would this have been about 2000, 2001?

20 A No. This is way back, way back.

21 Q This would've been before the time that you went --
22 the first time you went to Husqvarna?

23 A Long ago.

24 Q Okay. Got you. Okay. I think we've gone back
25 enough in time for your employers. Okay. Let's go

1 ahead and move along to your accident. Just tell
2 me briefly what happened.

3 A Okay. Every morning we come in at 5:00. We get
4 there about 4:30 or 4:45. We have our little
5 meeting, and they have a little exercise thing that
6 we do before we start working. What the elderly
7 ladies usually do, they had us -- we were going to
8 the work area on the side line, they call it, on
9 the side. We usually build up parts. Elderly
10 ladies usually build up parts. We move from one
11 side of the line to the next side of the line and
12 build up parts. This particular day, one of the
13 supervisors came out and asked the other supervisor
14 what stations can Dot -- well, the call me Dot in
15 the job; they don't say Dorothy -- can she do on
16 the line. So, the other supervisor, the nighttime
17 supervisor, said that I could do the station where
18 you take that big gun and you had to take about
19 four screws -- and they're rotating, moving around,
20 and you got to shoot holes, shoot holes. You got
21 to do about six -- You got to do about six holes
22 in one section because that line is moving. But I
23 was never working on the line, and I told the
24 supervisor this morning, I said, "Marilyn, you know
25 I never could do that job successfully." So, she

1 told the other supervisor, "Well, just put her on
2 it. Let her go on," and, "Put her on it."
3 Q So, you were using an airgun?
4 A Yes, ma'am.
5 Q And this was not your usual job?
6 A Exactly.
7 Q Okay. And I'm familiar with the plant. You're in
8 a section where I think there's, what, about three
9 people on each side of the table and use the airgun
10 to do the bolts?
11 A Exactly.
12 Q Okay.
13 A That's exactly right.
14 Q Got you. So, you just filled in for that night?
15 A Filled in for -- This was daytime.
16 Q Daytime. Okay. But you work in a day shift?
17 A Yes, ma'am.
18 Q Okay. Who was your supervisor that day?
19 A Jeanette Kelly. She was not the supervisor that --
20 that put me there. Marilyn Butler was the
21 supervisor that put me to that station, and the
22 team leader was Jackie Watson. I got on the
23 station, and I said, "Miss Jackie," I said, "the
24 gun is a little bit too much," and I couldn't keep
25 up. See, you got -- you get on a station on that

1 line -- See, I never worked the line, and they
2 knew that. When you get on that line, you got to
3 be able to take that gun -- And the gun weighs --
4 the gun that I was using was heavier than -- way
5 more heavier than this little box sitting here in
6 front of me. But I tried. I did the best I could
7 to keep it going, but, I said, "My arm is beginning
8 to pain me, Miss Jackie," the team leader. I told
9 her. "Oh, stop complaining. Go on down, and you
10 can try and do it." I said, "Miss Jackie, please,
11 ma'am," I said, "I'm in pain." "Just keep on doing
12 -- keep on doing -- Try and do the best you can."
13 That's what they always tell you. So, when the
14 break time came, they told me to go to the nurse.
15 I said, "I have to go to the nurse." They took me
16 in to the nurse. The nurse put some ice on my arm
17 and my hand and rubbed some Biofreeze all on my
18 hand and arm, and rubbed it, and the supervisor
19 came to me and said, "You got to go back on that
20 station now. You got to go back to that station.
21 We're going to take you off it for the day." The
22 chief man that's over the -- that's over the -- the
23 nurses out there, he came in. He used to be my
24 supervisor. He said, "Take her off of that
25 station, Marilyn. Take her off." She came back

1 and told me -- They put me on something lighter.
2 I was in another little corner doing -- doing a
3 little, small thing. She came back and told me,
4 "Dot, you're going back on that station tomorrow."
5 I said, "Yes, ma'am," because you cannot refuse a
6 job in there to do, cannot refuse, or you'll get
7 terminated. I said, "Yes, ma'am." All right. The
8 next day, I came back in. She said, "Back on that
9 station." I didn't say one thing because if you
10 say too much or the wrong thing, they can send you
11 on out and you'll be terminated. I went back and I
12 got the gun and I tried again. I did what she told
13 me to do. The pain got -- came back into this arm
14 (indicating) and then right in here (indicating).
15 It came back in here again, --

16 Q Okay.

17 A -- severe pain.

18 Q I'm glad you said that. And you're pointing to
19 your right hand. So, where is the pain located in
20 your right hand?

21 A The gun that I was using, it had to -- I had to go
22 down on it -- I had to hold the gun with a grip
23 like this (demonstrating) and take this hand and --
24 and take that thumb and pull that trigger and take
25 the screws and hit -- you got to hit it, got to

1 hit, hit, -- You got six screws you got to pick
2 up, put in that big heavy gun. The gun was so
3 heavy. And you got to hit that line -- It's a
4 moving line. Just like this table here, got it
5 like this right here. (Demonstrating.) You see
6 how I'm going?

7 Q Mm-hmm.

8 A (Demonstrating.) Boop, boop, boop, boop, boop,
9 boop. And I move, boop, boop, -- You got to keep
10 it -- and you got to hit every hole. If you miss,
11 you got to hit the light. I've hit the light about
12 six times..

13 Q And how long were you on the line?

14 A I was on that line -- They put me on it that day.
15 When I went in and told them about the -- about the
16 pain, she put me back on there that next day. The
17 pain -- I was shaking my arm. I was -- When I
18 went back on it, they seen me shaking my hand.
19 They said, "Take her off it. Take her off it. She
20 hurting." I was shaking and still trying to do it.
21 The team leader stood right over there. She smiled
22 one time. But that's the way they -- That's how
23 they've always operated in there. I mean, it's
24 sad, though, but --

25 Q Well, going -- And I'm not trying to interrupt

1 you, because I want to know exactly the pain. When
2 you felt the pain from the airgun, was it in your
3 fingers or in your hand?

4 A Fingers and my arm. It started to pain me
5 severely.

6 Q Okay. And that's on your --

7 A Hand --

8 Q -- on your hand?

9 A Hand -- But -- Hand, fingers, and up in here
10 (indicating), right in here.

11 Q And up in there, you're pointing to your thumb
12 area, on the top of your thumb area?

13 A The thumb area here, and it still hurts. Pain here
14 (indicating) and here (indicating) and here
15 (indicating). That's where the pain started. I
16 could really feel it, and I told them that. I told
17 her one more time. I called her over. I said,
18 "Miss Jackie, please, ma'am," I said, "I need to go
19 back to the nurse." "Oh, stop complaining, Dot.
20 You can handle it. Handle it. Handle it."

21 Q So, after the -- How long did you stay doing that
22 job on the assembly line?

23 A I stayed there -- The second time, I did the best
24 I could with what I could do. Back in the day, I
25 was a real good worker. I was younger then, when I

1 went in there. I'm fifty-eight years old now,
2 going on sixty. They said, "You used to could do
3 this -- You used to handle that work real good at
4 one time, Miss Dot." I said, "I understand," I
5 said, "but I don't have the speed I used to have."
6 I said, "I'm in pain, got pain." I did what they
7 told me. They put somebody in -- They stepped
8 somebody in for me, put me right back to it.

9 Q And I'm going to move forward because this actually
10 is part of your accepted claim that you got
11 treatment for anyway. What did they -- The
12 ultimately said you had carpal tunnel or de
13 Quervain's; is that correct?

14 A Yes, ma'am. They operated in the carpal tunnel in
15 there. They opened this de Quervain right here
16 (indicating), and they went under there
17 (indicating) for the nerve damage.

18 Q On your arm. And you're pointing down to your arm
19 --

20 A Yes, ma'am.

21 Q -- toward your elbow?

22 A Where that scar is. Yes, ma'am.

23 Mr. Wilson: (to the deponent) Let her
24 ask the question, --

25 The Deponent: Okay.

1 Mr. Wilson: -- then you answer, because
2 if y'all are talking over each other, she has
3 a hard time keeping up. Okay?

4 The Deponent: Okay.

5 Mr. Wilson: I know you want to tell her
6 everything. Let her ask the questions first.

7 The Deponent: Okay.

8 Q Now, you had the surgery and then did physical
9 therapy -- Now, you had two different surgeries;
10 is that correct?

11 A (Holds up three fingers.)

12 Q Three different surgeries?

13 A (Nods head.)

14 Q Okay. And then, after that, did you do some
15 physical therapy?

16 A Yes, ma'am.

17 Q Okay. And how many doctors did you see for your
18 problems? Do you remember?

19 A Okay. Dr. Singleton. Physical therapy to Dr.
20 Duckett. Dr. Buckaloo. From Buckaloo to Dr. --
21 the doctor in Columbia, Dr. Gino. Am I saying it
22 right?

23 Q I think that's right, Ugino.

24 A Ugino. Yes, ma'am. Dr. Ugino. From Dr. Ugino --
25 Well, first -- I missed somebody. Let me go back.

1 The nerve conductor -- who did the nerve conductor
2 study --

3 Q They did an EMG; is that correct?

4 A Yes, ma'am. Yes, ma'am. Then Dr. Ugino. From Dr.
5 Ugino to Dr. Shealy in Charleston. From Dr. Shealy
6 to Dr. Muirhead. I missed one, another one in
7 Charleston that did the -- He did the -- He put
8 -- He put the thing on my fingers. He did the
9 nerve study. I can't call his name.

10 Q Would that have been Muirhead?

11 A No, it wasn't Muirhead. It was another doctor.

12 Q That's fine if you don't remember their exact name.
13 Okay. Tell me a little bit about how your right
14 hand and arm are doing today.

15 A Yes, ma'am. My right hand, being totally honest
16 with you, the carpal tunnel, I couldn't sleep at
17 night for the pain in this right hand. This right
18 hand is doing -- it feels good. I don't feel no
19 more pain inside the right hand. It feels very
20 well.

21 Q What parts are bothering you now that weren't
22 bothering you before, if any, of your hand or arm?

23 A Yes, ma'am. This thumb (indicating), it hurts
24 severely right here still. Dr. Marro gave me
25 several shots in it right here (indicating). Pain

1 is still running down here severely, up in here
2 (indicating).
3 Q You're saying there's a radiating pain underneath
4 your arm, going from the bottom of your hand to
5 about your elbow --
6 A Right. Yes, ma'am.
7 Q -- on the right side?
8 A Yes, ma'am.
9 Q Okay.
10 A Yes, ma'am.
11 Q And is the pain constant?
12 A It'll come and -- right here (indicating) severely.
13 pain still.
14 Q And you're pointing up to your elbow area in the
15 crease -- well, opposite -- through the actual
16 elbow but in the crease on your right arm?
17 A Yes, ma'am.
18 Q Any other body parts hurting?
19 A No, ma'am. In my fingers, it's still very numb.
20 It's very, very numb, especially this index finger
21 right here. It's very numb, but some of them is
22 very numb.
23 Q Have you ever had numbness in your fingers before
24 this accident?
25 A No, ma'am. No problems with my hand or arm before

1 this.

2 Q Are you satisfied with the treatment that you got
3 for your hand and arm, or do you want more
4 treatment?

5 A Everything is very well, but just one thing that --
6 I don't know if I needed that. I just -- The
7 doctor did not -- after he did surgery on me, I
8 just thought maybe that I should have had -- But,
9 you know, many people have had this. I'm not
10 saying what they had. But I feel they should have
11 did a nerve conductor sturdy -- study on my arm and
12 hand to see where was it at after surgery. I did
13 not get any of that, not even a -- not even a x-ray
14 or anything to see how it -- how is everything
15 looking, you know, after the surgery. And
16 everything else, I'm well pleased about, well
17 pleased.

18 Q Is there anything --

19 A Really appreciate it.

20 Q -- before this accident you could do that you can't
21 do now, like anything -- any housework, yard work
22 or anything like that?

23 A I can't do any kind of yard work. I cannot --
24 When I go to reach up (demonstrating), -- Oh. And
25 I left out something. The shoulders is in very bad

1 pain, too, severe pain in my -- both shoulders.

2 Q You said both shoulders. And when did that pain
3 begin?

4 A This began ever since 2013.

5 Q And did something happen to your shoulders, or --
6 When did they start hurting?

7 A What I do when I -- my job that I have at Husqvarna
8 was the staring [ph] table. I reach up and pull a
9 gun down and tighten it -- tighten a bracket on it,
10 and I lift them -- and it's sort of heavy -- and I
11 put them over here on that line. I've been
12 reaching up -- I've been reaching up mashing
13 buttons for years, mashing those buttons in the
14 press room. I've worked in four departments of
15 that plant, the press room was my first area, the
16 machine shop, and the blade cell. Those are
17 machines that you operate.

18 Q Now, did your shoulders begin hurting before this
19 carpal tunnel problem began or after?

20 A Yes, ma'am, before.

21 Q And was there any specific event, or was it from
22 doing your job? Did any specific event happen on
23 the job to make your shoulders hurt?

24 A No, ma'am. I'm just -- Well, what I was doing, --
25 I'll say it again -- reaching up over my head,

1 pulling a gun down and tightening bolts, the
2 reaching up and the pulling down (demonstrating),
3 the reaching up and pulling -- going up -- You're
4 talking about doing like a thousand times a day
5 you're doing this (demonstrating) because if you're
6 running a thousand parts -- I had to do a thousand
7 on that line each day. Reaching up, reaching
8 overhead and pulling down and tightening
9 (demonstrating), and a long period of standing,
10 also.

11 Q Also, let's talk about -- You said this was in
12 2013 -- is that correct --

13 A (Nods head.)

14 Q -- that your shoulders began hurting?

15 A (Nods head.)

16 Q You said both shoulders?

17 A (Nods head.)

18 Q Prior to 2013, had you had any treatment for your
19 shoulders, either shoulder?

20 A No -- Yes, ma'am. My doctor -- My family doctor,
21 Dr. Amoah, I was going to him. I told him about my
22 shoulders. He would give me a needle. He told me
23 all that I needed to do was massage my shoulders.
24 He never gave me no x-rays, no MRIs or anything,
25 and he's my family doctor for 20 years.

1 Q Okay. Any other -- Are you claiming any other
2 injuries for this work accident?

3 A No, ma'am.

4 Q Have you or do you intend to apply for any sort of
5 disability, like Social Security or anything like
6 that?

7 A I don't know yet.

8 Q Okay. Let me see. Is there anything I'm leaving
9 out here? I think that's about it. I just have
10 some final questions. Have you understood all of
11 the questions that I've asked you today?

12 A Yes, ma'am.

13 Q Do you wish to change your answers to any of the
14 questions?

15 A No, ma'am.

16 Q Have you been truthful today?

17 A Yes, ma'am.

18 Ms. Hapeshis: That's all I've got,
19 unless your attorney has something to follow
20 up.

21 Mr. Wilson: I don't have any questions.

22 [Off the record briefly at
23 10:53 a.m.]

24 Ms. Hapeshis: We're back on the record.

25 Examination Continues

1 By Ms. Hapeshis:

2 Q Ms. Miller, I believe that you had said that you
3 wanted to tell me something else that was bothering
4 you, was your right arm, so we've opened the record
5 back up to hear that. What --

6 Mr. Wilson: (to the deponent) Go ahead
7 and tell her what you were going to say.

8 A When I go to reach out like this (demonstrating),
9 ooh, it's severe pain. And when I wash, I can't --
10 my fingers don't have the feeling -- this hand
11 (indicating) does not have the feeling -- same
12 feeling of this hand (indicating) -- of this hand
13 over here. You know, I can't -- I'm not -- I can
14 wash, but I'm not able to grip. I'm not able to do
15 a strong grip.

16 Q And it's just you can't get a strong grip on your
17 right hand or left hand?

18 A Right hand.

19 Q Right hand.

20 A Very weak. I can't lift my pots like I used to --

21 Q What about --

22 A -- when I'm cooking.

23 Q Oh. Sorry. What's the heaviest you think you can
24 lift?

25 A I don't know right now.

1 Q But you said you have problems lifting --

2 A Because I'm in severe pain here in these shoulders
3 (indicating), and I wouldn't -- Right now, like
4 one -- I'd say one -- just one pound, but these
5 shoulders, when I get these shoulders repaired, I
6 think I'll know then, but I wouldn't be able to --
7 No, ma'am, I couldn't give, you know, how much I
8 could do, I really couldn't, because the pain is
9 still severe here.

10 Q Okay. Is there anything else you want to tell me
11 on the record?

12 A No, ma'am, nothing else that I can think of.

13 Ms. Hapeshis: All right. That's all
14 that I have for you.

15 The Deponent: I appreciate the doctors
16 that they sent me to.

17 Ms. Hapeshis: Thank you.

18 (Whereupon the deposition was concluded at
19 10:57 a.m.)

20 **(Deponent has waived reading and signing.)**

South Carolina Workers' Compensation Commission
WCC File # 1318602

Dorothy Miller,	)	
	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Kevin K. Nahigian, MD
	)	
Husqvarna,	)	
	)	
Employer,	)	
	)	
Ace American Insurance	)	
Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Kevin K. Nahigian, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 5:23 p.m., Monday, June 27, 2016, at Carolina Shoulder & Knee Specialists, 810 Mallet Hill Road, Columbia, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR-M

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Exhibits

<u>Marked as Defendant's Exhibit Number 1</u> ; Deposition of Kevin K. Nahigian, MD; medical records; 29 pages.	3
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Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken.

1 Stipulations

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

5 (Prior to going on the record, the following
6 exhibit was marked.)

7 Marked as Defendant's Exhibit Number 1;

8 Deposition of Kevin K. Nahigian, MD; medical
9 records; 29 pages.

10 Whereupon,

11 Kevin K. Nahigian, MD, being duly sworn and
12 cautioned to speak the truth, the whole truth,
13 and nothing but the truth, testified and
14 deposed as follows:

15 The Court Reporter: Please state your
16 name for the record.

17 The Deponent: Kevin K. Nahigian.

18 Examination

19 By Mr. Huff:

20 Q I've been mispronouncing your name. It's Nahigian?

21 A Nahigian.

22 Q Nahigian. Not Nahigan. Nahigian.

23 A Nahigian. Yeah.

24 Q I'll try to -- I can tell you, Doctor, over the
25 years I have read more of your medical reports.

1 I've been doing this for 40 years, and I remember
2 when I first started doing workers' comp back
3 around 1981.

4 A Wow.

5 Q So, it's been a long time. Let me introduce
6 myself, if I could. My name is Ros Huff. I'm the
7 attorney that represents the employer/carrier in
8 this matter. This is -- started off not to be a
9 denied claim. It's an admitted claim. Medical
10 benefits have been paid under the Act for this
11 claim. Background information, Ms. Miller was
12 hired by my employer in November of 2011, November
13 18th, so 11/11 is when she was hired. And we're
14 here today about an accident that occurred -- the
15 date that I had of 10/2/13. It may be 10/8/13.
16 I'm not quite sure exactly of the date. There's a
17 little discrepancy there. A request for a hearing
18 was filed, claiming injuries on the job. Like I
19 said, those injuries have been accepted. We have
20 filed the appropriate forms in work comp, and I
21 just want to let you know that we have -- we have
22 paid them temporary benefits for being out of work
23 for almost 16,000 in medicals. It's just that --
24 And we requested a hearing to pay permanent
25 disability, and we did that August of last year,

1 and supposed to have a hearing soon. Now, my
2 records -- and if I'm wrong, Dr. Nahigian --
3 Nahigian, -- Excuse me. Let me turn to it over
4 here. Let me go to the last page here. All right.
5 I'm showing that you first saw the patient on
6 November the 11th. Does that sound about correct?
7 A Yes. That's correct.
8 Q Now, from what I gather, -- How did you come about
9 seeing the patient? Was it by way of a referral?
10 A Yes.
11 Q Do you know who made the referral?
12 A I do not. Usually it comes through either the
13 carrier or the primary care doctor that the carrier
14 has hired or has working for them on behalf of the
15 patient.
16 Q I don't remember the exact name either, but I do
17 know -- I think it came from another -- another
18 doctor. And when you first saw the patient, can
19 you tell me what complaints she presented with, the
20 chief complaint?
21 A Right shoulder pain, and she had explained that
22 this had come from an accident or injury from use
23 of airgun while at work.
24 Q Did she say when, what period of time --
25 A She marked as the onset of this problem beginning

1 in 2013.

2 Q Did she say when in 2013?

3 A She may have written it on the main writing page,
4 but it's not in the typed portion of the chart. I
5 thought she said upon presentation that it was two
6 months prior to her presentation, so that would
7 have been September she was evaluated by her
8 primary care doctor.

9 Q Two months before what?

10 A Before her presentation to see me.

11 Q So, that would've been September of 2015?

12 A Correct.

13 Q Pardon?

14 A Yes. Correct.

15 Q Did you have an opportunity to review any of her
16 prior medical records?

17 A You know, I don't recall back that far. Usually a
18 lot of that information is kind of included into
19 portions of this note. So, if I did, then there
20 may be some excerpts that were consolidated into
21 her record here as far as timing of the injury,
22 when she had been seen by another primary care
23 doctor, what he ordered, things like tests that he
24 ordered, injections that he ordered or did, things
25 like that. So, I may have reviewed that in order

1 to include all that information in the chart.

2 Q Does your chart show any indication of any medical
3 records being provided to you?

4 A It does not, but typically I wouldn't see someone
5 who is workers' comp without some -- Associated
6 paperwork usually comes with everyone. Now, there
7 was some contention, I believe, at the time whether
8 or not this is workers' comp or not. I think there
9 was some discussion about that. So, if that was
10 the case, I could possibly have seen her without
11 any accompanying information.

12 Q Would there be a -- We've got a claim for
13 bilateral shoulders now, and what we originally set
14 the case for and paid surgery for was her wrist
15 surgery on one hand, right wrist surgery only.
16 Then two years later, we're now here on the
17 shoulders. That's why I'm taking your deposition,
18 for clarification.

19 A Okay.

20 Q Now, this started off as an admitted claim.
21 There's no animosity here. It is what it is.

22 A Okay.

23 Q So, that's why it's very, very important to me.
24 How can we find out what medical records you may
25 have reviewed. If we need to continue the

1 deposition till we get them, --

2 A Well, -- And I would say this, that I -- I really
3 don't -- I don't really care much what comes with
4 the patient. It's -- It's really about -- You
5 know, I ask them questions, they give me answers on
6 injuries, what the problem is, what they're here
7 for, and even if she saw a therapist 75 times, I
8 don't read the 75 notes from the physical
9 therapist. I just note she had therapy and she's
10 been seen by her primary care doctor, it's shoulder
11 complaints she's had for X amount of months and
12 she's here for evaluation. So, -- And even if it
13 comes with a big packet, unless she's had surgery
14 on that shoulder in that packet or something's
15 really pertinent, I really don't give it much
16 credence.

17 Q So, she came to you with shoulder complaints?

18 A Correct.

19 Q And the shoulder complaints had been around for
20 about two months, since September of 2015?

21 A That's what she put on her sheet, yes.

22 Q Did she make any mention to you of prior shoulder
23 complaints, prior to September 2015?

24 A She -- She had said that she'd used airguns for 30
25 years at work and she felt that that was the cause

1 of her bilateral shoulder issues. And a lot of
2 times they'll come in complaining of all kinds of
3 problems, but if we've already agreed to see them
4 for just X, the right shoulder, left shoulder,
5 whatever, even if they mention it, we don't even
6 talk much about it or mention much in the note. We
7 focus on what we've been approved to see and what
8 the appointment is for.

9 Q So, her complaint was strictly of right shoulder?

10 A Correct.

11 Q Any complaints of the left shoulder?

12 A Not to my recollection, but, again, even if she
13 said it upon presentation, it may not have gotten
14 in because she could say, like, my head and butt
15 and leg pain, and she hasn't been approved for that
16 or that's not what the appointment is for, so we
17 have to limit it to one thing. So, sometimes
18 they'll say things and I don't put it in because
19 we're not authorized to see it or we haven't agreed
20 to see it.

21 Q So, you were referred -- this patient was referred
22 to you by another doctor, correct?

23 A Correct.

24 Q Who did you think --

25 A We thought.

1 Q Who did you -- What medical provider did you -- or
2 insurance company or employer did you contact to
3 get authority as to what body part? I'm trying to
4 figure that out. I want to know why the right -- I
5 mean the left arm is not mentioned in this at all
6 if she had complaints.

7 A I don't know. It certainly could use some
8 investigation to see.

9 Q Did you ask -- Let's talk about prior history of
10 shoulder problems, whether it be left or right
11 shoulder, prior history. What history did she give
12 you regarding any prior problems?

13 A In her paperwork that she filled out, she listed
14 the onset of this problem being in 2013, but then
15 also -- but that she had been evaluated two months
16 earlier by her primary care provider. So, either
17 this came through workers' comp or it came through
18 her primary care provider. She also had -- He
19 also had ordered an MRI and performed an injection
20 two months prior to her seeing me at my office.

21 Q Did she give you any history of having any prior
22 injuries?

23 A No.

24 Q Would that be something that would be important to
25 you in order for you to give a medical opinion as

1 to causation?

2 A Sure.

3 Q Why is that important?

4 A Well, it gives me an idea of the extent of the
5 injury, what -- the mechanism of the injury. If
6 someone falls onto the opposite arm, they can have
7 wrist and shoulder problems on the same side. They
8 can fall and have a wrist problem or a knee problem
9 that could be pertinent. But the primary reason
10 she was there was for her shoulder, and I was going
11 to evaluate that completely. You know, at the time
12 of initial presentation, I'm never doubting the
13 patient or distrusting the patient. It's -- It's
14 innocent until proven guilty. So, I'm never
15 suspicious. If someone comes in and says their big
16 toes is hurting and they hurt it at work, I don't
17 question them, you know, the dates and put them
18 under a hot light and, you know, interrogate them.
19 I just move on from that. Once they tell me they
20 got injured at work and it's the right shoulder,
21 and I focus on the shoulder.

22 Q She's age fifty-nine. That's what I'm showing, her
23 birthday being August 22nd of '57. So, she's
24 almost fifty-nine. Do you agree with that?

25 A Yes.

1 Q Your records that you have right now do not show
2 her giving you any history, any specific history,
3 of prior medical treatment to either her right or
4 left shoulder?

5 A I now see down here some of the things listed in
6 all the medical information that she has a history
7 of shoulder surgery. That wasn't made obvious to
8 me upon the initial evaluation.

9 Q When was the prior shoulder surgery?

10 A It didn't list a date. It had past surgical
11 history --

12 Q Does it say which shoulder?

13 A No, it does not.

14 Q You don't know whether it's right or left shoulder?

15 A Correct. And oftentimes if they list it, it's
16 usually involving another shoulder, a different
17 shoulder.

18 Q If in fact -- You did surgery on which shoulder?
19 Was it the right?

20 A The right. Correct.

21 Q If there was prior surgery to the right shoulder
22 and you did surgery, you would have noticed that
23 and you would have noted that in your record, that
24 prior surgery to that shoulder, correct?

25 A Yeah, usually. Sometimes people's incisions are so

1 old that you don't even see them, the incision
2 mark. So, if I didn't see a large obvious surgical
3 scar, I would not have mentioned it.

4 Q Do you know how far back she first started having
5 shoulder problems in the right side?

6 A No, I do not.

7 Q If you have shoulder problems, can you have
8 radicular pain from shoulder problems?

9 A Yes.

10 Q Would it go into the neck or into the arm or both?

11 A Either.

12 Q If she had shoulder prior -- shoulder problems, how
13 far down the arm would it go? Would it go to the
14 hand or to the -- stop at the elbow or --

15 A It depends. Some clavicle problems can affect the
16 nerves past -- all the way down the arm. If it's a
17 shoulder joint problem, typically that achiness
18 doesn't go much past the elbow, but it frequently
19 does go to the level the elbow.

20 Q Were you aware that she had prior -- went to the
21 doctor and had prior problems with her -- both
22 right and left shoulder with pain down into the
23 forearm back in June 29th of 2010, some three years
24 before this accident?

25 A No.

1 Q Were you aware that she had injuries to her forearm
2 after being assaulted, physically assaulted?

3 A No.

4 Q Were you aware that she had severe pain in her
5 right shoulder, the one where the surgery was done
6 in October 22nd of 2011? Was that told to you?

7 A No.

8 Q Were you aware that February 12th of 2012 that she
9 received treatment from The Regional Medical Center
10 for not mild or moderate but for severe pain in
11 bilateral shoulders?

12 A No.

13 Q Would that be something that you'd want to know in
14 making the decision as to causation?

15 A Of course.

16 Q Thank you, Doctor. Were you aware that in -- on
17 April 29th of 2012, she received medical treatment,
18 with pain in both arms and pain in both shoulders
19 with elevation, and was diagnosed with shoulder
20 pain, to follow up for medical treatment and was
21 prescribed Lortab?

22 A I was not aware of it.

23 Q Were you aware, then, on September 27th of 2012
24 that she presented herself to The Regional Medical
25 Center for pain in both shoulders that radiates

1 down her arm and she said, "I got a whiplash a few
2 years ago and have trouble and pain ever since"?
3 Are you aware of that?

4 A I am not.

5 Q So, she never told you that, did she?

6 A Correct.

7 Q And the type of problems that you were seeing her
8' for could be the product of a motor vehicle
9 accident with whiplash injury?

10 A Yes.

11 Q What is Norco?

12 A It's a narcotic medication that is used for
13 significant injury and surgical pain relief.

14 Q So, it's not prescribed for mild problems?

15 A Well, it depends on the level. There's 2.5, 5,
16 7.5, 10. So, a lesser one, a 2.5 maybe for mild,
17 but if you use the 5 or 7, it's for a pretty
18 significant pain issue.

19 Q I have mentioned to you so far pain in the
20 shoulders in 2010, pain in the shoulders in 2011,
21 pain in bilateral shoulders in 2012 with a
22 diagnosis of severe pain. Now, I want to go to the
23 year 2013. We've got '10, '11, '12. Now we're in
24 2013. She is being diagnosed with severe, not
25 mild, not moderate but severe pain in bilateral

1 arms from the shoulders down. Does that sound like
2 some type of -- Can you give a causation with that
3 type of medical history that she didn't tell you
4 about?

5 A I'm not there at the time, so -- but, obviously, if
6 she's going to the emergency room, it must be
7 significant.

8 Q Her date of accident is October -- October of 2013.
9 Were you aware that she was over at The Regional
10 Medical Center on August 30th, roughly six weeks
11 earlier before she said that she had this accident
12 on the job, presenting on August 30th of 2013,
13 "Patient presents with severe pain in bilateral
14 arms from shoulder down"? Were you aware of that?

15 A I was not.

16 Q Would that be something you'd want to know if
17 you're going to look at causation, something that
18 they're already getting treatment six weeks before?

19 A If the patient gets to me and they've been approved
20 already one way or the other, -- Beyond that, I
21 don't question it anymore. I figure that due
22 diligence and done, and, you know, I'm there to
23 take care of the patient at that point. So, timing
24 is an issue when it comes to repairing, and if it's
25 a giant difference of years, that's a big

1 difference. If it's a couple of weeks or a month
2 or two, that's different. It would not have, you
3 know, raised any red flags with me.

4 Q The only reason I'm asking this is that we've
5 accepted the hand, like I said. It's the shoulders
6 that are coming in later that is making us come
7 here today. And I'm looking at the date of
8 accident being October 8th of 2013, and we're six
9 weeks earlier, and she's being prescribed Norco and
10 Naprosyn, and she's been diagnosed with these
11 problems. And I'm trying to see, can you really
12 state to a reasonable degree of medical certainty
13 that the shoulders are related to any accident, or
14 is it more that it's been ongoing for many years,
15 with degenerative changes? And I'm going to get
16 into that when I look at the MRI.

17 A It certainly sounds like that she had some shoulder
18 issues prior to her initial presentation or her
19 date of work injury --

20 Q All right.

21 A -- by what you've presented so far.

22 Q And I do look at the medical records, and it shows
23 that this alleged date of injury is November --
24 excuse me -- October of 2013, the 8th, and then
25 she's over getting treatment on October 20th, which

1 is 12 days after the date of accident, not even two
2 weeks, and what she's presenting for is right wrist
3 pain from repetitive trauma at work, not for any
4 shoulder problems. If she was having shoulder
5 problems, do you think that would be something
6 she'd divulge to the doctor?

7 A I would think so.

8 Q All right. And then -- she then had the right
9 carpal tunnel and de Quevain's release. That's not
10 anything to do with the shoulder, is it, Doctor?

11 A Correct.

12 Q Were you aware that -- I cannot pronounce this
13 doctor's name. I'm going to spell it for the court
14 reporter. It's A-p-r-a-k-u, at the Family Health
15 Center, Inc. Were you aware that she sought
16 treatment in September 8th of 2008, approximately
17 five years earlier, for arthritic pain in her
18 shoulder, especially her right shoulder? Was that
19 ever told to you?

20 A No, it was not.

21 Q Were you aware that on December 29th of 2009, she's
22 again at the Family Health Center -- this is before
23 the date of accident in '13 -- complaining in the
24 emergency room of a motor vehicle accident causing
25 pain in her shoulder?

1 A No, I was not.

2 Q Is that something that you think that -- And I'm
3 not saying any -- pointing any fingers. That's
4 something she didn't tell you, did she?

5 A Correct.

6 Q And you do ask about prior conditions or prior
7 medical treatment when you're trying to diagnose
8 and treat a person, correct?

9 A If I have reason to suspect there is other issues
10 prior to her date of injury, I would ask her. I
11 don't go into too much detail because it's really
12 what has occurred recently is what I'm most
13 concerned about.

14 Q Were you familiar that on February 25th of 2010,
15 again at the Family Health Center, Inc., she
16 complained of consistent arm pain?

17 A No.

18 Q Were you aware on April 19th of 2010, same
19 provider, again complaining of pain down her right
20 arm and some down her left arm, from the neck area?

21 A No, I was not.

22 Q But that's the arm that you were treating her for,
23 the right arm, correct?

24 A Correct.

25 Q Were you aware on May 4th, 2010, at Family Health

1 Center, Inc. she came in with joint pain in her
2 shoulders following a motor vehicle accident that
3 occurred only five months earlier?

4 A No, I do not.

5 Q Is that something you'd want to know? You asked;
6 she just didn't tell you.

7 A It would be helpful to know.

8 Q Those medical treatments that I mentioned to you
9 for 2010 from the Family Health Center, were you
10 aware that she continued to treat with the Family
11 Health Center, Inc. and on 1/13 of 2012 she shows
12 up with worsening pain and stiffness in her right
13 shoulder and was diagnosed with shoulder joint
14 pain? Were you aware of that?

15 A I was not.

16 Q Were you aware almost a year later -- because that
17 was in January of 2012 -- that she's back in
18 December of 2012 and is being diagnosed with
19 bilateral frozen shoulders and pain on abduction?
20 Were you aware of that?

21 A I was not.

22 Q Is that information you think you would need or
23 that she should have provided to you so you could
24 make a diagnosis as to causation?

25 A That would have been helpful also as far as the

1 overall prognosis and treatment course. I would
2 have evaluated things a little differently if I
3 knew that, yes.

4 Q Were you aware that she's back at Family Health
5 Center, Inc. on February 2013 and again diagnosed
6 with shoulder problems?

7 A I am not aware.

8 Q Were you aware that she returned to the Family
9 Health Center, Inc. in March of 2013 -- now, this
10 is seven months before her alleged date of accident
11 in October 2013 -- where she is complaining of the
12 exact same right shoulder with joint pain for four
13 days, right shoulder and left shoulder, after a
14 whiplash injury that she had in a car wreck? Were
15 you aware of that?

16 A I am not aware.

17 Q Were you aware that she returned five months later
18 to the same provider and was diagnosed with neck
19 and shoulder muscle problems and started on
20 Flexeril?

21 A I am not aware of that.

22 Q On September 27th, 2013, approximately five weeks
23 later, she returned to the same medical provider
24 when she complained of chronic neck and arm pain
25 that she relates to a whiplash injury. Were you

1 aware of that?

2 A I am not.

3 Q Were you aware -- again, the same medical provider,
4 -- I want to make sure I put the name on the
5 record, Family Health Center, Inc. -- that she
6 goes to the doctor six weeks after the alleged
7 accident with my employer where she's still got
8 spasms in the neck and shoulder muscles and could
9 not afford pain medication and complains of pain in
10 her right and left shoulder, neck, and right and
11 left leg, right foot pain and the assessment is
12 neck strain where there's no history given of a
13 work-related accident? Were you aware of that?

14 A I am not aware of that.

15 Q Were you aware that in February of 2015, at the
16 same medical provider, she comes in complaining of
17 neck and arm pain and again it says after a
18 whiplash injury where she is relating it to a car
19 wreck and not work? Were you aware that she did
20 that?

21 A I'm not aware of that.

22 Q All right. I'm now looking at Dr. Gregory
23 Singleton at Orangeburg Primary Preventative &
24 Occupational Medicine. This accident is October
25 2013. Were you aware that she goes to see Dr.

1 Singleton in November of 2005 as the result of a
2 motor vehicle accident and she's complaining of
3 right arm pressure and neck problems?

4 A I was not aware.

5 Q She didn't tell you that?

6 A No.

7 Q You were not aware that November 9th of 2005 Dr.
8 Singleton diagnosed her with right arm pain?

9 A I'm not aware.

10 Q I'm also showing that she's seen Dr. Gregory
11 Singleton in October of two thousand -- October 8th
12 of 2013, October 16th of 2013, -- Matter of fact,
13 I'm just going to read it. Went to the doctor --
14 She went to the doctor on October 8th, 2013, to a
15 Dr. Singleton, where she is complaining of right
16 hand pain that goes up her right arm, and there's
17 no mention of any shoulder problem. Are you aware
18 of that?

19 A I am not.

20 Q She then returns a week later, on October 16th, and
21 again the complaint is right wrist pain, diagnosed
22 as a right wrist sprain, and there was no mention
23 of the shoulder. Were you aware of that?

24 A I am not.

25 Q This is all in proximity of the same month of her

1 complaint of her shoulder problems. Were you aware
2 that she then returned two weeks later, on October
3 30th, 2013, and saw Dr. Singleton, and her
4 diagnosis again and her complaints were strictly
5 wrist strain? Were you aware of that?

6 A I am not.

7 Q She then returns to Dr. Singleton on November 20th
8 of 2013, and again it's right wrist pain. Were you
9 aware of that, nothing mentioning the shoulder?

10 A (No response.)

11 Q Are you aware of that?

12 A I am not aware of that.

13 Q She then returns on December 11th of 2013, and
14 again it states she's still has pain in the right
15 wrist but no mention of a shoulder problem. Were
16 you aware of that?

17 A I am not.

18 Q She then returns a month later, on January 8th of
19 2014, with wrist pain with an assessment of right
20 wrist strain, with right wrist still hurting. Were
21 you aware of that? No mention of a shoulder
22 problem.

23 A I am not.

24 Q Were you aware that she came back on -- eight
25 months later, on September 3rd of 2014 and saw Dr.

1 Singleton, again only with right wrist still
2 hurting and swelling and fingers being numb? Were
3 you aware of that, with no mention of a shoulder?

4 A I am not.

5 Q Finally, with Dr. Singleton, she returns two weeks
6 later, on September 17th, 2014, with numbness in
7 her fingers. Were you aware of that?

8 A I am not aware of that.

9 Q Were you aware that she went to the South Carolina
10 Orthopaedic Institute and saw a Dr. Jerrold
11 Buckaloo back on May 20th of 2010 complaining of
12 neck problems?

13 A I am not.

14 Q Doctor, can you state to a reasonable degree of
15 medical certainty the findings that you found in
16 her neck region -- can you tell us to a reasonable
17 degree of medical certainty the age of that
18 condition?

19 A In her neck or her shoulder?

20 Q What did you treat her for?

21 A Shoulder.

22 Q Shoulder. Yes. Can you tell me from what you've
23 seen the age of how long this has been there?

24 A That's a very difficult thing to determine because
25 components can be there for quite some time or not

1 at all. So, the partial tear could be present for
2 quite some time, and that turns into a full
3 thickness tear with time. Other times the full
4 thickness tear is there for a long period of time.
5 So, it's -- it's pretty tough to know. But when
6 you do shoulder surgery, all that information is --
7 is important because if someone has had inability
8 to lift their arms for years, that's not going to
9 be a repairable shoulder. If it's weeks to several
10 months, you know you have a good shot of repairing
11 those. So, if someone had a massive tear of the
12 rotator cuff for two years, we're not even
13 attempting surgery on that. If they have had it
14 for just a couple of weeks or months, then we talk
15 about fixing that because we know that's
16 repairable.

17 Q So, you're thinking that if that tear was there,
18 that's repairable, if it occurred within a couple
19 of months, not years?

20 A Yeah. The question that I ask that -- is I always
21 hope to determine, if it was present for a long
22 period of time, was when did things abruptly change
23 and when were you unable to pick your arm up or
24 when did you notice a large difference. And I had
25 no history that anything in the past had been

1 present or occurred.

2 Q Based upon the exams that were done, testing I mean
3 by exams, and the studies, can you tell me --
4 because I looked at Dr. Buckaloo's report of
5 September 22nd, '15. It says bilateral shoulder
6 pain times years, and it's been treated for years.
7 I'm just trying to find out, in looking at what the
8 MRI shows, how long that preexisting condition has
9 been there. The MRIs, Doctor, were done in
10 September -- excuse me -- July of 2015 of the right
11 and left shoulder, and that would be almost a year
12 and a half after. So, what they found was a full-
13 thickness, full-width tearing of the supraspinatus
14 tendon of approximately three centimeters of
15 tendinous retraction, atrophy of the supraspinatous
16 muscle, degeneration and probable tearing of the
17 superior labrum. That's the right shoulder. And
18 the left shoulder is pretty much the same thing.
19 I'm saying -- And it says it's suggestive of a
20 longstanding injury. Can you tell us to a
21 reasonable degree of medical certainty how long
22 these conditions had been present. It's not
23 something that occurs overnight, is it?

24 A It can occur overnight, but it can be present there
25 for a long period of time. I'm not sure that I had

1 the MRIs available to me upon initial presentation.

2 Q Okay.

3 A So, I'm not sure I can comment on those as to how
4 old they were or how old they looked.

5 Q Would it help if I could find them for you?

6 A Well, I -- No. Oh. Excuse me. Now, I do see --
7 I'm sorry. I do see an MRI -- a reference. It
8 says MRI shows a full thickness rotator cuff tear
9 which is retracted. I may have thought that they
10 were from July of that year.

11 Q Okay.

12 A And the reason why that is, if I know that the
13 primary care doctor had seen her, last seen her,
14 and treated her with an injection, -- In her
15 patient history, it said patient had MRI and
16 injection two months ago. So, I probably would not
17 have gone to that MRI, looked at the dates to
18 verify that. I would have just gone onto that MRI,
19 looked at the image to see what the findings were.
20 So, I think my impression at the time was the MRI
21 had been done relatively recently.

22 Q Okay.

23 A If an MRI had been done in the past and a newer one
24 had been done, I don't even look at the past one.
25 I look at the newer one to know where we are today.

1 Q Okay. Based upon that MRI being done, that period
2 of time frame before, can you state to a reasonable
3 degree of medical certainty what the probable cause
4 of her condition was? Was it related to something
5 on the job, or is it something that was
6 preexisting?

7 A It was performed in -- in '14, the MRI?

8 Mr. Alexander: July 2015.

9 A July of '15. Yeah. So, again, that's a more
10 recent MRI, so, yeah, I'm taking things at their
11 presentation. My -- My impression when she came
12 in was -- Even though it's mentioned in there, my
13 impression that this was relatively a new issue
14 because I see seen by the primary care two months
15 ago, MRI two months ago, injection two months ago.
16 So, I'm not sure I was even looking back to when
17 the accident really occurred or when this started
18 being a problem. And then having a fairly recent
19 MRI, I'm kind of thinking that everything must have
20 just occurred and there isn't a long history of
21 shoulder pain.

22 Q Even though I just read all these histories of
23 shoulder problems and arm problems?

24 A At the time, though, I didn't know --

25 Q Didn't know.

1 A -- those existed, so --

2 Q Okay.

3 A Again, I'm not questioning people who are coming
4 in. I'm trying to get through things in a timely
5 fashion, kind of cut to the chase as far as what
6 the problem is and what we need to do to treat.

7 Q Can you tell me what effect, if any, would obesity
8 have on her shoulder problem?

9 A Obesity can make it more difficult to correct the
10 problem. Severe obesity in the upper extremity
11 where there's increased weight can make it more
12 difficult to evaluate problems, correct problems,
13 and can add to the difficulty of recovery.

14 Q The reason I ask that, if someone weighs over 230
15 pounds, female, five foot, seven inches, would you
16 consider them to be morbidly obese?

17 A Yes.

18 Q I noticed on your first report, your first date of
19 service of November 11th, 2015, on page 2 of 3
20 under Results/Data, that an x-ray of the right
21 shoulder was taken.

22 A Yes.

23 Q And it shows joint space narrowing, significant
24 joint space narrowing. What was causing that
25 narrowing? Was that the arthritic changes?

1 A Arthritic changes in the AC joint and just wear and
2 tear through time.

3 Q I notice it says O -- Is that OH or CH joint under
4 Results/Data? It says significant degenerative
5 changes. What is that, CH, under Results/Data?

6 A Oh. GH, That's the glenohumeral joint. So, that's
7 the ball and socket portion of your joint.

8 Q It wasn't mild degenerative changes, was it?

9 A No.

10 Q It wasn't moderate, was it?

11 A No.

12 Q What do you mean when you say severe degenerative
13 changes?

14 A Severe usually means that there's near bone-on-bone
15 contact, that most of articular cartilage has been
16 worn away. I use significant when I want to kind
17 of note to myself that this is not a completely
18 normal joint, but it's not so severe that it would
19 prevent me from doing a soft tissue procedure
20 without replacing the surfaces.

21 Q What does AC joint? What part of the shoulder is
22 that?

23 A That's between the collarbone and the shoulder
24 blade. The AC joint is above the shoulder joint.

25 Q And there you said significant, but now you're

1 using the severe word. What does that mean?

2 A So, severe means that it's bone-on-bone changes in
3 the AC joint. So, that's very common in laborers,
4 and it's very common in people of her age group and
5 people that have done repetitive things. So, we
6 would see that high level in athletes in their
7 early twenties. It just -- It just tells me that
8 when I'm going in there, I'm also really evaluating
9 that joint to make sure that there's no symptoms
10 coming from that joint. In her particular case,
11 the changes were severe there intraoperatively, so
12 we did just a clavicle resection.

13 Q How long does it take for that to develop? That
14 doesn't develop overnight, does it?

15 A No. That --

16 Q It's years?

17 A Correct, years.

18 Q I notice you're dealing with the right shoulder.
19 Did she make any complaint to you of the left
20 shoulder? If so, would you have documented it?

21 A Again, there are people that come in complaining of
22 other extremity problems, and usually if I've not
23 been authorized to see those, I won't even mention
24 those.

25 Q Who authorized you to treat anything? I'm not

1 being disrespectful. I've looked over -- I've got
2 the medical records, and I've got 16 different
3 providers, and I did see where the referral was
4 made to you, but I didn't see -- Do you have a
5 document that shows there's only one shoulder that
6 she was referred to be seen for?

7 A No, but I only see one problem at a time, so --

8 Q So, if she mentioned the other shoulder, you
9 wouldn't even note it? Would you at least note it
10 in your record?

11 A I may have noted it if she was not a workers' comp
12 patient or if she had -- if she had been involved
13 in a motor vehicle accident. Acutely and if I was
14 the first one to see her, I would have mentioned
15 those things, but if I've been referred someone
16 from another physician for a specific problem, I'm
17 addressing that problem, not other things. I mean,
18 I would never get through my day. People come with
19 ten different extremity complaints, and I would
20 never get through the 60 patients I see in a day
21 unless I keep moving.

22 Q Do you know if she's right-handed or left-handed?

23 A I believe we documented that in some portion of the
24 case. I don't see if offhand here. My perception
25 was that she was right-handed because she was

1 constantly referring to the fact that she uses the
2 airgun, and I was thinking you would use the airgun
3 with your dominant hand.

4 Q Did she give you any indication that she used the
5 airgun in the opposite hand, the non-dominant hand?

6 A Later on she said that she was -- she would do
7 things above her head, firing the airgun, and she
8 felt that was the cause -- that was the reason why
9 both her shoulders were hurting, so I assumed that
10 she was firing the gun at some point with both
11 hands.

12 Q Okay. Can you tell me, what job description did
13 she give you? What did she say that she did?

14 A She just told me she did overhead work with an
15 airgun on an assembly line for 30 years.

16 Q Did she tell you how she did the overhead?

17 A I don't think so.

18 Q Did she tell you the duration of the overhead work?

19 A I mean, it sounded like it was the majority of her
20 work.

21 Q Did she tell you the duration, how long?

22 A Duration of a day or duration --

23 Q When she had her hands over head. Did she tell you
24 how long she had them over her head before she came
25 back to a neutral position?

- 1 A She did not.
- 2 Q Do you know what she did at the employer?
- 3 A Not specifically. Something with an airgun.
- 4 Q Do you know whether the airgun -- if it would
- 5 pause, whether or not it had an automatic choke
- 6 that shut down and tightened at the end point?
- 7 A I have no idea.
- 8 Q Did she give you any history that the airgun caused
- 9 any jerking and trauma to her hands, in a jerking
- 10 fashion, and, if so, would you have documented it?
- 11 A I know that repeatedly she was very adamant that
- 12 all of her problems were related to use of the
- 13 airgun, but I don't know specifics.
- 14 Q Okay. Thank you. Can you state to a reasonable
- 15 degree of medical certainty how long the tear was
- 16 present in the rotator cuff?
- 17 A I cannot.
- 18 Q Can you tell me, when's the last visit you had with
- 19 her?
- 20 A I believe June of 2016, unless you have some other
- 21 date.
- 22 Q I have -- I think the last one I have is April. I
- 23 don't have June. So, we may have to get that
- 24 later.
- 25 A I can get that for you.

1 Q Thank you.

2 Mr. Huff: Do you have any objection to
3 making that part of the record?

4 Mr. Alexander: No. I have no objection.

5 Mr. Huff: Whatever the records are, the
6 records are. I'm not trying to hide anything.
7 So, I got them, I'll put them in and let them
8 make the decision.

9 Mr. Alexander: I agree.

10 Mr. Huff: Okay. So, no objection.

11 Q I notice on March 14th of 2016, there was a letter
12 sent to you by Attorney Charles McCutchen. Do you
13 have that?

14 A Yes.

15 Mr. Huff: This document has been
16 submitted, and, to protect myself, my client
17 and my records, I'm going to -- I object to
18 this document being presented as evidence at
19 the commission for multiple reasons. One, it
20 consists of leading questions. Improper
21 foundation. But we'll still ask the
22 questions, and the commissioner will rule.

23 Mr. Alexander: He's ruled on that
24 already?

25 Mr. Huff: He did?

1 Mr. Alexander: Yes.

2 Mr. Huff: Yeah, he let it in, subject to
3 my cross-examination. You are correct. Thank
4 you. Thank you for bringing that to my
5 attention.

6 Q This document is a letter to you from Charles
7 McCutchen with the Lanier Law Firm, and Burroughs.
8 When you got this document, did you have any
9 conversation with the other attorney that sent this
10 to you?

11 A You know, I don't recall. I mean, I speak to a lot
12 of lawyers on behalf of patients. They may call me
13 up and say listen, she's still having problems with
14 her X, if I sent you a questionnaire, would you be
15 comfortable giving the answers to it, and a lot of
16 times I'll say yes. So, we may have had some
17 preliminary conversation. Beyond that, I don't
18 recall one way or the other. So, I may or I may
19 not have.

20 Q If you would, subject to --

21 Mr. Huff: I'm still going to do an
22 objection, but I think you're right on the
23 ruling, but just be on the safe side. I can
24 always withdraw it.

25 Q You didn't draft this questionnaire, did you,

- 1 Doctor?
- 2 A No.
- 3 Q You treated her and did surgery on the right
- 4 shoulder?
- 5 A Correct.
- 6 Q Have you provided any medical treatment whatsoever
- 7 with the left shoulder?
- 8 A I don't think so. I think they wanted me to
- 9 evaluate it, but I don't think I ever got to it.
- 10 Q Can you then, therefore, give any opinion regarding
- 11 the left shoulder at this time without doing any
- 12 examination?
- 13 A No.
- 14 Q Well, let's just strictly limit it to the right
- 15 shoulder, then.
- 16 A Okay.
- 17 Q They ask a question about repetitive action. Could
- 18 you please tell me what repetitive action you were
- 19 talking about?
- 20 A My perception of that is just the use of the airgun
- 21 above her head repetitively.
- 22 Q What's the weight of the airgun?
- 23 A Absolutely no idea.
- 24 Q What level is it?
- 25 A No idea.

1 Q What degree of force is needed to use the airgun?
2 A No idea.
3 Q In an eight-hour day, what is the frequency of
4 using the airgun?
5 A No idea.
6 Q All right. Instead of going through everything
7 again, those same questions I just asked you about
8 the use of the airgun, the weight of the airgun,
9 the level of the airgun that's used, the force of
10 the airgun, the frequency of the airgun, goes to
11 question number 2. Do you have any idea as to
12 question number 2?
13 A Could you rephrase the question?
14 Q Yes, I will. I just ask the same question.
15 Question number 1 deals with the first word
16 repetitive action.
17 A Oh. I see what you're saying. You're saying
18 regarding number 2, if you asked me all those same
19 questions would I have any idea, and I -- no, I'd
20 have no idea.
21 Q So, no idea.
22 A Correct. Now I'm with you.
23 Q Okay. Thank you. The last that you saw Ms.
24 Miller, do you think she's at maximum medical
25 improvement?

1 A Yes, for her right shoulder.

2 Q Have you assigned any impairment rating?

3 A I did not because there was still this discussion,
4 so I figured instead of giving her a number at that
5 point, that when I saw her officially the final
6 time, I would provide that.

7 Q Okay.

8 A Although some forms may have been filled out at the
9 request of someone. Let me look here. I don't
10 believe so.

11 Q I think I'm near the conclusion. Let's go to, if
12 we could, your operative note. I'm showing that is
13 dated December 8th of 2013 and discharge on
14 December 8, 2015. Do you have that? If not, I'll
15 give you a copy.

16 A I'll take the copy.

17 Q I'll be more than happy to.

18 A Oh. I have it. I have it. Sorry.

19 Q Okay. Thank you, Doctor. Can you tell me what --
20 when the procedure was performed?

21 A I think it was on December 8th, 2015.

22 Q Okay. And -- Because it says here date of
23 procedure December 8th. So, that's right. And
24 what was your postoperative diagnosis?

25 A She had a massive full-thickness rotator cuff tear,

1 severe arthrosis of the AC joint, and impingement
2 of the rotator cuff by the shoulder blade.

3 Q All right. I notice you used the word massive.
4 What does that mean?

5 A That's -- It's primarily for my use and the use of
6 the therapist to note a tear that's at least five
7 centimeters in size and of moderately poor quality
8 tissue that denotes that we're going to have to
9 treat this patient a little bit different than the
10 average rotator cuff rehab.

11 Q Can you tell, based upon that length, how long that
12 tear had been there?

13 A Massive tears tend to be there longer, but no, you
14 can't carbon date it and know exactly how long it's
15 been there.

16 Q All right. The second postoperative diagnosis is
17 right shoulder acromioclavicular joint arthrosis.
18 What does that --

19 A AC joint arthrosis, between the collarbone and
20 shoulder blade, the arthritis in that joint.

21 Q That's arthritis?

22 A Correct. We treat that with a distal clavicle
23 resection.

24 Q That had been there for a while, then?

25 A Correct.

- 1 Q Okay. When you got into the joint and you saw it,
2 would you call that mild, moderate or severe?
- 3 A Severe.
- 4 Q It had been there for a prolonged period or a
5 protracted period of time?
- 6 A Correct.
- 7 Q I noticed at the bottom of that -- it's a two-page
8 report -- at the very bottom it says you entered
9 the space -- I can't read it. Mine has a hole in
10 it.
- 11 A Subacromial space. Yeah. That's the space above
12 where the rotator cuff would be, but that space
13 really doesn't exist because the rotator cuff
14 wasn't there. It was retracted.
- 15 Q And you say a large amount of thickened material
16 was encountered. What was -- What's that
17 thickened material?
- 18 A It's supposed to say a large amount of thickened
19 bursal material. So, it's the bursa, area where
20 the bursa is.
- 21 Q Was that normal or abnormal?
- 22 A It's very typical with people with rotator cuff
23 tears.
- 24 Q You found a spur. How long does it take for a spur
25 to develop?

1 A That's been there for many years, as well.

2 Q And it says the distal clavicle -- and I know what
3 the clavicle is because I had the pleasure of
4 breaking that one time -- was -- you didn't say
5 mildly or moderately. You said it was extremely
6 arthritic?

7 A Yes. So, that's the same thing that we talked
8 about before. That's the AC joint.

9 Q That took time, took years for that to develop?

10 A Correct.

11 Q And it says arthritic with a cauliflower, moth-
12 eaten appearance. That's very descriptive. Can
13 you tell me what that means for the laborer?

14 A Yeah. So, it's supposed to be perfectly smooth and
15 flat, a nice smooth cartilage, and this was
16 extremely arthritic and had been there for a long
17 period of time.

18 Q So, it's preexisting?

19 A Correct.

20 Q Can you state to a reasonable degree of medical
21 certainty how long the tears that you found were
22 present there?

23 A I cannot.

24 Mr. Huff: Doctor, I have no further
25 questions. I want to thank you for your time.

1 The opposing attorney may have some questions,
2 and I may have some follow-up.

3 The Deponent: Let me grab my phone real
4 quick, make sure I didn't miss a call.

5 [Off the record at 6:25 p.m.;
6 back on the record at 6:29
7 p.m.]

8 Mr. Alexander: I don't know -- We
9 didn't actually cover this before. Are we
10 stipulating Dr. Nahigian is an expert?

11 Mr. Huff: Oh, I think we did it. I have
12 no problem at all.

13 The Deponent: Tired expert.

14 Mr. Huff: Yeah.

15 Mr. Alexander: I'll try to be brief.

16 Examination

17 By Mr. Alexander:

18 Q You're familiar with the claimant's line of work,
19 what she told you in her -- in her presentation?

20 A Somewhat, yes.

21 Q That's it's overhead work essentially?

22 A Right.

23 Q For somebody who's done that for 30 years, is that
24 enough for you to make a determination on
25 causation?

1 Mr. Huff: I'm going to object to the
2 form of the question as leading.

3 A I typically don't doubt patients when they come in.
4 If they have not had other injuries or reports of
5 problems and they say that they've been using
6 something and they ask me could this have caused
7 it, I usually comment one way or the other on it.
8 So, I didn't have any reason to suspect that she
9 had other injuries or complaints at that time, and
10 I just don't get too involved with the mechanism.
11 I mean, if it makes sense, I kind of just move on
12 from there.

13 Mr. Huff: Doctor, let me say this, when
14 I object, you still answer the question.

15 The Deponent: I got it. I got it.

16 Mr. Huff: The commissioner will rule,
17 but do answer. Thank you.

18 Q You note in your records, I've got here for the --
19 well, it's the March note, "Her job required many
20 years of overhead activities and use of an airgun
21 and this, no doubt, contributed to her degenerative
22 process." That's your note?

23 A Correct. And that could -- that could be partly --
24 The AC joint is part of that. The spur formation
25 is part of that. So, you know, that's just a

1 generalized comment.

2 Q But that's not just based on her telling you what
3 she did; that's based your examination, as well?

4 A No. That's basically mostly based on what she has
5 on her findings and tests, whatever, clinical exam
6 and what she told me.

7 Q Okay. So, a combination of objective and
8 subjective?

9 A Correct.

10 Q How would you define repetitive trauma?

11 A You know, people that are using the hammer,
12 sledgehammer repeatedly, jackhammer, you know,
13 things that are, you know, requiring significant
14 force over and over and over again.

15 Q As far as the treatment of her shoulders, I know
16 we've discussed that you treated mainly for the
17 right and there weren't really mentions of the left
18 early on, but I know -- I think in January 2016
19 there is a diagnosis of left shoulder impingement
20 syndrome. Do you have any idea why -- why that
21 started in January?

22 A I don't. Usually it's a patient, again, bringing
23 it up to me or saying can you do something for my
24 other shoulder, as well. And even if they mention
25 it at some point, I'll usually say talk to your

1 employer, if they okay it, I'm happy to see you for
2 it. And then if they mention it, sometimes I'll
3 just put it in the note, and then at a later date,
4 now that we've taken care of the one shoulder, that
5 they're mentioning it, so we go back and look at
6 the note, that there's some mention of it. But
7 just because it's not there doesn't mean they
8 haven't mentioned it.

9 Q Okay. Was there a reason why you went to the right
10 shoulder before the left? Is one worse than the
11 other?

12 A No. That was her primary complaint.

13 Q All right.

14 A That's what my perception was, that I was okay to
15 see -- the reason for the referral.

16 Q Going back to the postoperative notes where you --
17 I guess used the word prolonged period of time for
18 these conditions. How would you define prolonged
19 period? Is that a couple of months or years, or
20 what --

21 A What do you -- the context of --

22 Q When you said prolonged period of time, that the
23 postoperative diagnoses suggest, --

24 A Yes.

25 Q -- what would a prolonged period of time be for

1 you?

2 A Arthritic changes in the joint, I mean, that takes
3 years, but -- and those can develop for -- develop
4 over 40 or 50 years. They can develop over three,
5 four years of intense activity. So, there's just
6 no way to know how long those have been present.
7 They don't occur in a year, two years. Just to
8 clarify that, there's plenty of people that have
9 rotator cuff tears that acutely tears in their cuff
10 but have chronic arthritic problems above the cuff
11 that have weakened the cuff through the years. So,
12 we go in to treat the cuff. So that they don't re-
13 tear, we then address those problems, take care of
14 the spurs, open the space, taking it into the
15 collarbone so as not to wear through the cuff again
16 and re-tear it.

17 Q This questionnaire from the previous law firm sent
18 to you in March 2016, you said she wouldn't need
19 any future medical treatment on her shoulders. You
20 answered no on that?

21 A Correct.

22 Q But now you're -- you believe she does need
23 treatment on her left shoulder, correct?

24 A Oh. I thought that was just the right shoulder we
25 were talking about.

1 Q So, in the questionnaire, you focused on only the
2 right shoulder?

3 A Correct.

4 Q Right shoulder you evaluated and treated; left
5 shoulder, does that need to be addressed?

6 A The left shoulder really hasn't been evaluated.

7 Q Okay. With this repetitive injury, basically we're
8 saying over time her work is the cause of what
9 we're now seeing in the MRIs and what you see on
10 the postoperative diagnosis. We don't need a
11 specific date necessarily for that. It doesn't
12 have to be that it happened on -- So, would you
13 say, based on your treatment and seeing 30 years of
14 overhead work and what you saw in reports,
15 subjective and objective, -- could you say to a
16 reasonable degree of medical certainty that to be a
17 direct causal relationship between the condition
18 under which she did her work and the injury that
19 she sustained to her shoulders?

20 Mr. Huff: I'm going to place an
21 objection. I object to it being a compound
22 question. I object that it calls for
23 speculation. I'm going to object that's it's
24 conclusionary. I'm going to object that it
25 does not lay a proper foundation. But you

1 still answer the question, if you remember the
2 question.

3 The Deponent: Yes.

4 A It can be contributory, but there's no way I can
5 say that it's the only reason why it's occurred --
6 this occurred.

7 Q Okay. You've gone over this, but I'd like to go
8 over it. Dr. Singleton is treating her through
9 workers' comp for her wrist injury, which was the
10 only approved treatment at the time. So, even if
11 she discussed her shoulders, there's a chance it
12 wasn't noted. That's how you treat; is that
13 correct?

14 A Correct.

15 Q Okay. So, it not being noted in his notes wouldn't
16 have any bearing on your opinions?

17 A Yeah. If there's -- Correct. If there is some
18 kind of controversy occurring and there is a debate
19 whether or not, you know, two knees, two shoulders,
20 two wrists, then I'll certainly mention those
21 things. If I've been approved to officially see
22 one thing, I only talk about that.

23 Q Okay.

24 A Typically workers' comp won't pay or reimburse for
25 other x-rays or other evaluations or other exams.

1 So, whatever we're approved for is what we see.

2 Mr. Alexander: Okay. That's everything
3 I needed.

4 Mr. Huff: I may have one or two
5 questions.

6 Re-examination

7 By Mr. Huff:

8 Q You don't have any doubt that she had prior
9 problems and preexisting conditions to the right
10 upper extremity?

11 A Her AC joint arthritis and her bone spurring that
12 was present was no doubt present for longer than
13 the date of injury that was listed, to me.

14 Q Have all your answers today been truthful?

15 A Mostly. Ha. Yes.

16 Q You didn't give any false answers?

17 A No.

18 Q You've been doing this -- This is not your first
19 rodeo?

20 A No, it's not.

21 Q Okay.

22 A Yes, they have been.

23 Q Do you want to change any of the answers?

24 A No.

25 Q You want to stand by your answers to questions you

1 understood?

2 A Yes. Correct.

3 Q And to a reasonable degree of medical certainty?

4 A Correct.

5 Mr. Huff: I have nothing further.

6 (Whereupon the deposition was concluded at

7 6:40 p.m.)

8 **(Deponent has waived reading and signing.)**



A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 11/11/2015
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nabighian MD

Chief Complaint
right shoulder pain

History of Present Illness

Shoulder Problem: The patient is being seen for an initial evaluation of a shoulder problem. She sustained an injury to the right shoulder. The injury resulted from using air guns on assembly line for 30 years. She was previously evaluated by a primary care provider 2 month(s) ago. Previous presentation included shoulder pain. Past evaluation has included shoulder MRI. Past treatment has included injection. Symptoms: pain. Shoulder pain: Symptoms are located in right shoulder. The patient describes the pain as aching. Onset was 2013. The symptoms occur constantly. Exacerbating factors: reaching up and straight out. Relieving factors: rest, ice and ibuprofen. Patient had MRI and injection 2 months ago.

Active Problems

1. Shoulder pain (719.41) (M25.519)

Surgical History

1. History of Shoulder Surgery

Family History

Family History

1. Family history of cancer (V16.9) (Z80.9)
2. Family history of hypertension (V17.49) (Z82.49)

Social History

- Never a smoker
- No alcohol use

Current Meds

1. Naproxen TABS;
Therapy: (Recorded: 11 Nov 2015) to Recorded

Allergies

1. No Known Allergies

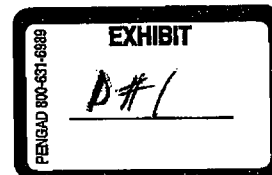
Vitals

Vital Signs [Data Includes: Current Encounter]

Height: 5 ft 7 in
Weight: 230 lb
BMI Calculated: 36.02
BSA Calculated: 2.15

Review of Systems

Complete-Female:



Date of Service: 11/11/2015

Patient Name: DOROTHY A. MILLER

Patient DOB: [REDACTED]

MR#: 2149170

Gender: F

Provider: Kevin K. Nahigian MD

Constitutional: no fever and no chills.

Head and Face: no facial pain.

Eyes: no eye pain and no visual changes.

ENT: no earache, no change in hearing and no tinnitus.

Cardiovascular: no chest pain, no lower extremity edema, no palpitations, no orthopnea, no lightheadedness, no peripheral vascular disease, no claudication and no syncope.

Respiratory: no shortness of breath, no cough, no wheezing and no dyspnea.

Gastrointestinal: no abdominal pain, no nausea, no vomiting, no constipation, no bright red blood per rectum, no melena and no diarrhea.

Genitourinary: no dysuria, no urinary frequency, no hematuria, no urinary urgency, no urinary hesitancy and no urinary incontinence.

Musculoskeletal: as noted in HPI.

Integumentary and Breasts: no rashes, no new skin lesions and no change in a mole.

Neurological: tingling and numbness, but no limb weakness.

Psychiatric: no anxiety, no substance abuse, no depression and not suicidal.

Endocrine: denies weight gain / loss, denies heat / cold intolerance and no increasing thirst.

Hematologic and Lymphatic: no tendency for easy bleeding, no tendency for easy bruising and no oral ulcerations.

Immunologic: no recurrent infections and no lymphadenopathy.

Results/Data

All Results [Data Includes: Current Encounter]

XR Shoulder Right AP Internal AP External Axillary

XR Shoulder Right AP Internal AP External Axillary: The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

Results: X-Ray Review: right Shoulder

Views: AP and outlet view

Bone lesions: Grossly normal without lesions

Joint space narrowing: Significant joint space narrowing

Congruence: Normal

GH joint: Significant degenerative changes

AC joint: Severe

Scapula: Bigliani type 2 acromion

Humerus: No abnormalities

Diagnosis: AC joint arthrosis

¹ Amended By: Nahigian, Kevin K; Nov 18 2015 4:51 PM EST

Physical Exam

Physical Exam: General Multi-System Review.

Skin: No rashes or bruises.

HEENT: Mucosa pink and moist.

Heart: Regular rate and rhythm.

Lungs: No wheezing or shortness of breath.

Abdomen: No masses or tenderness.

Extremities: No deformities or edema.

Neuro: Normal gait.

Exam: right Shoulder

Skin: No surgical scars.

Inspection: No gross abnormalities.

Palpation: Point tenderness over the AC joint.

Active ROM: Full active ROM.

Passive ROM: Slightly greater than active ROM.

Date of Service: 11/11/2015

Patient Name: DOROTHY A. MILLER

Patient DOB: [REDACTED]

MR#: 2149170

Gender: F

Provider: Kevin K. Nahigian MD

Stability: No evidence of instability.
Special Tests: Positive cross body adduction test.
Strength: Motor strength 4/5 rotator cuff muscles, no obvious atrophy.
Sensation: Sensation intact to light touch.
Vascular: Pulses intact
Reflexes: 2+ and symmetrical
Lymph: No lymphadenopathy

X-Ray Review: right Shoulder
Views: AP and outlet view
Bone lesions: Grossly normal without lesions
Joint space narrowing: Significant joint space narrowing
Congruence: Normal
GH joint: Significant degenerative changes
AC joint: Severe
Scapula: Bigliani type 2 acromion
Humerus: No abnormalities
Diagnosis: AC joint arthrosis

MRI shows full-thickness rotator cuff tear which is retracted/a.c. joint arthrosis and subacromial impingement

Assessment: Full-thickness retracted rotator cuff tear AC joint arthrosis with subacromial impingement of right shoulder.

Treatment Discussion: The patient has exhausted conservation management and despite corticosteroidal injection, anti-inflammatory medication, and activity modification, has failed to improve. We will proceed with shoulder arthroscopy, rotator cuff repair, distal clavicle resection, and subacromial decompression. The patient has a very significant only retracted tear and understands there is a slight possibility that it may not be repairable. The patient does not have any obvious atrophy, therefore a tendon should be mobilized.

Surgical Risks and Benefits:

The patient is fully aware of all conservative measures and options and has elected to proceed with this surgical intervention. The specifics of the planned procedure as well as the nonsurgical alternatives were discussed. The perioperative and postoperative courses were outlined. The risks, benefits, goals, and expectations were included in the discussion. The risks include, but are not limited to, deep vein thrombosis, injury to nerves or vascular structures, as well as infection. Prognosis and success rates were reviewed and success in any one patient cannot be guaranteed. All questions and concerns were addressed prior to consenting. The patient will return to see us following completion of this procedure.

Assessment

1. Complete tear of right rotator cuff (727.61) (M75.121)¹

¹ Amended By: Nahigian, Kevin K; Nov 11 2016 12:14 PM EST

Plan

1. XR Shoulder Right AP Internal AP External Axillary; Status: Complete; Done: 11Nov2015 11:32AM

Signatures

Electronically signed by : Kevin Nahigian, MD; Nov 11 2015 12:13PM EST
Electronically signed by : Kevin Nahigian, MD; Nov 11 2015 12:14PM EST
Electronically signed by : Kevin Nahigian, MD; Nov 18 2015 4:51PM EST



A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
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1268 DOUGLAS MCARTHUR ST
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DOS: 11/11/2015

DOB: [REDACTED]

Gender: F

MR#: 2149170

Provider: Kevin K. Nahigian MD

Chief Complaint

right shoulder pain

Results/Data

All Results [Data Includes: Current Encounter]

11 Nov 2015 11:32 AM

XR Shoulder Right AP Internal AP External Axillary

XR Shoulder Right AP Internal AP External Axillary: The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

Results: X-Ray Review: right Shoulder

Views: AP and outlet view

Bone lesions: Grossly normal without lesions

Joint space narrowing: Significant joint space narrowing

Congruence: Normal

GH joint: Significant degenerative changes

AC joint: Severe

Scapula: Bigliani type 2 acromion

Humerus: No abnormalities

Diagnosis: AC joint arthrosis

Signatures

Electronically signed by : Kevin Nahigian, MD; Nov 18 2015 4:51 PM EST

Lexington County Health Svcs

2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Printed by: Gary, Monique L

05/25/2016 10:54:00AM

Patient: MILLER, DOROTHY A
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

Age/DOM: 58 yrs
EMRN: 2149170
OMRN: 2149170
Home: (803) 997-2522
Work:

Results: 11-Nov-2015

Lab Accession # 0000877599
Ordering Provider: Nahigian, Kevin K
Performing Location:

Collected: 11/11/2015 11:32:00AM
Resulted: 11/11/2015 11:38:00AM
Verified By: <Verification Not Required>
Auto Verify: Y

XR Shoulder Right AP Internal AP External Axillary

Stage: Final

<u>Text</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Reference Range</u>
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XR Shoulder Right AP Internal AP External Axillary

The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.



KNOWN ALLERGY & REACTION

☒ No Known Allergies ☐ See Addendum for Additional Allergies

☒ Patient takes no medication ☐ Patient takes no herbs ☐ Unable to obtain history ☐ Includes herbal/OTC/alternative

Note: Heroin medications will not be given during hospitalization.

Please check which medication should be continued and sign below to authenticate order.

Info Obtained From:

Home Medications Disposition:

The Home Medical Assessment Firm has been acknowledged/reviewed. There is a need to change the patient's medication routine unless noted in discharge orders.

Physician Signature: _____

Date:

Time

Data Collection Completion

Exhibit Nameplates

Date of Birth:

0168

Consult

FAMILY HEALTH CENTERS, INC
 3310 MAGNOLIA ST
 ORANGEBURG, SC 291151466
 Phone: (803)531-6900
 Fax: (803)531-6943

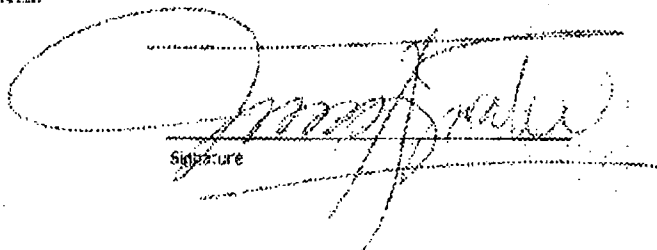
Patient Name: MILLER, DOROTHY
 Patient DOB(Age): [REDACTED]
 Patient Phone: (803) 997-2522
 Referred By: BISMARCK AMOAH APRAKU, MD

Chart No: 36875
 Encounter Date: 10/29/2015
 Examiner: BISMARCK AMOAH APRAKU, MD

Date Ordered	Date Performed	Referred To	Specialty	Dx Code	Associated Problem
10/29/2015		Nahigian, Kevin 1732 VILLAGE PARK DRIVE ORANGEBURG, SC 29118 Phone: (803) 531-7600	Orthopedic	223	ENCOUNTER FOR IMMUNIZATION

Order Comments: 58 y.o. female with B/L supraspinatus tears on MRI. Please evaluate and advise management.

Result Comments:


 Signature

10/29/2015
 Date



CAROLINA SHOULDER & KNEE SPECIALISTS

A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 12/23/2015
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nahigian MD

Chief Complaint

patient returned today without new complaint

Reason For Visit

2 week post op, DOS 12/8/2015, right shoulder acromial clavicular joint arthrosis, SAD retracted full thickness rotator cuff tear

Physical Exam

Physical Exam: Post-Op: right Shoulder
Procedure: Rotator cuff repair
Post-Op Period: 2 weeks
Progression: within normal limits
Pain Scale: appropriate for surgery
Wounds: healing well
Sutures: have been removed
PT/OT Attendance: continue with PT protocol

Exam: right Shoulder

Skin: Portal sites/surgical incisions appear to be healing well. Peri-incisional swelling and ecchymosis is well within normal limits.

Active ROM: ROM was not attempted.

Strength: Operative arm has intact sensation.

Sensation: Operative arm has normal pulses brisk capillary refill.

Assessment: 2 weeks status post rotator cuff repair right shoulder, doing well.

Treatment Discussion: The patient is not to lift the elbow away from side for an additional 4 weeks. The patient will continue to participate in organized PT according to the post-op protocol and transition to home exercise program when ready. Patient should return in 5 weeks if not returned to baseline. Otherwise, no scheduled follow up is needed. AP and outlet views of the shoulder should be taken prior to the MD exam.

Assessment

1. Complete tear of right rotator cuff (727.61) (M75.121)

Signatures

Electronically signed by : Kevin Nahigian, MD; Dec 23 2015 10:54AM EST



A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 01/27/2016
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nahigian MD

Chief Complaint

patient returned today without new complaint

Reason For Visit

7 week post op, DOS 12/8/2015, right shoulder acromial clavicular joint arthrosis, SAD retracted full thickness rotator cuff tear

Results/Data

All Results [Data Includes: Current Encounter]

27Jan2016 01:21PM

XR Shoulder Right AP Internal AP External Axillary

XR Shoulder Right AP Internal AP External Axillary: The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

X-rays: Show adequate subacromial decompression.

Assessment: 7 weeks status post right shoulder arthroscopy, doing well.¹

¹ Amended By: Nahigian, Kevin K.; Jan 27 2016 3:23 PM EST

Physical Exam

Physical Exam: Post-Op: right Shoulder

Procedure: Arthroscopy

Post-Op Period: 7 weeks

Progression: within normal limits

Pain Scale: appropriate for surgery

Wounds: healing well

Sutures: have been removed

P.T. Attendance: continue with PT protocol

Exam: right Shoulder

Skin: Portal sites/surgical incisions appear to be well healed. Peri-incisional swelling and ecchymosis has resolved.

Active ROM: ROM continues to improve and is as expected.

Strength: Operative arm has intact sensation.

Sensation: Operative arm has normal pulses brisk capillary refill.

X-rays: Show adequate subacromial decompression.

Assessment: 7 weeks status post right shoulder arthroscopy, doing well.

Treatment Discussion: The patient is able to progress with activity as tolerated without restrictions while using common sense. The patient will transition to home exercise program. As long as the patient improves no follow up will be necessary. The patient will return to see us in 6 weeks at that time AP and outlet views of the shoulder should be taken upon return prior to the MD exam.

Date of Service: 01/27/2016

Patient Name: DOROTHY A. MILLER

Patient DOB: [REDACTED]

MR#: 2149170

Gender: F

Provider: Kevin K. Nahigian MD

Exam: left Shoulder

Skin: No surgical scars.

Inspection: No gross abnormalities.

Palpation: Tenderness in the subacromial space and over the biceps tendon.

Active ROM: Full active range of motion.

Passive ROM: Full passive range of motion.

Stability: No evidence of instability.

Special Tests: Positive impingement sign.

Strength: Motor strength 5-/5 rotator cuff muscles, no obvious atrophy.

Sensation: Sensation intact to light touch.

Vascular: Pulses intact.

Reflexes: 2+ and symmetrical.

Lymph: No lymphadenopathy.

Assessment: Impingement syndrome of the left shoulder, injected.

Treatment Discussion: After sterile preparation of the injection site, 1cc (4mg) of dexamethasone sodium phosphate and lidocaine mixture was injected into the subacromial space. Post-injectional discomfort and topical icing were discussed. Effects on blood sugar were mentioned. The patient was instructed regarding activity modification recommendations. A home exercise program was provided. The patient will take anti-inflammatory medication on a full stomach, and GI side effects were discussed. The patient will ice shoulder frequently and call if symptoms remain refractory. If symptoms do not improve, full x-ray evaluation of LEFT shoulder will be performed upon return.

Assessment

1. Complete tear of right rotator cuff (727.61) (M75.121)
2. Shoulder impingement, left (726.2) (M75.42)

Plan

1. XR Shoulder Right AP Internal AP External Axillary; Status: Complete, Done: 27Jan2016 01:21PM
Is the Patient Pregnant? : No
Reason for Exam? : pain

Signatures

Electronically signed by: Kevin Nahigian, MD; Jan 27 2016 1:58PM EST

Electronically signed by: Kevin Nahigian, MD; Jan 27 2016 3:23PM EST

Lexington County Health Svcs

2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Printed by: Gary, Monique L.

05/25/2016 10:49:00AM

Patient: MILLER, DOROTHY A
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

Age/DOB: [REDACTED]
EMRN: 2149170
OMRN: 2149170
Home: (803) 997-2522
Work:

Results: 27-Jan-2016

Lab Accession # 0000954571
Ordering Provider: Nahigian, Kevin K.
Performing Location:

Collected: 01/27/2016 1:21:00PM
Resulted: 01/27/2016 1:28:00PM
Verified By: <Verification Not Required>
Auto Verify: Y

XR Shoulder Right AP Internal AP External Axillary

Stage: Final

<u>Test</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Reference Range</u>
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XR Shoulder Right AP Internal AP External Axillary

The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.



A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 03/09/2016
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nahigian MD

Chief Complaint

patient returned today without new complaint

Reason For Visit

3 months post op, DOS 12/8/2015, right shoulder acromial clavicular joint arthrosis, SAD retracted full thickness rotator cuff tear

Results/Data

All Results [Data Includes: Current Encounter]

09Mar2016 10:19AM

XR Shoulder Right AP Internal AP External Axillary

XR Shoulder Right AP Internal AP External Axillary: The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

X-rays: Show adequate subacromial decompression.

Assessment: 13 weeks status post right shoulder rotator cuff repair, residual inflammation injected.

Physical Exam

Physical Exam: Post-Op: right Shoulder

Procedure: Rotator cuff repair

Post-Op Period: 13 weeks

Progression: within normal limits

Pain Scale: appropriate for surgery

Wounds: healing well

Sutures: have been removed

PT/OT Attendance: continue with PT protocol

Exam: right Shoulder

Skin: Portal sites/surgical incisions appear to be well healed. Peri-incisional swelling and ecchymosis have resolved.

Active ROM: ROM continues to improve. Forward flexion 150 degrees.

Strength: Operative arm has intact sensation.

Sensation: Operative arm has normal pulses brisk capillary refill.

X-rays: Show adequate subacromial decompression.

Assessment: 13 weeks status post right shoulder rotator cuff repair, residual inflammation injected.

Treatment Discussion: After sterile preparation 1 mL dexamethasone and 4 mL lidocaine were injected into both shoulders subacromial spaces. Postinjection discomfort and topical icing were discussed. Patient will continue to

Date of Service: 03/09/2016

Patient Name: DOROTHY A. MILLER

Patient DOB: [REDACTED]

MR#: 2149170

Gender: F

Provider: Kevin K. Nahigian MD

use her Therabands on both shoulders as she probably has rotator cuff tear in the LEFT shoulder. Her job required many years of overhead activities and use of an air gun and this no doubt contributed to her degenerative process. The patient is encouraged to progress activities and strengthening as tolerated. The patient will continue with PT according to the post-op protocol and transition to home exercise program when ready. The patient will return in 4 weeks if not improved. Upon return, no x-rays will be necessary.

Assessment

1. Shoulder impingement, left (726.2) (M75.42)
2. Complete tear of right rotator cuff (727.61) (M75.121)

Plan

1. Administered: Dexamethasone Sodium Phosphate 4 MG/ML Injection Solution
2. Administered: Lidocaine HCl - 1 % Injection Solution
3. Renew: Nabumetone 750 MG Oral Tablet; 1 tablet by mouth twice a day TAKE WITH A FULL STOMACH
4. XR Shoulder Right AP Internal AP External Axillary; Status: Complete; Done: 09Mar2016 10:19AM
Is the Patient Pregnant? : No
Reason for Exam? : pain

Signatures

Electronically signed by : Kevin Nahigian, MD; Apr 8 2016 12:44PM EST

Lexington County Health Svcs

2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Printed by: Gary, Monique L.

05/25/2016 10:47:00AM

Patient: MILLER, DOROTHY A
1268 DOUGLASMCCARTHER ST
ORANGEBURG, SC 29115

Age/DOB: [REDACTED]
EMRN: 2149170
OMRN: 2149170
Home: (803) 997-2522
Work:

Results: 09-Mar-2016

Lab Accession # 0001000057
Ordering Provider: Nahigian, Kevin K.
Performing Location:

Collected: 03/09/2016 10:19:00AM
Resulted: 03/09/2016 10:30:00AM
Verified By: <Verification Not Required>
Auto Verify: Y

XR Shoulder Right AP Internal AP External Axillary

Stage: Final

<u>Test</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Reference Range</u>
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XR Shoulder Right AP Internal AP External Axillary

The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

12:49:22 p.m. 03-15-2016

803-419-6626

LAW OFFICES
LANIER & BURROUGHS, LLC
250 GIBSON STREET
POST OFFICE DRAWER 2789
ORANGEBURG, SOUTH CAROLINA 29116
www.landblawfirm.com

LEWIS C. LANIER
SHANE M. BURROUGHS
CHARLES J. MCCUTCHEEN
JUSTIN T. BAMBERG

March 14, 2016

TELEPHONE:
(803) 268-9800

FAX: (803) 531-3465

Carolina Shoulder & Knee Specialists
Kevin K. Nahigian, MD
810 Mallet Hill Road
Columbia, SC 29223

RE: Dorothy Miller
D/O/A: 10/08/2013
D/O/B: [REDACTED]
SSN: [REDACTED]

Dear Dr. Nahigian:

I hope this letter finds you doing well. I write on behalf of Ms. Dorothy Miller regarding her Worker's Compensation Claim. She advises that she began having problems on October 8, 2013 and ultimately left her employment as part of a seasonal layoff. As I am sure you are aware, she has not returned to her employment, and has undergone right cubital tunnel release on January 2, 2015, shoulder arthroscopy, rotator cuff repair, distal clavicle resection and subacromial decompression. She further informs me at this point based on her treatment to date, that further treatment is needed for her shoulders. As you are aware, Ms. Miller was employed with Husqvarna and has been an assembly line worker for approximately nine years, and as you know carried out the repetitive tasks of lifting, overhead reaching, bending, stooping, and turning as part of that job.

At this time I would very much appreciate your reviewing the following questions and answering same.

1. Based upon a reasonable degree of medical certainty, are the bi-lateral rotator cuff tears that you have treated and are currently treating Ms. Miller for, more likely than not, the proximate result of repetitive actions arising out of her employment as stated above.

☒ Yes ☐ No JD (Initials)

2. Based upon a reasonable degree of medical certainty, in your opinion is the right rotator cuff surgery performed by you on December 2, 2015 was more likely than not due to the repetitive actions arising out of her employment as stated above.

☒ Yes ☐ No JD (Initials)

12:49:50 p.m. 03-18-2016

803-419-6626

March 14, 2016
Page 2Kevin K. Nahigian, MD
Dorothy Miller

3. Based upon a reasonable degree of medical certainty in your opinion, will any future medical treatment for Ms. Dorothy Miller's shoulders will be necessary.

_____ Yes _____ ☒ No X (Initials)

4. Based upon a reasonable degree of medical certainty in your opinion, will any future medical treatment and surgery will be necessary for Ms. Dorothy Miller.

_____ Yes _____ ☒ No X (Initials)

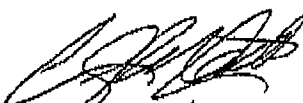
5. Based upon a reasonable degree of medical certainty in your opinion has Ms. Miller reached maximum medical improvement.

☒ Yes _____ No X (Initials)

I have attached a medical release to allow you to release this information to me. Thank you in advance for your treatment of Ms. Miller. Should you have any questions or require anything prior to completing this questionnaire, please do not hesitate to contact my office.

Kindest Personal Regards,

Very Truly Yours,


Charles J. McCutchenCJM/asl
Enclosure

0178



A Lexington Medical Center Physician Practice

Lexington County Health Svcs
2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 04/06/2016
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nahigian MD

Chief Complaint

patient returned today without new complaint

Reason For Visit

4 months post op, DOS 12/8/2015, right shoulder acromial clavicular joint arthrosis, SAD retracted full thickness rotator cuff tear

Physical Exam

Physical Exam: Post-Op: right Shoulder
Procedure: Rotator cuff repair
Post-Op Period: 16 weeks
Progression: within normal limits
Pain Scale: appropriate for surgery
Wounds: healing well
Sutures: have been removed
PT/OT Attendance: continue with PT protocol

Exam: right Shoulder

Skin: Portal sites/surgical incisions appear to be well healed. Peri-incisional swelling and ecchymosis have resolved.

Active ROM: ROM continues to improve. Forward flexion 150 degrees.

Strength: Operative arm has intact sensation.

Sensation: Operative arm has normal pulses brisk capillary refill.

X-rays: Show adequate subacromial decompression.

Assessment: 16 weeks status post right shoulder rotator cuff repair, doing well

Treatment Discussion: The patient is encouraged to progress activities and strengthening as tolerated. The patient will continue with PT according to the post-op protocol and transition to home exercise program when ready. The patient will return in 8 weeks if not improved. Upon return, no x-rays will be necessary. The patient has made tremendous progress considering the severity of her tear. I do feel that she would benefit from continued organized physical therapy as this would expedite her return to normal activities. We'll see her back in a week's and expect declaration of MMI likely in 4 months. The patient certainly could do a sedentary light duty job if available.

Assessment

1. Complete tear of right rotator cuff (727.61) (M75.121)

Signatures

Date of Service: 04/06/2016

Patient Name: DOROTHY A. MILLER

Patient DOB: [REDACTED]

MR#: 2149170

Gender: F

Provider: Kevin K. Nahigian MD

Electronically signed by : Kevin Nahigian, MD; Apr 6 2016 9:40AM EST



811 West Main Street
Lexington, SC 29072
803.358.6100

OPERATIVE REPORT

PATIENT: Miller, Dorothy	LOCATION: LEXSLEX NO
ACCOUNT: 100009141380	MR #: M002180120
ADMITTED: 12/08/2015	D: 12/09/2015 06:26 P
DISCHARGED: 12/08/2015	T: 12/10/2015 09:49 A
PROVIDER: Kevin Nahigian, MD	DATE OF BIRTH: [REDACTED]

(XWT33)

DATE OF PROCEDURE: December 8, 2015.

PREOPERATIVE DIAGNOSIS(ES):

1. Right shoulder full-thickness rotator cuff tear.
2. Right shoulder acromioclavicular joint arthrosis.
3. Right shoulder subacromial impingement.

POSTOPERATIVE DIAGNOSIS(ES):

1. Massive retracted full-thickness rotator cuff tear.
2. Right shoulder acromioclavicular joint arthrosis.
3. Right shoulder subacromial impingement.

SURGEON: Kevin Nahigian, MD.

ANESTHETIC USED: General.

ESTIMATED BLOOD LOSS: Trace.

COMPLICATIONS: None.

DRAINS: None.

DESCRIPTION OF OPERATIVE PROCEDURE: Following preoperative clearance and consent, the patient was taken to the Operating Room, placed in the supine position, and general anesthesia was induced. Following uneventful induction, the right shoulder was sterilely prepped and draped. Through the posterior soft spot of the shoulder, the joint was entered with a spinal needle and distended with normal saline. A 5-mm stab incision was made in the corresponding location and the joint was entered with a blunt trocar and evaluated arthroscopically. The articular surface of the glenoid and humerus were without pathology. The labrum was circumferentially intact without significant detachment or fraying. The biceps tendon was without intra-articular pathology. The inferior recess was explored and there were no loose bodies or debris. The anterior glenohumeral ligaments were without pathology. The patient has a massive retracted rotator cuff tear with a portion retracted back to the level of the glenoid. This was at least a 5-cm tear. The cuff was mobilized from the undersurface around the glenoid to help with provisional repair, and the rotator cuff footprint was debrided in preparation for such a repair.

The subacromial space was entered. A large amount of thickened material was encountered and a large

OPERATIVE REPORT

PAGE 1 OF 2



Kevin Nahigian, MD

0181

LMC-LEXINGTON OUTPATIENT SURGERY

PATIENT: Miller, Dorothy

LOCATION: LEXSLEX NO

ACCOUNT #: 100009141380

MR #: M002180120

anterolateral acromial spur was present. A subacromial decompression was performed. The distal clavicle was extremely arthritic with a cauliflower, moth-eaten appearance. A distal clavicle resection was performed in typical Mumford fashion. Just over 1 cm of bone was removed from the distal clavicle and the free end was cauterized. The massive tear was mobilized in a sequential fashion with extensive debridement to mobilize the flap. This debridement was both on the bursal and joint surface. Multiple traction sutures were placed in the cuff to help with this mobilization. Besides the traction sutures, six sutures total were placed in the leading edge of the rotator cuff, two ends each passed through the cuff. Twelve suture ends total were passed through the leading edge. These suture ends were then placed through three SwiveLock suture anchors and fixed to the lateral cortex. This results in a moderately tensioned, watertight, anatomic, knotless rotator cuff repair. The patient's bone was rather soft, and care will be taken to avoid mobilizing this patient too early. The patient was awakened from anesthesia after the wounds were closed and sterile dressings were placed. Upon departure from the wound, all instrument, needle, and sponge counts were correct. There were no complications and no drains.

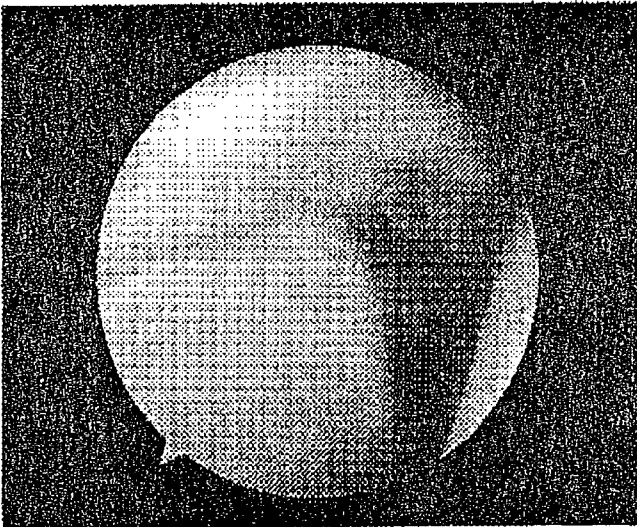
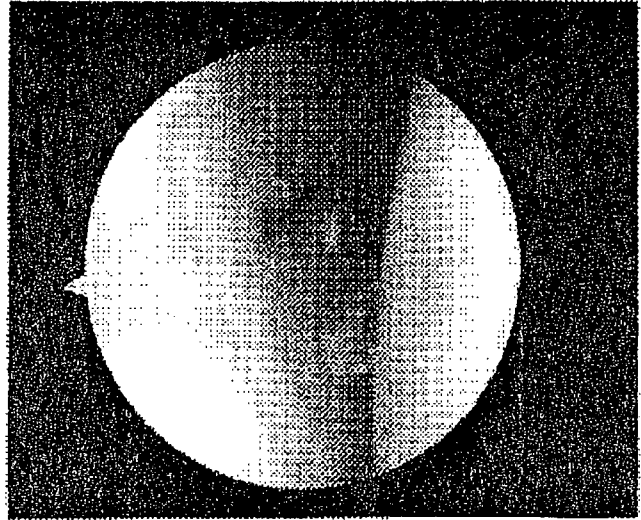
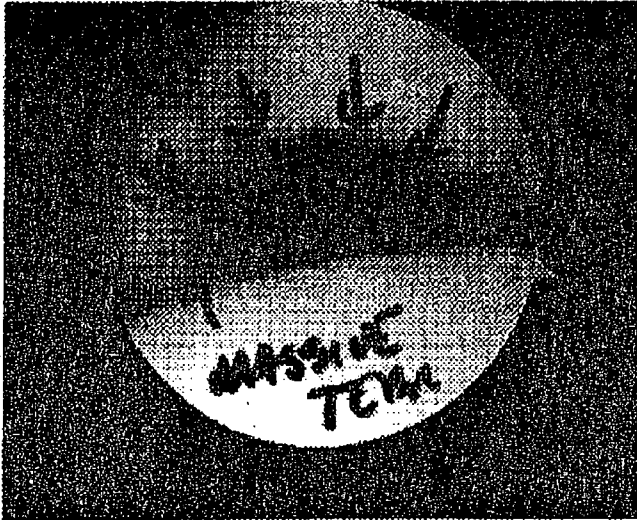
cc: Kevin Nahigian, MD

T: 12/10/2015 09:49 A/dnm

**OPERATIVE REPORT
PAGE 2 OF 2**

100009141380 Kevin Nahigian, MD

0182

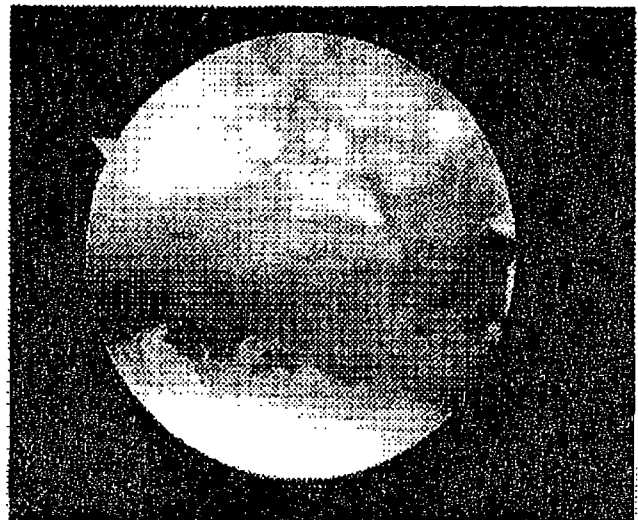


JOINT (OK)
LABRUM + BICEPS
OK

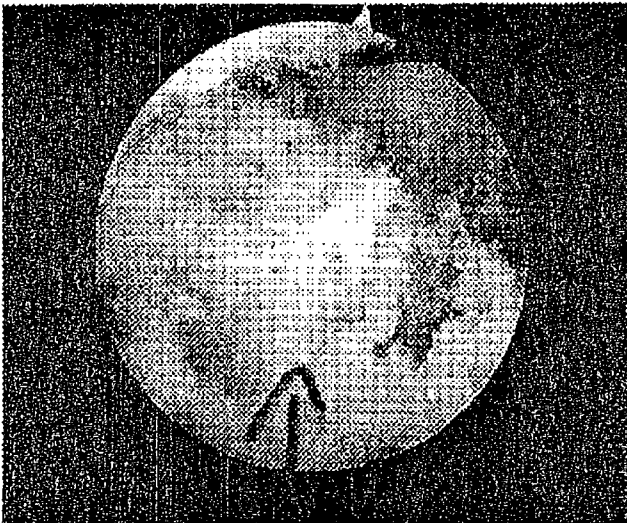
MASSIVE TEAR



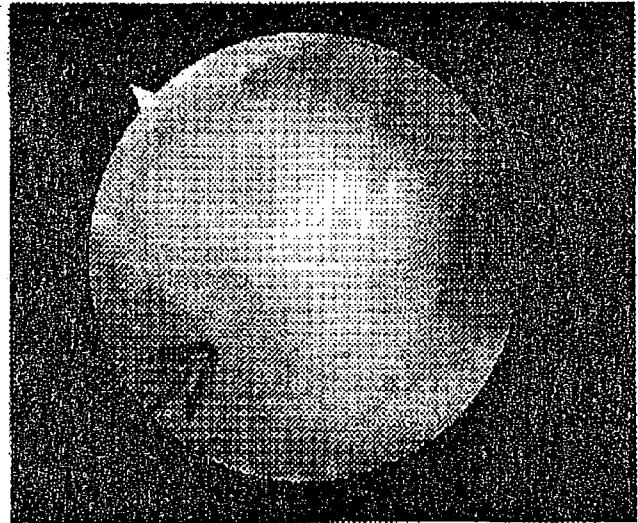
MASSIVE RETRACTED
TEAR



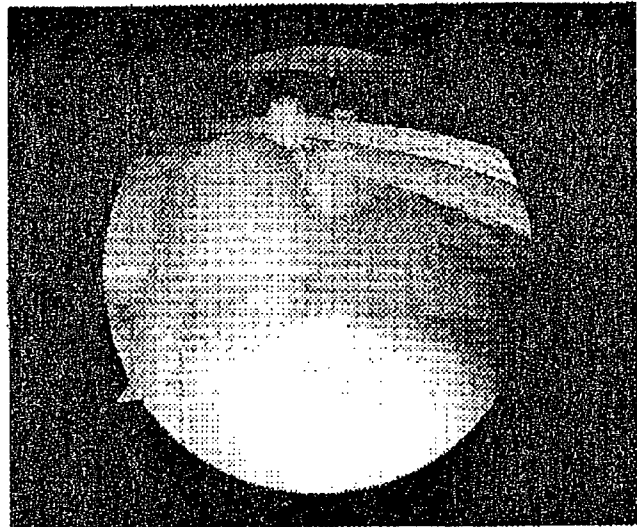
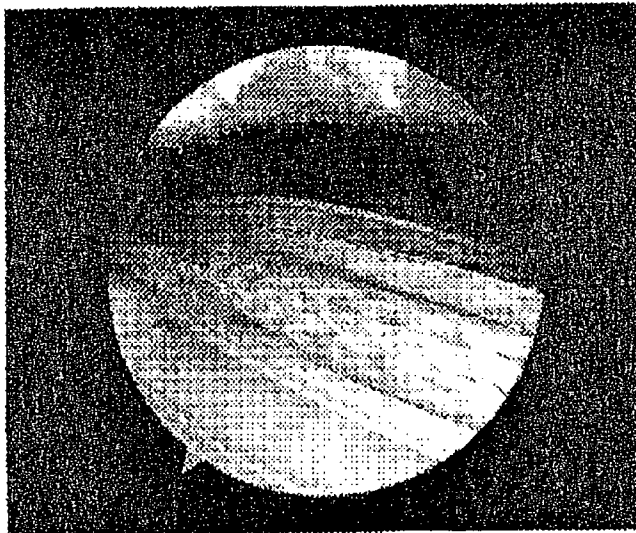
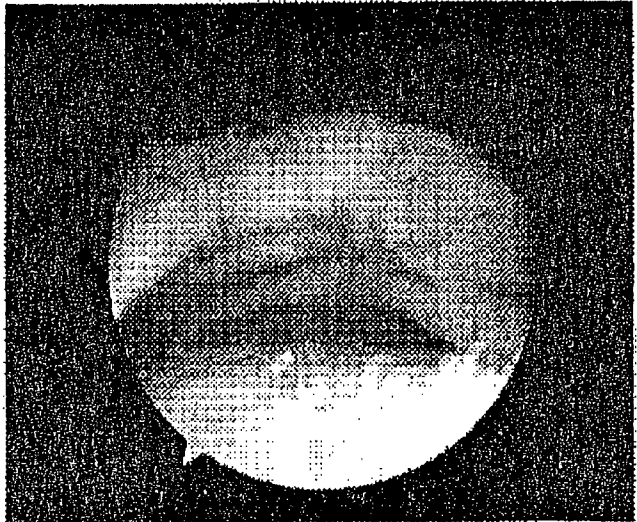
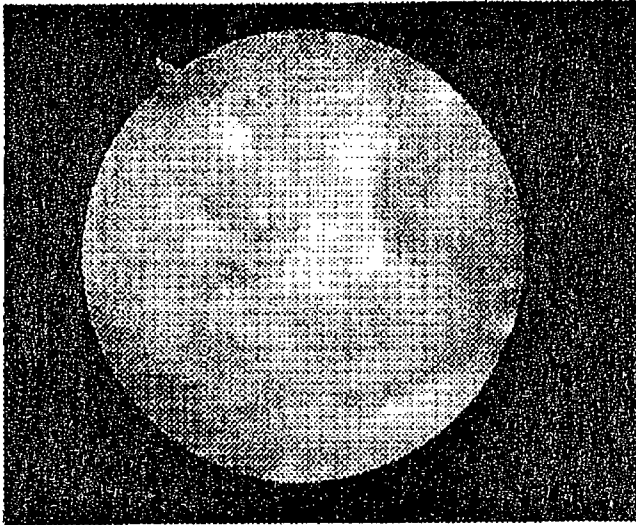
SPUR ABOVE CUFF

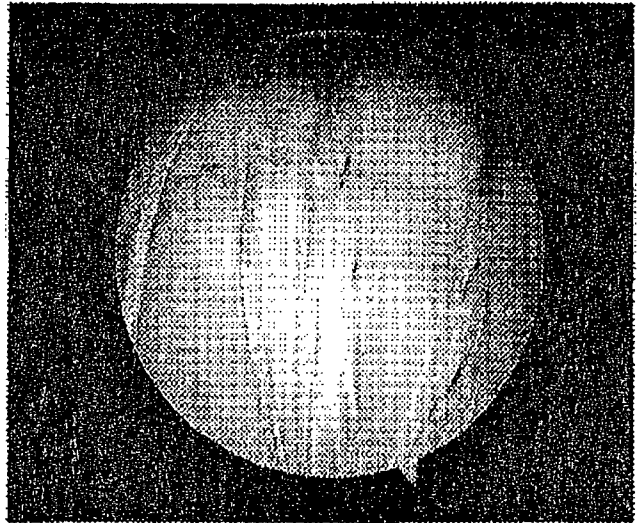
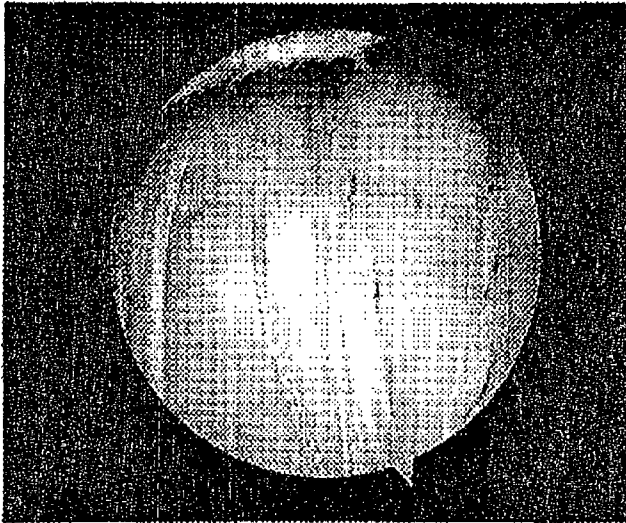


ARTHRITIC AC JOINT



THICE SLOW!
MASSIVE TEAR (LIMIT 1ST)
018
UNEL





Lexington County Health Svcs

2720 Sunset Boulevard
West Columbia, SC 29169
(803) 791-2000

Printed by: Gary, Monique L.

05/25/2016 10:08:00AM

Patient: MILLER, DOROTHY A
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

Age/DOR: XXXXXXXXXX
EMRN: 2149170
OMRN: 2149170
Home: (803) 997-2522
Work:

Results: 08-Dec-2015

Lab Accession # L15-14970
Ordering Provider: Nahigian, Kevin K.
Performing Location:

Collected: 12/08/2015 12:00:00AM
Resulted: 12/09/2015 4:17:00PM
Verified By: <Verification Not Required>
Auto Verify: Y

Inpatient Surgical Pathology

Stage: Final

<u>Test</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Reference Range</u>
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Inpatient Surgical Pathology

Patient Name: MILLER, DOROTHY
MR#: M002780120
Specimen #L15-14970
Date Finalized: 12/9/2015

SPECIMEN(S) RECEIVED:
Right shoulder shavings

CLINICAL INFORMATION

All on right shoulder: Full thickness retracted rotator cuff tear; acromial joint arthrosis with subacromial impingement (sk)

DIAGNOSTIC OPINION:

RIGHT SHOULDER MATERIAL (SHAVINGS):
- BENIGN FIBROCARILAGE TISSUE AND SYNOVIAL WITH REACTIVE FIBROSIS AND
FOCAL GRANULATION
TISSUE

TBS:SH 12/9/15 (CLAG)

MICROSCOPIC DESCRIPTION

Sections show fragments of benign fibrocartilaginous tissue and synovium with reactive fibrosis and focal granulation tissue seen. No significant inflammation or evidence of neoplasia is identified.

GROSS DESCRIPTION

MRI Shoulder w/o Contrast Right

Miller, Dorothy Ann - 0000174021

* Final Report *

* Final Report *

Reason For Exam

Rt and Lt Rotator Cuff tear, Mri Rt Lt Shoulder w/o contrast

FINAL REPORT

PROCEDURE: MRI right shoulder without contrast

Technique: High-field MRI of the right shoulder was performed, utilizing the following sequences: Axial PD fat-sat, axial T2 fat-sat, coronal PD fat-sat, coronal STIR, sagittal T2 fat-sat, and sagittal T1.

COMPARISON: Plain film dated 2 July 2015

CLINICAL HISTORY: Shoulder pain for years with limited range of motion, evaluate for rotator cuff tear

FINDINGS:

The humeral head is high riding on the bony glenoid. No fracture or dislocation are seen. No there is mild edema of the acromioclavicular joint. No Hill sac deformity or bony Bankart lesion are seen. The long head of the biceps tendon is normally positioned in the inter tubercular groove. The biceps labral anchor appears intact. The superior labrum is degenerated and likely torn. There is a full-thickness fullwidth tear of the supraspinatous muscle with approximately 3 cm of tendinous retraction. There is also tendinopathy of the infraspinatus. There is soft tissue fullness and some edema at the rotator cuff interval, query symptoms of a frozen shoulder. Tendinopathy of the subscapularis tendon is also seen. Fluid is seen in the subacromial and coracoid bursa. There is muscle atrophy of the supraspinatous and infraspinatus.

IMPRESSION:

1. Full-thickness fullwidth tearing of the supraspinatous tendon with approximately 3 cm of tendinous retraction. There is atrophy of the supraspinatous muscle.
2. Tendinopathy of the infraspinatus tendon with some muscle atrophy. Tearing of the anterior fibers should be considered.

Result type: MRI Shoulder w/o Contrast Right
Result date: 17 July 2015 16:30 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Right
Performed by: Morgan, Gerard E on 17 July 2015 16:33 EDT
Verified by: Morgan, Gerard E on 17 July 2015 16:40 EDT
Encounter info: 1001472101, RMC, Outpatient, 07/17/2015 - 07/17/2015

Printed by: Oliver, LaTasha N
Printed on: 09/02/2015 12:13 EDT

Page 1 of 2
(Continued)

COPY

0188



MRI Shoulder w/o Contrast Right

Miller, Dorothy Ann - 0000174021

* Final Report *

3. Degeneration and probable tearing of the superior labrum.
4. Soft tissue fullness of the rotator cuff interval with mild associated edema, Query symptoms of a frozen shoulder.
5. Tendinopathy of the subscapularis tendon.

Signature Line

***** Final Report *****

Dictated by: Morgan, Gerard E
07/17/2015 4:33 pm
Signed by: Morgan, Gerard E
07/17/2015 4:40 pm
Transcribed by: Morgan, Gerard E

Completed Action List:

- * Order by Amoah-Apraku, Bismarck on 13 July 2015 13:41 EDT
- * Perform by Huggins RT(R), Roddrick O on 17 July 2015 16:30 EDT
- * VERIFY by Morgan, Gerard E on 17 July 2015 16:40 EDT

Result type: MRI Shoulder w/o Contrast Right
Result date: 17 July 2015 16:30 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Right
Performed by: Morgan, Gerard E on 17 July 2015 16:33 EDT
Verified by: Morgan, Gerard E on 17 July 2015 16:40 EDT
Encounter info: 1001472101, RMC, Outpatient, 07/17/2015 - 07/17/2015

Printed by: Oliver, LaTasha N
Printed on: 09/02/2015 12:13 EDT

Page 2 of 2
(End of Report)



0189

* Final Report *

*** Final Report *****Reason For Exam**

Rt and Lt Rotator Cuff tear, Mri Rt Lt Shoulder w/o contrast

FINAL REPORT**LEFT SHOULDER MRI**

Technique: Coronal T1, coronal proton density fat sat, coronal STIR, axial T2 fat sat, axial proton density fat sat, sagittal T1, and sagittal T2 fat sat weighted images are obtained on a 1.5 Tesla MR unit.

HISTORY: 57-year-old female with shoulder pain and decreased range of motion. There are no comparison examinations available.

FINDINGS: The humeral head is high riding within the glenoid fossa. There is acromioclavicular hypertrophy and small joint effusion extending into the subacromial/subdeltoid bursa. Small amount of fluid noted within the subcoracoid bursa. No os acromiale or Hill-Sachs deformity. Complete tear of the supraspinatus tendon with retraction to the level of the acromioclavicular joint noted with associated atrophy of the supraspinatus muscle belly suggesting long-standing injury. Tendinopathy of the infraspinatus tendon noted with muscular atrophy. No partial or full thickness tear identified in this location. The subscapularis and teres minor tendons are intact. Long head biceps tendon is appropriately located within the bicipital groove. Long head biceps tendon anchor is intact. There is degenerative change of the glenohumeral articulation with osteophyte formation and small degenerative tear of the superior labrum. No large displaced labral tear, occult fracture, osseous destructive lesion, or soft tissue mass identified.

IMPRESSION:

1. Complete tear of the supraspinatus tendon, retracted to the level of acromioclavicular joint. Atrophy of the supraspinatus muscle belly noted.
2. Acromioclavicular hypertrophy.
3. Tendinopathy of the infraspinatus tendon with muscular atrophy.
4. Small nondisplaced degenerative tear of the superior labrum.

Result type: MRI Shoulder w/o Contrast Left
Result date: 28 July 2015 15:00 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Left
Performed by: Habakus DO, Scott J on 28 July 2015 15:31 EDT
Verified by: Habakus DO, Scott J on 28 July 2015 15:46 EDT
Encounter info: 1001472101, RMC, Outpatient, 07/17/2015 - 07/17/2015

Printed by: Oliver, LaTasha N
Printed on: 09/02/2015 12:13 EDT

Page 1 of 2
(Continued)



MRI Shoulder w/o Contrast Left

Miller, Dorothy Ann - 0000174021

* Final Report *

Signature Line

***** Final Report *****

Dictated by: Habakus DO, Scott J

07/28/2015 3:31 pm

Signed by: Habakus DO, Scott J

07/28/2015 3:46 pm

Transcribed by: Habakus DO, Scott J

Completed Action List:

* Order by Amoah-Apraku, Bismarck on 13 July 2015 13:41 EDT

* Perform by Huggins RT(R), Roddrick O on 28 July 2015 15:00 EDT

* VERIFY by Habakus DO, Scott J on 28 July 2015 15:46 EDT

Result type: MRI Shoulder w/o Contrast Left
Result date: 28 July 2015 15:00 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Left
Performed by: Habakus DO, Scott J on 28 July 2015 15:31 EDT
Verified by: Habakus DO, Scott J on 28 July 2015 15:46 EDT
Encounter info: 1001472101, RMC, Outpatient, 07/17/2015 - 07/17/2015

Printed by: Oliver, LaTasha N
Printed on: 09/02/2015 12:13 EDT

Page 2 of 2
(End of Report)



0191

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1318602

DOROTHY MILLER,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT</u>
HUSQVARNA,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
ACE AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
10:15 A.M., WEDNESDAY, AUGUST 17, 2016, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, COLUMBIA, SOUTH
CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

RICHARD CHARLES ALEXANDER, ESQUIRE
 SHELLY LEAKE LAW FIRM, LLC
 3614 ASHLEY PHOSPHATE ROAD
 NORTH CHARLESTON, SOUTH CAROLINA 29418
 843-297-8485

FOR THE DEFENDANT

SHELBY G. HAPESHIS, ESQUIRE
 HUFF & HAPESHIS, LLC
 POST OFFICE BOX 1935
 IRMO, SOUTH CAROLINA 29063
 803-252-2232

REPORTED BY

CORA ELLIS BRÜTON
 COURT REPORTER
 131 BROWNING COURT
 LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's date is August 17th, 2016.
2 This is South Carolina Workers' Compensation File
3 Number 1318602. This is the case of the Claimant
4 Dorothy Miller represented by Attorney Richard Charles
5 Alexander. The Employer is Husqvarna. Carrier is Ace
6 American Insurance Company; both Defendants
7 represented by Shelby H. Hapeshis.

8 The date of accident is October 2nd, 2013. There
9 is an average weekly wage of \$361.18 with a
10 corresponding compensation rate of \$240.79.

11 APAs have been submitted. Are there any
12 objections to APAs, jurisdiction, venue or any other
13 items?

14 MS. HAPESHIS: No further objections.

15 MR. ALEXANDER: Just the one objection we had on
16 the personnel file, but everything else has already
17 been taken care of.

18 THE COURT: Okay. And as we discussed in
19 prehearing conference I'm going to allow that in and
20 certainly give it the weight that I feel it deserves.
21 Without further objection the Commission's file
22 becomes a part of the record with the exception of
23 self-serving declarations or unstipulated medical
24 reports.

25 Ms. Hapeshis, we're here today on your Form 21,

1 so if you would please put your position on the record
2 and let us know exactly what it is you're seeking here
3 today, ma'am.

4 MS. HAPESHIS: Commissioner, just briefly. We
5 are here today on our Form 21. First of all the date
6 of injury I have listed as August -- October the 8th
7 of 2013 and it is for the Claimant's wrist. That is
8 the only body part that we contend has been affected
9 in this case. The Claimant has had surgery -- two
10 different surgeries and was released by Dr. Muirhead
11 on July the 16th of 2015 with the restrictions of no
12 lifting and -- over a pound and no repetitive
13 activities. We would state that now would be the time
14 to pay permanent settlement. We would request
15 overpayment for any TTD accrued in excess and as far
16 as any kind of claim to the bilateral shoulders we
17 would state that it was a preexisting problem. We
18 have a doctor, Dr. Buckaloo who treated her for her
19 wrist and states in his medical record that the
20 shoulders are not related to any work injury and they
21 are, indeed, preexisting. And that can be found in
22 our APA page number -- real quickly, APA page number
23 807 and again he reiterated that he believed that it
24 was not related in the June 13 of 2016 questionnaire.
25 That is APA 21 page 1819. Further, the Claimant's

1 attorney is going to state that Dr. Nahigian related
2 the Claimant's shoulder problems to her work injury,
3 but if you will see in his deposition he goes back on
4 that opinion, says that the shoulder problems were
5 preexisting. And then immediately prior to this
6 hearing he goes back again on his opinion and issues a
7 medical questionnaire and it's on -- it's number 22 of
8 our APA -- of our exhibits, pages 1821 through 1902.
9 He goes back and states, yes it is related. So we
10 would say that his opinion is irrelevant or should be
11 given little or no weight as he really waivers back
12 and forth, does not make a definite opinion whether or
13 not the shoulder is related. We would also state that
14 to back up our position we would rely on our medical
15 records, specifically we would rely on the medical
16 record of August the 30th of 2013 at the Regional
17 Medical Center where the Claimant presented with
18 severe pain in bilateral arms from the shoulder down,
19 and the date of injury once again claimed is October
20 the 8th of 2013. The Claimant -- the first MRI taken
21 of the Claimant showing any problems to the shoulder
22 is APA page 708 and that was taken on 7/17 of 2015,
23 and once again the Claimant had not been working
24 during this time and this was years after the date of
25 injury and she was taken out of work because of her

1 wrist injury. We would also state that the injury was
2 so bad and on APA page -- APA page 756 with her
3 private doctor, Dr. Apraku at Family Health Centers on
4 March the 29th of 2013 which was within the same year
5 of our injury, he was already contemplating surgery
6 for her shoulder pain and she was scheduled for a
7 surgery consult in Columbia. And further, there is
8 some evidence that she could have even had shoulder
9 surgery in the past, whether or not she had or not,
10 Defendants' APA page 741 is the medical record. That
11 one is also from the Family Health Center I believe,
12 and it states on June 24th of 2015, had shoulder
13 surgery in the past and also had right ulnar nerve
14 injury. The prior shoulder treatment is too
15 voluminous to go through each one, one by one, but
16 just in general if you look at Defendants' APAs 322
17 and that's in 2011, severe pain in right shoulder. In
18 2012, APAs page 354, severe pain in bilateral
19 shoulders. APA page 476, both shoulders have pain,
20 radiates down for one week. This is in 2012. Got
21 whiplash a few years ago and has had trouble with pain
22 ever since. And then we would also state the first
23 time that anything is mentioned after our date of
24 injury about her shoulders is, again, while she is
25 still out of work is on December the 15th of 2014.

1 That's Defendants' APA page 748 and at that visit she
2 says that she has pain in her shoulders, however, she
3 denies any trauma or injury. And that is all that we
4 have. We would just say that she's at MMI for the
5 wrist, that it's time to pay permanency for that
6 injury and we request an overpayment of that and as
7 well as a finding that the bilateral shoulder injuries
8 are preexisting and not related to this injury and are
9 non-compensable. Thank you.

10 THE COURT: All right. Thank you, ma'am. Mr.
11 Alexander.

12 MR. ALEXANDER: Your Honor, at this time, again,
13 as I said before, we are seeking -- I think maybe it
14 could be premature at this point to make a permanency
15 and a rating on the arm without having a decision on
16 the compensability of the shoulders. There is a
17 possible permanent and total disability of both of her
18 shoulders and her arm are affected and are compensable
19 injuries. So, you know, I think even if a decision is
20 made on the -- on the impairment level I feel like,
21 again, based on the restrictions, her vocational
22 history and the limitations she's going to have from
23 that shoulder -- excuse me, from the arm would limit
24 her much more than a seven percent rating. In
25 addition, we are seeking past, present and future TTD

1 based on the ongoing issues with her shoulders that
2 have yet to be treated by the Carrier. Again, the
3 right shoulder we noted has already been treated by a
4 private doctor, but we still have the left arm that
5 needs to be treated. Either way, she's been out of
6 work because of these injuries that we are saying are
7 work related. We feel that the TTD should be
8 continued until she's released at MMI for both
9 shoulders in addition to the arm. As far as the
10 records, again, we -- we don't dispute that she has a
11 history of arthritis. That's almost exactly what
12 we're trying to say is this. She's been working for
13 30 years in this type of work. It's a repetitive
14 trauma injury to the shoulders. It didn't just happen
15 acutely, it happened over years. There are complaints
16 in the APAs of left shoulder pain throughout. There's
17 never any mention again until she finally had an MRI
18 of a tear and that was again -- I know that was in
19 2015. She complained about her shoulder pain --
20 again, she's had that for quite a while and it kind of
21 falls in place when there evidence in the APA, I
22 believe it is from August 2013, and forgive me, I know
23 there's a lot of pages there. I'll have to get back.

24 THE COURT: That's fine.

25 MR. ALEXANDER: But the August 20th issue she

1 mentioned, the August 20th, 2013 where she relates --
2 you know, relates to having severe pain in her
3 shoulders, two months later she has, you know, has
4 this other injury. She's, you know, again, these are
5 repetitive trauma. There's not a set date when, you
6 know, you know hey, this exactly happened; it's
7 repetitive, it's over time. To that point Dr.
8 Nahigian's records, especially APA 25 in his records
9 it notes on pages 19, 39 - 19 through 40, years ago
10 activity, no doctor treated for the degenerative
11 process. He's provided opinion, again, he said that
12 in his notes without anybody saying, hey is this work
13 related, is this work, you know, -- he just -- that
14 was in his notes. He has provided multiple opinions
15 -- provided opinion to a previous attorney who was
16 checking on this case and that was APA 26 where they
17 asked if the shoulder injuries were related to her
18 work; he said yes. I asked him the same question
19 essentially a little more detailed discussing under
20 42-1-172 for repetitive trauma injury and he says
21 basically -- he says it arose out of the employment
22 and there's a direct causal relationship between the
23 condition under which the work is performed and the
24 injury. Dr. Buckaloo's statement probably shouldn't
25 be given much weight at all, first they -- you know,

1 the Defense attorney is -- essentially made a medical
2 conclusion for him saying the he's, you know, there's
3 no documentation -- no medical documentation to
4 demonstrate causation for the shoulder. She says
5 that, she didn't say, hey can you review these records
6 and tell me this. She says that's what all it says in
7 her opinion. And his answer to the questions states,
8 she's had various symptoms prior to 10/8/13. Again,
9 we don't disagree that she's had symptoms for -- for
10 several years because of, again, the repetitive
11 trauma. His question -- again, that's APA 21, pages
12 1820 -- I'm sorry, 1819 and 1820. Again, he says, yes
13 she's had symptoms prior to October 8th, 2013. And we
14 don't disagree that she's had symptoms. What we think
15 is that she had shoulder tears. Again, the answer to
16 the second question is, do her complaints stem from
17 preexisting conditions predating 10/8/13? And you
18 know, I don't think we can disagree, yes, she had
19 symptoms before that, you know, but there was an
20 exacerbation of this preexisting condition or it's
21 repetitive trauma, one -- you know, or both. That's
22 our -- our argument regarding the shoulders, and
23 again, Dr. Nahigian in the two opinions I've provided,
24 26 and 27 -- I'm sorry, 27 and 28 where he has said
25 this is a repetitive trauma injury. He is the only

1 one that's actually been inside her shoulder and seen
2 the degenerate -- degeneration, the MRIs that are done
3 show the same. He said that in his deposition as
4 well. And then, again, when he was asked after the
5 deposition, I -- I sent a supplementary questionnaire
6 asking if his opinion changed at all based on learning
7 that she had been in a motor vehicle accident and she
8 had complained this or that? He said, no it doesn't
9 change his opinion. And again, he has no reason to
10 support her claim or not. He's treating her either
11 way. The only other issue, again, is the median nerve
12 in the arm not being treated. There are records
13 showing NBC testing, EMG testing that shows median
14 issues. Give me just a second and I can at least
15 reference a couple of those. APA 5, page 786, NBC
16 studies on February 4th, 2014, a reveal -- a reveal
17 right focal median neuropathy. Dr. Buckaloo referred
18 -- reviewed it, the NBC, page 80 -- excuse me, 802 and
19 says that it shows right focal median neuropathy. It
20 doesn't appear that anything was ever done to treat
21 that issue. And there are multiple other mentions of
22 the -- that median nerve. APA 9, Dr. Shealy and Dr.
23 Muirhead, page 825, looks like it's from October 2014.
24 Increased sensibility is present in the median and
25 ulnar nerve distribution. We'd like to note also -- I

1 believe there was additional cubital tunnel release
2 done in January of 2015 that was covered in addition
3 to the de quervains release and the carpal tunnel
4 release that were done on the arm. She continued to
5 go -- she tried to go back to work and continued to
6 have pain. She was not able to go back to work. She
7 has been held out because of that. When she had --
8 every time she's gone to have one of these surgeries
9 she ends up having therapy after.. They send her to
10 therapy, you know, problems continue to persist. I
11 would also like to note in APA 12, Sports Plus
12 Physical Therapy around May of 2015 she had been
13 referred again for additional therapy. A big focus at
14 that time was on her shoulders and the problems she
15 was having in her shoulders, you know, let me see;
16 I've got the notes. Decreased range of motion and
17 strength; goals include improving range of motion in
18 the shoulders. She's -- and again, this is APA 12
19 page 860 is when that starts. These are all being
20 covered by workers' comp. It's -- you know, they are
21 treating her for this in May and June. She treated
22 for about six weeks, she was released only because she
23 was showing no functional gain, so you can see, I
24 believe it's page 881. Unable to perform shoulder
25 exercises secondary to pain and limited strength.

1 Page 882, appears to be stopping occupational therapy
2 second to no progress with right shoulder, range of
3 motion and elbow strength. And then again on page
4 883, June -- June 30th, 2015 making no functional
5 gains from occupational therapy. Has met maximum
6 rehab potential. Next thing we know she's got MRIs in
7 July saying, oh, hey there's tears and then there's no
8 further treatment being offered by the Carrier. So,
9 again, I'm not saying they accepted it, but they did
10 treat it and then again, it looks like when they found
11 out there was more going on than just some therapy
12 they decided it wasn't compensable. That's everything
13 I have, sir.

14 THE COURT: All right. Thank you, sir. Anything
15 you want to add?

16 MS. HAPESHIS: Just briefly. All of the
17 references in 2014 to the pain that she's having in
18 the median -- the median neuropathy, I'd just like to
19 point out that that was before her second surgery and
20 before the date of MMI, so to say all those complaints
21 are relevant because it was before she had had the
22 second surgery and after the doctor, knowing all of
23 this, still put her at MMI. As far as treatment for
24 the shoulder is concerned we sent her for an IME with
25 Dr. Buckaloo and he is the one who said this is

1 preexisting, it's not related and which is why we
2 obviously didn't pick it up is that he says it's not
3 related. So yes, we did give her an evaluation
4 because it was requested. I will say that to my
5 knowledge no further treatment has been requested for
6 the wrist which is the accepted body part. If I'm
7 wrong he can correct me, but that has never been an
8 issue as far as -- as long as I've been on this case.
9 That's all that I have.

10 THE COURT: Would you like to reply?

11 MR. ALEXANDER: I'm not sure where the IME is
12 from Dr. Buckaloo. I've got treatment records in
13 here, but I -- if you can tell me --

14 MS. HAPESIS: Page 21 -- oh, no, it's page --
15 I'll give you that APA number. It's APA 807. And if
16 you -- and he states the age of the injury is unknown
17 and certain (inaudible) given the atrophy of the
18 associated muscle belly of the shoulder. And she did
19 treat with him for the wrist, and that's probably what
20 you're looking at.

21 MR. ALEXANDER: I'll just -- I see September
22 2015. I guess I didn't know that was an IME because
23 he said she didn't present through workers' comp.

24 MS. HAPESIS: It -- it should have been all --
25 and it may not have been, it may have been that he

1 checked it out in addition to.

2 THE COURT: Chip, are you seeking additional
3 treatment for the wrist, or are you --

4 MR. ALEXANDER: For the -- again, based on the
5 median nerve issues I -- as far as I know they're
6 still ongoing based on her treatment at the neuropathy
7 center which I've got as APA 24 -- 190 -- pages 1905
8 and 1915. Give me just a second. February 8th, 2016,
9 page 1906 EMG, NCB findings. Page 1906, and again,
10 EMG, NCB findings, bilateral mild to moderate, severe
11 median sensory neuropathy in right ulnar. Sensory
12 neuropathy to bilateral wrists. So there are problems
13 after her surgery which was more than a year prior to
14 that.

15 THE COURT: Okay. Anything more? You don't have
16 anything as far as this?

17 MS. HAPESHIS: Nothing further. And we would
18 rely on our -- our medicals and the Form 21 pleading
19 and then reserve our right to cross examine the
20 witness.

21 THE COURT: Okay. So you are going to defer to
22 Chip to examine the witness? I just want to make sure
23 since it's on your 21?

24 MS. HAPESHIS: Right. I'm going to rely on our
25 medical records and then if -- I would like to

1 question -- and I'll reserve my right to cross examine
2 her.

3 THE COURT: All right. Ma'am, before we get
4 started I have a couple of quick things for you If you
5 would please speak up and speak clearly for us. It's
6 important that we all hear your responses to the
7 questions but most important that the court reporter
8 get them for the record. If you're asked a yes or no
9 question please give us a verbal yes or no answer.
10 Try and stay away from things like uh-huh and huh-uh.
11 That's just too easily misunderstood for the record.

12 THE WITNESS: Yes, sir.

13 THE COURT: So if you could help us out with that
14 we'd appreciate it. Okay?

15 THE WITNESS: Yes, sir, I will.

16 THE COURT: Please raise your right hand. Do you
17 swear or affirm that the testimony you are about to
18 give is the truth, the whole truth and nothing but the
19 truth?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Please state and spell your
22 name for the record, ma'am.

23 THE WITNESS: Dorothy Miller.

24 THE COURT: Okay.

25 THE WITNESS: D-O-R-O-T-H-Y M-I-L-L-E-R.

1 THE COURT: Okay. Thank you Ms. Miller.

2 THE WITNESS: You're welcome.

3 THE COURT: Mr. Alexander, your witness.

4 MR. ALEXANDER: Your Honor, do you mind if I stay
5 seated?

6 THE COURT: Whatever you're most comfortable
7 doing.

8 MR. ALEXANDER: Thank you.

9 Dorothy Miller,

10 Having first been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ALEXANDER:

13 Q Ms. Miller, how far did you go in school?

14 A GED.

15 Q Did you complete that?

16 A Yes, sir.

17 Q What age did you start working?

18 A I started working since I was 14 years old
19 at a carwash.

20 Q And what other -- aside from the car wash
21 what other kinds of jobs have you had since then?

22 A Production -- production work. A little bit
23 of food service but mostly production, machine
24 operating work.

25 Q And so production work like you did at

1 Husqvarna?

2 MS. HAPESHIS: Objection. Leading.

3 A Yes, sir.

4 Q What kind of work did you do at Husqvarna?

5 A At Husqvarna I did several jobs. When I
6 started there in 1994 I was -- went into the press
7 room was my first department. My second department
8 was the machine shop. They started laying off so they
9 branches us on back to final assembly. From final
10 assembly started lacking so they moved us back. I
11 worked every department in Husqvarna. I was also a
12 team leader in Husqvarna in the service department,
13 but I got relocated back to chassis -- the chassis
14 department.

15 Q Okay, and what --

16 A The last department.

17 Q And what does that involve? Can you
18 describe the --

19 A Yes, sir, I can. Chassis department
20 involves you have a moving line, you have two moving
21 lines that's moving about let's say about -- they
22 rolling like 15 -- like 15 minutes of move -- just
23 constantly running, just like a run. Just a straight
24 run. They never stop until you cut them off. If you
25 have emergency you hit the red light but they're

1 running all day and you're putting parts on -- you're
2 using machine guns and you're putting parts on it.
3 And it's moving constantly. It never stops.

4 Q Okay. And what -- what specifically did you
5 have to do?

6 A My job specifically was -- the elderly
7 ladies usually work like where she's sitting would be
8 the line moving where the people would be working.
9 Back behind me back here would be where the elderly
10 ladies like myself and other ladies would be with guns
11 in their hand and maybe tightening parts and building
12 up parts because they were not able -- they don't put
13 their elderly ladies on the moving line because the
14 line was moving --

15 MS. HAPESHIS: Objection. Speculation. She's
16 testifying as to what other employees do at the plant
17 so I would have to say irrelevant. And there's no
18 evidence in the personnel file of anyone separating
19 people out by age in the department as well.

20 THE COURT: I'll let you respond.

21 MR. ALEXANDER: I -- I don't think she's trying
22 to make any statement about her being in a certain
23 age. I think she's just kind of describing the kind
24 of work she's doing.

25 THE COURT: All right. I'll allow it.

1 Q Please continue. Just again, on a daily
2 basis what are the activities you had to do? That's
3 what we're trying to get at.

4 A Okay. I was -- I was building up parts in a
5 section where they put us to not work to the line.
6 This particular day - this morning when I went into
7 work the supervisor told me he says -- the first
8 supervisor asked the other supervisor, what stations
9 can Dot do? They call me Dot in there. They been
10 calling me that. So the supervisor told her that I
11 could do the station. That I was only on that station
12 for maybe two or three hours and I could not do that
13 station when they asked me to. So she told me -- she
14 came over to me and she said, you got to go on the
15 line on that station. I don't want to -- we cannot
16 refuse to do a job that we are asked to do because if
17 we do we'll get fired and you have to go up in the
18 office and so I just -- you know, I said I tried it
19 before, I didn't succeed. So I did what they told me
20 to do. I followed the instructions. I got the gun in
21 my hand and I had to put four screws and that line was
22 moving at a fast motion. And I did the best I could.
23 I stopped the light because I was getting behind. I
24 did the best I could many times. I stopped the light.
25 They asked me, why you hitting the light? I said, I'm

1 falling behind. I said, I -- I know I just can't keep
2 up. You know, the team leader told me stop
3 complaining and --

4 MS. HAPESHIS: Objection. Hearsay.

5 THE COURT: All right. Is your team leader your
6 supervisor?

7 A The team leader is the boss on the floor,
8 exactly.

9 THE COURT: Okay. Well I'll allow that.

10 A The team leader -- stop complaining and go
11 ahead and do your job Dot. You can try your best to
12 do it. I did. I moved on and I moved on and I tried
13 to move on as much as I could. I had to continue to
14 hit the red light. That means I'm in trouble. I'm
15 behind. I'm not keeping up with the parts that's in
16 front of me. She came back, I said I'm in tremendous
17 pain. I told her I said, my arm is starting to kill
18 me. Stop complaining and do your work. She told me
19 this. I just hold my head down and did the best that
20 I could.

21 Q Ms. Miller, I want to talk a little bit more
22 about overall when you worked there. This gun you're
23 talking about using, where is that gun?

24 A Okay, the gun -- this first gun that I used
25 was sitting -- it would sit there on my table and you

1 would pick that gun up and you would put it down.
2 Okay, the next gun that I used was at the staring
3 table where I was mainly -- mainly where I always
4 worked. The -- that staring -- staring table and the
5 section always had a gun where we could just put it
6 here and it -- and just go and use it. The
7 maintenance man came and changed that station. He put
8 the gun -- he hung it up over your head and hung it on
9 something and you had to reach up. You had -- you had
10 to reach up and pull that gun down. Reach up and pull
11 that gun down and tighten them suckers, reach up.
12 You got to pull up -- reach overhead all day. Pull
13 that gun down, pull that gun down and -- and tighten
14 those staring legs and tables. I mean you lift them
15 up. They weigh about 30, 35 pounds after you lift
16 them up and set them on that moving line. Reaching
17 overhead, pulling down, reaching up over, pulling
18 down. And I told him, I explained to him, I said,
19 this gun is a little too high. He said well the
20 maintenance man put it there. Let's just leave it
21 there. I did the best I could. You know, I knew I
22 could not walk off from my station because I have a
23 five year old I had to take care of. I could not
24 complain, I had to do the best that I could and I did
25 that. Honestly I did the best I could with everything

1 that they asked me to do. At the end of the day I
2 went into my supervisor's office I said, I need to go
3 to the nursing station. She said, what's wrong? I
4 said, my arm is killing me. I've been having pains in
5 my shoulder, also my hand. My arm is killing me.
6 Take her to the nurse. Take her down to whatever.
7 That's the way they speak to you. I went to the
8 nurse. The nurse asked me what happened and what was
9 I doing and I told her. The man that was over the
10 medical department said, take her off of that station
11 right now. Take her off of that station. Do not put
12 her on. When I went to the nurse they put me back on
13 that same station and this man that's over the medical
14 department had to get involved. He said, no. Take
15 her off and I mean right now and -- and take her off
16 of that station because she's severely -- in severe
17 pain. They gave me some ice, some bio freeze, told
18 her to rub me all the way down and just -- and let me
19 lay down on a little bed -- a little bed in there for
20 a while and about a hour or two hours. Then after
21 that when I went back -- I went back she told me the
22 next day you got to go back on that station. I didn't
23 say one word because if I say something you lose your
24 job. I went and I did the best I could with
25 everything I had. And, you know, I'm not trying to

1 look sad but, you know, I worked there a long time and
2 I did the best I could and then I know I was injured
3 and, you know, but I just --

4 Q Ms. Miller, let's move -- move to -- let's
5 talk about some of the treatment. Once you -- once
6 you had the injury can you tell me who you -- who you
7 went to see --

8 A Yes I can.

9 Q -- who they sent you to?

10 MS. HAPESHIS: Commissioner, if I can -- can we
11 have -- can you instruct the Claimant to not answer
12 until the Claimant's attorney finishes his questions
13 because I'm getting -- I'm getting confused with
14 questions and answers and I'm sure the court reporter
15 --

16 THE COURT: Yeah.

17 MS. HAPESHIS: -- is having a hard time.

18 THE COURT: Yeah. Yeah. Let him make sure he
19 finishes the question.

20 A Yes, sir.

21 THE COURT: Thank you, ma'am.

22 A Yes, sir. I will.

23 BY MR. ALEXANDER:

24 Q So tell me who you -- who you went to see
25 for treatment?

1 A They sent me to Dr. Singleton which was the
2 plant -- which was the plant doctor. After that he
3 turned me over to Dr. Duffy the physical therapy --
4 for physical therapy. You want me to move on and --

5 Q Yes, ma'am.

6 A -- explain the rest of it?

7 Q Who'd you see next?

8 A Okay. Next they sent me to Dr. Buckaloo
9 because I needed to go to a specialist. He sent me to
10 Dr. Buckaloo. Dr. Buckaloo he -- he looked at me and
11 he checked everything and the carpal tunnel was in my
12 hand and the wrist. He said, I think it generated in
13 my wrist and the hand. He ordered surgery, carpal
14 tunnel in the inside of my hand where he went in and
15 on the wrist. Yes, sir.

16 Q All right. And after you had that surgery
17 what happened next?

18 A After that they sent -- I went back to Dr.
19 Buckaloo about -- it wasn't really even four weeks.
20 He told me to return --

21 THE COURT: Let me stop you right there.

22 A Okay.

23 THE COURT: It's okay for you to tell me what
24 your supervisor told you.

25 A Yes, sir.

1 THE COURT: But you can't -- you can't tell me
2 what your doctors told you. You can tell me what your
3 understanding about what they did for you was. If you
4 tell me what their recommendation was. But don't tell
5 me what they told you because that is hearsay. It's a
6 little different with your supervisor. A supervisor
7 you can testify to that, but when you're talking about
8 your doctors and that sort of thing just stick to what
9 they did for you and what your understanding about
10 things are.

11 A Yes, sir. I will.

12 THE COURT: Okay. Thank you ma'am.

13 A He went inside the carpel tunnel surgery and
14 did the carpal tunnel surgery in my -- inside of my
15 right hand and did surgery on my wrist. It wasn't
16 really three weeks. He said when I went back to him
17 about two weeks. At first when I went back and he
18 said -- he told me, he said, returned me back to work.
19 He said I'm returning you back to work. And I looked
20 at him and I said, I'm in tremendous pain. This hand
21 is in tremendous pain. He said, well I'm returning
22 you back in to work. I had to do what he told. I
23 went back to my job like he told me.

24 Q And what happened when you went back to
25 work?

1 A When I went back to work they put me -- they
2 had me over another line -- a small line. The only
3 thing I had to do was fold some things, just fold some
4 things inside and push them on down the line. And the
5 more -- I did the best I could. I started working, I
6 knew what I was supposed to do and I did it about not
7 even two and a half hours. Severe pain came back into
8 my arm and hand. It was so severe they said take her
9 to the nurse again. I went to the nurse, the
10 supervisor took me to the nurse. The nurse said, she
11 likely came back to work a little too soon. It was
12 severe pain. They ordered me -- I was in so much pain
13 they ordered me to -- they said, -- the case manager
14 said something else is wrong.

15 MS. HAPESHIS: Objection. Hearsay.

16 A Yes, ma'am. I'm sorry.

17 MR. ALEXANDER: That's okay. We'll --

18 THE COURT: Okay. Just stick to what your
19 understanding about things are.

20 A Okay.

21 THE COURT: Thank you ma'am.

22 Q Let's talk about once you got sent back for
23 additional treatment after you saw the nurse you --
24 you had gone back to work, once you got sent who --
25 did you go have additional treatment after that?

1 A Yes, sir. They sent me to get an MRI in
2 Charleston down at the Charleston Dr. Alexander. They
3 wanted me to get a nerve study test done again. They
4 said the nerve study test said that there was nothing
5 wrong with the -- all the nerves -- all the medial
6 nerve or the radial nerve. They sent me to Charleston
7 to Dr. Shealy, Dr. Shealy sent me to Dr. Alexander.
8 He did a nerve study on me and he asked me he said,
9 who did your first nerve study? And I told --

10 MS. HAPESHIS: Objection.

11 Q What was your understanding --

12 A My understanding --

13 Q -- after talking with him about -- about
14 your arm, what was your understanding?

15 A My understanding is that he told me --

16 Q I'm not asking about what he said.

17 A Oh I'm sorry. I -- I -- I --

18 THE COURT: That's okay. I know that's hard. I
19 know that's hard to do because that's --

20 A Yes, sir.

21 THE COURT: -- the way you normally talk --

22 A Yes, sir.

23 THE COURT: -- but try to help us out --

24 A I will.

25 THE COURT: -- as best as you can.

1 A He said, ma'am, your ulnar nerve is damaged
2 in your arm. He said, that's where all this pain is
3 coming from. Your ulnar nerve is damaged. And they
4 set up surgery for me to do the ulnar nerve and --

5 Q So they did repair the ulnar nerve?

6 MS. HAPESHIS: Objection.

7 A Yes, sir. Yes, sir. They did.

8 MS. HAPESHIS: I'll withdraw.

9 A Yes, sir.

10 THE COURT: Okay. Thank you.

11 Q Did you ever complain about your shoulders?

12 A Yes, sir. I did.

13 Q Why didn't you receive any treatment for
14 your shoulders from that -- from workers'
15 compensation?

16 MS. HAPESHIS: Objection. Leading.

17 THE COURT: Sustained. Can you please rephrase?

18 Q What was your impression or what was your
19 understanding when you had asked for treatment on your
20 shoulders?

21 A My understanding when I asked and told my
22 supervisor -- we had to do exercises in the morning
23 before we start work. We had to take our hands and
24 clap up over our heads and do jumping jacks. We had
25 to do several different exercises before -- perform

1 the work duties. I complained to my team leader, I
2 said my shoulders is starting to bother me. They
3 said, why aren't you putting your hands up over your
4 head? I said, my shoulders is bothering me bad. And
5 they said, well just do the best you can. Don't do it
6 then. Just do the other little exercises. When I --
7 when I asked and explained to them about my shoulder
8 they never would -- they never would -- they would
9 never do anything. You know, they just say, awe it'll
10 be all right. That's what they would telling me. You
11 know, they would tell us that. They never did
12 anything.

13 Q Okay. Were you ever -- were you ever
14 non-complaint with any of the treatment?

15 MS. HAPESHIS: Objection. Leading.

16 THE COURT: I'll allow that.

17 A No, sir. I never was.

18 Q Do you -- once you were released by Dr.
19 Muirhead what did you -- what did you do as far as
20 treatment?

21 A What I did I was in so much severe pain I
22 couldn't sleep in my bed at night. I had to sit up on
23 my sofa and take a pillow and put behind my head and
24 it was so much pain I couldn't even lay in the bed.
25 What I did I was referred to Dr. -- Dr. -- my doctor

1 that did the surgery up here.

2 Q Is that Dr. Nahigian?

3 A Yes, sir. Thank you, sir. Dr. Nahigian. I
4 was referred him and I went. And I went to him and
5 told him it was very, very severe. He did x-rays and
6 he looked at the MRI and he set up a surgery for me
7 because I had to have surgery and I told him about the
8 pain.

9 Q And he did surgery on your right arm?

10 A He did surgery on my right shoulder. He
11 said it was a very great big tear -- big tear, biggest
12 tear he had ever seen. Those were his words to me.
13 Not making things up. And he said it needs surgery.
14 He said, the left shoulder is also rotor cuff -- it's
15 torn and also in my left shoulder. And I explained to
16 him the job I had and he said, okay. He said, it's
17 bad. And that's what he told me.

18 Q So you knew -- your impression or your
19 understanding is that you need treatment on your left
20 shoulder?

21 A Yes, sir.

22 Q Are you currently working?

23 A No, sir, I'm not.

24 Q Are you doing anything, vocational rehab or
25 anything like that?

1 A No, sir. We sitting down on a stool writing
2 -- we sitting down, going to classes and (inaudible)
3 some books or something.

4 MR. ALEXANDER: That's everything I have right
5 now.

6 THE COURT: Okay. Ms. Hapeshis.

7 MS. HAPESHIS: Commissioner, just briefly a few
8 questions.

9 CROSS EXAMINATION

10 BY MS. HAPESHIS

11 Q I believe that Claimant's attorney just
12 asked if you are currently working. You say you're
13 not working?

14 A No. Voc rehab -- I'm at -- voc rehab is job
15 training to help me get back into -- and they also
16 treat you for -- if you have any kind of depression
17 you know. If you've been having any kind of depressed
18 -- I was in a very -- took me to a very depressed
19 situation. They had treated me for that. And I'm
20 also recovering person with 24 years and they're
21 treating me and helping me deal with many different
22 other -- and treating me. And we have some little
23 hangers that we put little clips on sometimes. We're
24 sitting down but I have a seat with my name on it -- a
25 chair like this --

1 Q Okay. I'm just going to stop you just for
2 the brevity.

3 A Yes, ma'am.

4 Q You are saying you are in vocational
5 training?

6 A Yes, ma'am.

7 Q So my question is, have you worked since
8 this accident with an employer?

9 A No, ma'am. No ma'am.

10 Q Have you sought employment with an employer?

11 A No, ma'am. No, ma'am.

12 Q Have you ever worked for Federated Mobile?

13 A Federal Mobile?

14 Q Uh-huh.

15 A It's two of them now. It's two of them.

16 Q Okay. Have you ever worked for them?

17 A I worked for Federal Mobile -- Mobile --
18 Mobile Power Train which is in Mexico now. It went to
19 Mexico like in 2000. And I also worked at the other
20 Federal Mobile -- there's two different ones. I
21 worked at the other Federal Mobile also a short time.
22 I worked at both of them a short time.

23 Q And what years was that?

24 A I'm hoping that I can give you the right
25 years. I'm hoping, it's so long ago and I'm about 60

1 years old almost. It was 1999, 2000.

2 Q It was prior to this accident; is that
3 correct?

4 A Long years prior.

5 Q Okay. I'm going to move on. Have you --
6 and you said you have not tried to obtain employment
7 since this accident?

8 A I been sitting with a lady -- sitting with a
9 lady -- just sitting and watching her, but she died.
10 One of my dear friends, I didn't have to do anything
11 but just sit and watch her.

12 Q Did you get paid for that?

13 A Well they friends, you know, and she just
14 gave me a couple or whatever, just to get gas in my
15 car, that was about it.

16 Q And how long did you do that?

17 A How long did I did what?

18 Q This sitting job. How long --

19 A Oh I did that no more than about two months.

20 Q And how -- when did it start and when did it
21 end?

22 A She died back here -- this is August. She
23 died around it must have been June or July. It wasn't
24 long. She died. The only thing I had to do was sit
25 and hand her some water.

1 Q Okay. Are you capable of sitting with
2 someone; is that a job that you could do?

3 A Well, it depends now upon that job because
4 some of those sitting jobs you have to change the
5 diapers, you have to take diapers, I've never had to
6 put any diapers on this lady. All I had to do was sit
7 and hand her juice and her water and make a little --
8 just a little bit for her to eat, but she had
9 cirrhosis of the liver so she wasn't really eating
10 anything, just drinking Ensure. My job was to just
11 sit with her.

12 Q Ms. Miller, I'm going to have to change a
13 little bit.

14 A Okay.

15 Q Have you ever posted on Facebook a request
16 to sit as a job on a daily basis for five and six
17 hours?

18 A Maybe I did.

19 Q Okay. So you were requesting to do a job of
20 sitting? So do you believe that's something you could
21 do?

22 A Sitting, yes, just sitting.

23 Q Okay. And it's something you have done?

24 A And watching someone. Sitting and watching
25 someone.

1 Q Okay. So you are capable of doing that; is
2 that correct?

3 A No more than two -- or two hours a day.
4 That's all I did.

5 Q Okay. Would it be correct to say you stated
6 that you could sit with someone for five to six hours
7 a day?

8 A I wouldn't say that. No, ma'am. I would
9 not say that.

10 MS. HAPESHIS: Commissioner, can we go off the
11 record for a minute?

12 THE COURT: Certainly.

13 (Off the record at 11:22 a.m.)

14 (On the record at 11:23 a.m.)

15 THE COURT: We're back on the record.

16 BY MS. HAPESHIS:

17 Q Okay. Ms. Miller, I'm going to approach
18 with a picture that your attorney has seen and it's
19 actually a screenshot of A Facebook post, and it's
20 just for you to say this is me, this is not me. I'm
21 going to approach and see if you can identify. Is
22 that you?

23 A Yes, it is. Yes, ma'am. That's me.

24 Q Okay. And in that post how long do you say
25 you can sit with someone?

1 A Well, I said five, maybe five hours -- five
2 to six hours, but I said five and six hours so I could
3 -- I know two hours I wouldn't be able to probably,
4 you know, -- I said five to six hours.

5 Q Okay. But you just told me you could only
6 sit two hours?

7 A I was only sitting two hours with this
8 patient.

9 Q Okay. But you were requesting to sit for
10 five to six hours daily?

11 A Yes, ma'am. I did put on it -- I did put
12 that there.

13 Q Okay. So that's different from what you
14 testified to; is that correct?

15 A Not -- not really because -- not really
16 because I was only sitting two hours, I posted that to
17 try to -- I needed some little more income for gas in
18 my car, taking my daughter back and forth to school.

19 Q Okay. Correct me if I'm wrong, but I asked
20 how long you could work and your answer was two to
21 three hours sitting?

22 A Exactly. Yes, ma'am.

23 Q Okay. But this shows that you posted on
24 Facebook that you're looking for a job for five to six
25 hours sitting with --

1 A Yes, ma'am.

2 Q -- a patient.

3 A Yes, ma'am.

4 Q Okay.

5 A Yes, ma'am.

6 Q I'll move on.

7 A We talked a lot about your treatment for
8 your shoulders. And did you receive any treatment for
9 your shoulders or arms prior to this date of injury at
10 Husqvarna in 2013?

11 Q No, ma'am. I never had, no, ma'am.

12 A You never had --

13 MR. ALEXANDER: Can I object? Can we get a
14 little bit better clarification of what she's
15 regarding as treatment? I want to make sure she
16 understands the question.

17 BY MS. HAPESHIS:

18 Q Okay. Prior to 2013 were you on medication
19 for shoulder problems?

20 A No, ma'am. No, ma'am.

21 Q Prior to 2013 had any doctor recommended
22 surgery for your shoulder?

23 A My family doctor -- I went to my family
24 doctor in 2012 and I -- I told my family doctor,
25 (inaudible), I have to think way back. 2012 I went to

1 my family doctor. I told him about my shoulders. He
2 said, aw, is nothing wrong with your shoulders Ms.
3 Miller? Dr. Moore is his name. He said, I -- he
4 said, there's nothing wrong with your shoulders. He
5 would massage and he said they need massaging. I said
6 this pain is severe -- severe. This was the first
7 time I was explaining to him about my shoulders.

8 Q And when was this when you explained it was
9 your shoulders and you said you pain was severe?

10 A I told him that the pain was getting severe
11 in 2012.

12 Q Did you mention what was making your
13 shoulder pain severe?

14 A I did not mention anything that was making
15 it -- yeah, he asked me what type work did I do and I
16 explained to him -- I only -- I told him just what I
17 was doing. He said, I understand. When I went back
18 again he gave me a needle in my hip. He said, I'm
19 going to give you a needle in your hip for pain. He
20 gave me a needle in my hip maybe twice for -- for the
21 pain in my shoulder. He never ordered me x-rays or
22 MRIs. This was a family health center. He didn't do
23 any of that. He didn't do anything.

24 Q Okay. The family -- health center is Dr.
25 Apraku; is that correct?

1 A Dr. Amah -- Dr. Amah --

2 Q Amah Apraku?

3 A -- Amah.

4 Q Dr. Apraku.

5 MS. HAPESHIS: Chip, if you'll please turn to APA
6 page 756, and Commissioner?

7 THE COURT: Thank you.

8 BY MS. HAPESHIS:

9 A But may I add, now they do have different
10 doctors sometimes that sees you when you walk in
11 there. You see different doctors. I been there
12 several times, several times and I -- I'm trying to
13 think did I see one in there in his urgent care side,
14 on that I can't -- I don't recollect.

15 Q Okay. And my question is did you tell them
16 what had caused your shoulder pain?

17 A No, ma'am. I did not.

18 Q Okay.

19 MS. HAPESHIS: If I may approach and I don't have
20 the APA number.

21 Q I'm looking at a doctor's visit from March
22 the 29th of 2013. It looks like you were examined by
23 Anna Price.

24 MR. ALEXANDER: So what page again?

25 MS. HAPESHIS: It's page 756, Defendant's APAs.

1 A That's the hospital?

2 Q Yes.

3 A Okay. The hospital. Exactly. You said
4 Family Health Center now a few minutes ago. This is
5 -- this is the hospital.

6 Q Okay. So they sent you to the hospital and
7 not Family Health Center.

8 A Exactly. Now I told her what I was doing.
9 Yes, sir. Yes, ma'am. At the hospital, exactly when
10 I went there, she asked me what work did I do.

11 Q Okay. Well, if you can under subjective,
12 what did you tell her caused your shoulder problems?

13 A She asked me, Ms. Miller, I already know
14 where you work. I looked at her. I said, you know
15 me? She said, no, ma'am.

16 Q Ms. Miller, will you please read into the
17 record under subjective what it says that caused your
18 shoulder problem?

19 A I don't have my reading glasses just like
20 where -- where --

21 Q It says subjective right and left shoulder.

22 A Right shoulder, left shoulder.

23 Q Does it say, right shoulder and left
24 shoulder after whiplash one and a half years ago, did
25 physical therapy but that was several years ago,

1 doesn't seem to remember?

2 A No, ma'am. This is not what I -- I told
3 her. She did not even tell me that. No, ma'am. She
4 didn't.

5 Q Okay. So the medical record doesn't reflect
6 what you told her?

7 A That's not -- that's not true at all. Very
8 untrue.

9 Q Okay. Ms. Miller, when you said -- you said
10 that there was no treatment before this injury for
11 your shoulder; is that correct? Did I read you
12 correctly when you said that?

13 A Yes, ma'am. Back -- excuse me, back couple
14 of years ago I was in an accident. I went to the
15 hospital -- the hospital. They examined me fully and
16 thoroughly. They said it's nothing wrong at all.
17 They said you just -- you know, you got a little
18 shaken up. I didn't receive any needles, they didn't
19 put no needles. They didn't put me on no medication.
20 They did x-rays of everything. They said there's
21 nothing wrong. And I had been working very good many
22 years since that, I've -- I couldn't even work if I
23 had any severe injuries to the shoulder. I couldn't
24 do that repetitive work at Husqvarna at all.

25 Q Have you -- has anyone ever recommended

1 shoulder surgery before this accident at Husqvarna?

2 A No, ma'am. No, ma'am.

3 Q Okay.

4 MS. HAPESHIS: If I could please turn to page 757
5 of the Defendants' APA.

6 Q Under plan, it's actually the back of the
7 last medical record I gave you. Anna Price again and
8 again the lettering is so small in here and they print
9 off the medical records in -- in a bunch. If I were
10 to say this says, consultation with a specialist,
11 Orthopedic surgery. Reason ortho in Columbia, right
12 shoulder pain. Where would that doctor have gotten
13 that consultation from?

14 A What doctor are you speaking of?

15 Q It's Anna -- it's documented by Anna Price,
16 M.D. which you said was at the ER.

17 A Is this the lady that was in the emergency
18 room?

19 Q It must have been. It's a ER record.

20 A And what did she say?

21 Q She said, consultation with specialist
22 orthopedic. Orthopedic surgery. Reason ortho in
23 Columbia. Right shoulder pain.

24 A Yes, ma'am. But this was -- this was --
25 this was around 2013.

1 MR. ALEXANDER: Your Honor, can I object? I'm
2 not exactly sure what the question is right now. If
3 we're looking at the plan that looks like it's what
4 they're saying she needs to do, not has she done it
5 unless I'm misunderstanding. But again, I'm not sure
6 of the question.

7 MS. HAPESHIS: What I'm trying to prove is that
8 surgery was contemplated in 2013 and she said that
9 she's received no treatment for her shoulder. No one
10 has said she needed shoulder surgery before our
11 accident and this is from March prior to our accident
12 in October.

13 THE COURT: I'll allow it.

14 MS. HAPESHIS: Okay. And that's on Defendants'
15 page 757. It's the back of the report that starts on
16 756.

17 BY MS. HAPESHIS:

18 Q Ms. Miller, just briefly you were talking
19 about your job duties and you were illustrating things
20 of what you could do. How high can you lift your
21 right arm?

22 A Now?

23 Q Now. Okay. So almost directly straight
24 above.

25 A (Inaudible).

1 Q How high can you lift your left arm?

2 A (Inaudible).

3 Q Okay. So almost directly above.

4 A It's painful though when I go back -- it's
5 painful when I go back, both of them. This one is
6 painful -- it's moving into a painful -- the pain what
7 this one is moving into is painful.

8 Q Were you feeling pain when you were
9 describing your job duties earlier as you were lifting
10 your shoulders to instruct picking up and pulling
11 down? Did you feel pain at that time?

12 A Oh, they -- I'm a strong person. I've
13 always been. And I don't try to let nothing stop me
14 from not doing what somebody asks me to do and I went
15 up. Yes I felt it but it's -- I -- I'm on pain
16 medicine. I'm on pain medicine. I'm on pain
17 medicine. I'm also on nerve medicine.

18 Q Okay.

19 A I took two of my pain pills last night. I
20 really (inaudible).

21 Q That -- that's all I need. I'm going to
22 move ahead with one more question. We had talked
23 earlier about your deposition that we took. It was in
24 2015. September 22nd, 2015. It's been a little while
25 now, almost a year. At that deposition do you

1 remember stating that you never received any treatment
2 for your arm or shoulder?

3 MR. ALEXANDER: Can I object? I feel like this
4 is asked and answered. She -- she said before -- she
5 said she didn't think she received treatment and then
6 she said just a minute ago that she did get an
7 injection. Again, I feel like she's already answered
8 and if we're trying to say she's lying, I don't think
9 she's lying. I think it might have been that she just
10 didn't understand.

11 MS. HAPESHIS: I think you're testifying for the
12 Claimant. What I'm trying to say is that her
13 deposition testimony which I am about to introduce is
14 in complete opposition to her testimony today.

15 THE COURT: That's fine.

16 BY MS. HAPESHIS:

17 Q Okay. If you will, I'm going to Claimant's
18 deposition page 10, lines 9 through 16. Is it a true
19 statement -- this was in 2015 at your deposition. Do
20 you remember me taking your deposition?

21 A I -- I remember.

22 Q Okay.

23 A Some of it.

24 Q Do you remember me asking you questions
25 about prior treatment for your shoulders and arms?

1 A I remember you asking questions, yes.

2 Q Okay. Will you -- when I ask you to look at
3 line 9 I say, okay prior to this date of accident
4 we're here for today have you ever received treatment
5 to your right arm? And what did you say?

6 A Okay. You said in the right arm?

7 Q Uh-huh.

8 A You're saying before the accident?

9 Q Before the accident?

10 A Before the accident?

11 Q Did you receive treatment to your right arm?

12 A I never had to receive no treatment for my
13 right arm. No, my right arm was never injured.

14 Q So when you say no, ma'am, that's a correct
15 statement?

16 A Yes. That's right.

17 Q Okay. Then I go on line 13, before this
18 accident we're here for today have you ever received
19 treatment for either shoulder? And what's your
20 answer? And just what -- what was your answer first
21 before you explain?

22 A Okay.

23 Q What was your answer at the deposition?

24 A I think I said no.

25 Q Okay.

1 A I'm not really sure. It's been a while now.

2 Q Okay. And that is incorrect. Is that --
3 that was not a correct answer; is that the case?

4 A The reason I answered that because the --
5 the emergency room doctor, I just seen her. She
6 didn't -- she didn't do anything but just took the
7 MRI. That's all she did. Treatment to me means the
8 doctor giving you medicine or performing some kind of
9 -- now that's the way I, you know --

10 Q Okay.

11 A That's how I am, you know.

12 Q And you've never had any injections or
13 medicine before the date of accident we're here for
14 today for your shoulders? Is that what you're trying
15 to tell me now?

16 A I never received any --

17 Q You just stated earlier you've had
18 injections for your shoulder.

19 A My doc -- family doctor -- my family doctor,
20 where I've been going to for about 20 something years
21 injected me in my hip for the pain that I told him
22 about in 2013 --

23 Q Okay.

24 A -- in my shoulders.

25 Q Let's - we'll just let the record reflect

1 what it -- what it reflects. I'm going to move on
2 just to --

3 A Yes, ma'am.

4 Q Since we're on the -- the line of
5 questioning with your deposition, do you remember me
6 asking you at the deposition about any -- if you'd
7 ever been arrested?

8 MR. ALEXANDER: Objection. Relevance. We've
9 already -- we've already decided we weren't discussing
10 any of the criminal history.

11 THE COURT: I'll let you reply?

12 Q Have you been arrested in the past ten
13 years?

14 A I think I have. I'm not sure about the
15 year. I'm not sure. It's been so long. About the
16 year, the last time when -- when it -- when it
17 happened, what happened at my house with me and my
18 husband.

19 Q Okay. At your deposition is it true that
20 you stated you've only been arrested once and it was
21 30 years ago?

22 A I did say that because you asked me -- I
23 said I have some things from my past. About 30 --
24 about 20 or 30 something -- 20 something years back or
25 more something did happen. And I did say -- I did -

1 I did admit to that.

2 Q Okay. Do you remember me asking
3 specifically, have you been arrested in the last ten
4 years and you answered no?

5 A The reason that I answered no because I'm
6 not sure.

7 Q All right. Well let -- let's go ahead and
8 answer my question would you say yes or no?

9 A I said no. Yes, ma'am.

10 Q And is that a truthful answer?

11 A The best that I could think of. I'm not
12 sure of the years.

13 Q Okay. Have you been arrested in the past
14 ten years?

15 A To my knowledge I'm thinking if there's not
16 ten years old then I'd have to say yes. I'm not sure
17 of the years because I don't know -- remember the
18 year.

19 Q Okay. The deposition was taken in 2015.
20 All right. And ten years prior would have been 2005.
21 Were you arrested in 2010 for CDV that resulted in
22 treatment at a hospital?

23 A 2010?

24 Q 2010. And I -- I can refresh your memory if
25 I need to.

1 A Please.

2 Q Okay.

3 MS. HAPESHIS: I want to give a copy. This is an
4 updated public index search. Not the one that was
5 taken out. Just to use for her recollection.

6 Q Okay. I'm going to approach you with a few
7 questions, Ms. Miller, just to have you refresh your
8 memory? What's your date of birth?

9 A August 22, 1957.

10 Q Okay. What I'm showing you right now is a
11 medical record from the Regional Medical Center and it
12 has patient, and is that your name where it says
13 patient?

14 MS. HAPESHIS: And this is on APA page 243.

15 A Yes, ma'am. That's my name.

16 Q Okay. And what does it have for the birth
17 date on that?

18 A On here?

19 Q Does it say 8/22/1957?

20 A Yes, ma'am.

21 Q Okay. And if you will go to chief
22 complaint. What does it say your chief complaint was?

23 A It has PT. I don't know what PT means. Or
24 patient I guess. Patient states that somebody
25 currently in the police custody of asthma --

1 Q Well I think patient -- patient states SOB,
2 shortness of breath.

3 A Shortness of breath. Currently in police
4 custody. Has asthma, minimal wheezing, noted in
5 (inaudible). Police have given breathing treatment at
6 jail today. No distress noted in the triage
7 part-time (inaudible).

8 Q And what date does it say you were admitted
9 on?

10 A 9/8/10. Discharge 9/8.

11 Q Of 2010?

12 A 9/8 of 2010 and discharge at 9/8/2010.

13 Q Okay. So were you arrested in 2010?

14 A It was the CDV, right?

15 Q Uh-huh.

16 A But my husband and I -- he was a heavy
17 drinker and he was very -- oh, Lord he was --

18 Q Okay. But you were arrested in 2010; --

19 A -- scared me to death.

20 Q -- is that correct?

21 A Yes, ma'am.

22 Q Okay.

23 A If that's the right date.

24 Q Okay.

25 A Yes, ma'am. Like I said I wasn't very sure

1 of none of the dates because I -- I'm 60 years old I
2 tell you I --

3 Q I - I'm almost finished. I need to check
4 one more thing and I may be finished with my
5 questions.

6 MS. HAPESHIS: That's all that I have.

7 THE COURT: Okay. Mr. Alexander?

8 MR. ALEXANDER: I'm fine.

9 THE COURT: I have one question for you. Just
10 going back to one of the questions you were asked
11 earlier. Just for my own clarification, on the
12 medical report that you disputed where it said that
13 you had reported a year and a half previously shoulder
14 pain related to whiplash, did you have whiplash a year
15 and a half prior --

16 A No, sir. No, sir. It was not that. No,
17 sir, not at all.

18 THE COURT: Okay.

19 A No, sir. Not at all.

20 THE COURT: All right. That's the only question
21 I had for you. I appreciate it. Thank you for your
22 testimony and thank everybody for being here. That
23 concludes this proceeding.

24 (The hearing concluded at 11:38 a.m.)

25

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1318602

DOROTHY MILLER	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
HUSQVARNA	)	
	)	DOROTHY MILLER
EMPLOYER,	)	
AND	)	VS
	)	
ACE AMERICAN INS.CO.)	)	HUSQVARNA
	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Dorothy Miller versus Husqvarna, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 3:55 P.M., Tuesday, February 21, 2017, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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COMMISSIONERS PRESENT:

Avery Wilkerson, Chair
T. Scott Beck
Aisha Taylor

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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STIPULATIONS

Commissioner Wilkerson: Madame Court Reporter, if you will call the case.

Court Reporter: Today is February 21st, 2017.. This is South Carolina Workers' Compensation Case Number 1318602.. This is the case of Dorothy Miller, the Claimant, versus Husqvarna, the Employer and ACE American Insurance is the Carrier. The Appellant is the Defendant represented by Shelley -- I mean, Shelby, excuse me, G. Hapeshis. The Respondent is represented by Chip Alexander. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner Campbell. I was concentrating on getting your last name correct and messed up your first name --

Ms. Hapeshis: You were right.

Court Reporter: -- I'm sorry.

Commissioner Wilkerson: It's Hapeshis.

Ms. Hapeshis: You got it right, yes.

Commissioner Wilkerson: Hipeshis or Hapeshis; yes, ma'am.

1 Court Reporter: I'm sorry.

2 Commissioner Wilkerson: Please.

3 Ms. Hapeshis: Are you ready?

4 Commissioner Wilkerson: Yes, please, Ms.
5 Hapeshis.

6 ARGUMENT FOR THE APPELLANT

7 By Ms. Hapeshis:

8 Just briefly because the history is not
9 convoluted; it's pretty quick. This is an accepted
10 injury to the Claimant's right wrist; it happened in --
11 on October, 2013. The Claimant went for numerous
12 surgeries, was found at MMI several times for the right
13 wrist and finally was released on July the 16th of
14 2015. The Claimant has not worked at Husqvarna since
15 2014, was -- but was -- did bring up for the first time
16 the bilateral shoulder problems in a Form 50 in 2015,
17 and it was the first time that the Claimant had
18 complained of the shoulder issues. There was one
19 medical record in 2014, where she complains of shoulder
20 problems; however, she states that she doesn't know of
21 any trauma or injury. And throughout her treatment
22 since 2005, for her shoulders she had been in a motor
23 vehicle accident, had whiplash, has some arthritic
24 conditions; degenerative conditions, etcetera. She
25 never mentioned a work injury. Never mentioned any

1 kind of problems with her job or -- related to her
2 shoulders. And so, obviously, we went ahead and filed
3 a Form 21 and had our hearing. We would argue today
4 that no doctor has ever said that she has had an
5 aggravation of a pre-existing condition. The
6 Commissioner found that she had an aggravation -- an
7 excelled -- an exacerbation of a pre-existing condition
8 by repetitive trauma. And we would state that the
9 Claimant did not meet her burden of proof. Surgery was
10 already contemplated in 2013. Dr. Buckaloo, who
11 treated her for a long time, since 2010, for other
12 problems, neck issues and radicular pain in the arms,
13 stated that it was a degenerative condition back in
14 2013, and some arthritis was part of that as well. And
15 then he, again, agreed in 2015, by questionnaire, that
16 he did not believe it was related. Dr. Nahigian,
17 obviously, Claimant's counsel is going to bring up his
18 questionnaire and his deposition. We would just say if
19 we could take specific note of just some excerpts in
20 his deposition. He does go back-and-forth on whether
21 or not it is related to a work injury. He never states
22 anything about an aggravation. He states that -- that
23 the Claimant did not tell him the duration of overhead
24 work, has no idea what type of air gun was used, has no
25 idea as to the weight of the air gun, level of air gun,

7

1 force needed or frequency of air gun use in an eight
2 (8) hour day. And so, we would say that the Claimant
3 did not meet his burden of proof with regard to a
4 repetitive trauma aggravation. The TTD issue is pretty
5 straight forward as well. We would say that she has
6 treated numerous years for the wrist. Several doctors
7 have found her at MMI and that she was found at MMI and
8 has since worked since she was found at MMI. She
9 admitted at the hearing that she has done some home
10 health care. She also admitted at the hearing that she
11 has placed ads on Facebook to do home health care; so,
12 we would say that is in direct contradiction to her
13 inability to earn wages since she has, in fact, earned
14 wages and is actively seeking jobs. Finally, we would
15 say with regard to the medical issue that is an
16 emerging situation as the Claimant's wrist was accepted
17 and that this is an accepted case for the wrist and
18 that the Defendants would be allowed to designate the
19 physician if the shoulders are found compensable,
20 which, again, they suggest they are not related to her
21 injury and not -- there was no aggravation. The
22 Claimant herself has even said in numerous medical
23 records, for instance on page 465 of the APAs, that she
24 got a whiplash injury a few years ago, this was 2012,
25 when she states this, and she has had trouble with pain

1 ever since. And so, we would just say that burden of
2 proof was not met and that she is at MMI for her wrist
3 injury, which is the accepted part of this claim.
4 Thank you.

5 Commissioner Taylor: All right.

6 Commissioner Wilkerson: All right. Please.

7 ARGUMENT FOR THE RESPONDENT

8 By Mr. Alexander:

9 Commissioners, I think October 8th, 2013, has
10 gotten a lot attention, especially from the Defendants
11 and the deposition of Dr. Nahigian and the
12 questionnaires of Dr. Buckaloo. The -- October 8th,
13 2013, is the date of her admitted right wrist injury,
14 we're not -- we're not saying that date is the date she
15 has these bilateral shoulder rotator cuff tears, we're
16 -- we're not saying that is an acute injury; we're
17 referring to that as a repetitive trauma injury. So,
18 it's not a 42-9-35 issue, it's 42-1-172 and, you know,
19 what we're looking at here is -- and I'm not really
20 sure from reading it where the quote is coming from
21 from Appellant's brief but Commissioner -- Hearing
22 Commissioner Campbell found that she alleged -- and I
23 believe it's finding 3 of the decision order -- she
24 alleged this repetitive trauma exacerbation and that is
25 not a finding there, it's actually, you know, in

9
1 finding 19 he specifically finds, in accordance with
2 42-1-172, that a preponderance of the evidence showed a
3 causal connection between the Claimant's repetitive
4 activities that occurred while employed by the
5 employer, while engaged in the regular duties of her
6 employment, and the injuries to her right and left
7 shoulders as supported by the deposition testimony,
8 treatment records and questionnaires from Dr. Nahigian.

9 Commissioner Taylor: How did you all get
10 this attached to this claim?

11 Commissioner Wilkerson: That is what I was
12 about to -- that was going to be my question.

13 Commissioner Taylor: How did it --

14 Mr. Alexander: well --

15 Commissioner Taylor: -- if it -- if it
16 didn't happen on October 8th of 2013, how did it
17 even get attached at -- at the hearing?

18 Mr. Alexander: -- the Form 50 was amended by
19 the prior attorney when she underwent MRIs in 2015 that
20 revealed these tears. She didn't realize she had tears
21 until 2015. She didn't know -- I mean, again, the
22 mentions of her saying she had shoulder pain because of
23 a motor vehicle accident is just her saying what she
24 thinks is -- was the case. She's obviously not a
25 doctor; she doesn't know why she is having shoulder

1 pain. She doesn't, at the time, didn't realize that
2 it's from years of reaching up, pulling on levers,
3 pulling on air guns.

4 Commissioner Wilkerson: Was the shoulders
5 ever admitted in this case? Because this was set
6 on a Form 21, as I read it and went through all
7 the stuff, it was set on a 21 for credit for
8 temporary total benefits paid in excess of
9 award and if Claimant suffered compensable
10 repetitive trauma injuries. So, it wasn't set on
11 a 50; it was only set on her 21 --

12 Mr. Alexander: It was --

13 Commissioner Wilkerson: -- and those weren't
14 accepted body parts?

15 Mr. Alexander: -- the shoulders were not
16 accepted; they were treated in May and June of 2015,
17 through physical therapy that was authorized by the
18 Carrier but there was never -- I don't -- it's never
19 been accepted as the shoulders being a repetitive
20 trauma injury.

21 Commissioner Wilkerson: So, how did we get
22 the shoulders as a compensable body part in a Form
23 21 hearing?

24 Mr. Alexander: It was added in whenever -- I
25 guess when the 50 was amended in 2015 --

1 Commissioner Wilkerson: But --

2 Commissioner Beck: Do you have it on your
3 58s?

4 Mr. Alexander: I'm sorry?

5 Commissioner Beck: Were the shoulders on
6 your 58?

7 Mr. Alexander: Yes, sir.

8 Commissioner Beck: Okay.

9 Commissioner Wilkerson: -- okay. That's
10 weird. Okay, go ahead.

11 Mr. Alexander: Again, finding -- finding 19,
12 which leaves 41-172 as a specific finding from
13 Commissioner regarding the shoulders, and ruling 3 rule
14 of law states that under 41-172 she has sustained
15 repetitive trauma injuries to her left and right
16 shoulders, which arose out of and -- and occurred in
17 the course and scope of her employment.

18 Commissioner Taylor: But when? When?

19 Commissioner Wilkerson: When? Yes.

20 Mr. Alexander: Well, it -- there is no
21 specific date; it's -- it's under 40 -- 42-1-172 it's
22 gradual and onset. So, it's almost impossible to find
23 a specific date but I would -- I would point to the
24 MRIs and July, 2015, is the first time, again, she was
25 aware that she had repetitive trauma injuries because

1 that's the first time she realized she rotator cuff
2 tears.

3 Commissioner Taylor: Right. And I think the
4 evidence revealed she hadn't worked in almost a
5 year at that point in time. So, then how did we
6 get that attached to an admitted arm claim from
7 2013, when she didn't even know anything about the
8 repetitive trauma?

9 Mr. Alexander: I think that -- well, that's
10 the date they found out and under the case law that's
11 cited in the brief under that Schuriknight case it's --
12 you have two (2) years from the last date of exposure.
13 Her last work, I believe, was 2014; so she was still
14 within two (2) years for -- for her to bring that and
15 amend the 50.

16 Commissioner Taylor: But this hearing wasn't
17 on the 50. That's -- my question is not about
18 whether you all were right to bring it or within
19 the law to bring it because you were, but I just
20 don't see how it got attached to a hearing -- an
21 admitted claim on a 21 with a specific date of
22 injury. I mean, we're talking about a whole
23 totally different injury that should have had a
24 separate -- a separate claim.

25 Commissioner Wilkerson: Let me ask a

1 question also in reference to that. Any objection
2 when you put on your 58 to move forward on the
3 right and left shoulders at the hearing?

4 Mr. Alexander: I don't believe so.

5 Commissioner Wilkerson: Okay. That's -- I
6 couldn't find that either, that's --

7 Commissioner Taylor: I'm fine.

8 Commissioner Wilkerson: -- that nobody moved
9 to not allow that to come in.

10 Commissioner Taylor: Okay. That's fine.

11 Commissioner Wilkerson: So, it's before him
12 properly. It was so confusing as I went
13 back-and-forth this thing. Okay. So, it -- I
14 guess, technically, it is properly before the
15 Court.

16 Commissioner Beck: Yes.

17 Commissioner Wilkerson: Okay. Go ahead.

18 Mr. Alexander: Again, the medical records,
19 which were relied on by the Commissioner, they are
20 quoted several times all throughout the brief but
21 specifically the MRIs, again, show degenerate -- excuse
22 me -- degeneration in addition to the tears. Dr.
23 Nahigian, in his notes before this was ever brought up
24 as a comp situation, noted that years of overhead work
25 no doubt contributed to the degenerative condition in

1 her shoulders. He has completed questionnaires on
2 three (3) different occasions with the same consistent
3 statement. You know, the -- the discussion of him
4 changing his opinion in the deposition is -- I guess,
5 co-counsel for the -- for Defense was -- kept asking
6 him about this October 8 date and did he know that
7 there was, you know, complaints of her shoulder prior,
8 you know, in 2005, 2009. And, again, we're not saying
9 there was never any complaints prior because, again,
10 it's a repetitive trauma, it's not on October 8, 2013,
11 did she tear her shoulders up; that's -- that's not
12 what we're alleging. Again, they've also pointed out
13 that she never brought up her shoulders to Dr.
14 Buckaloo, which may be the case but she did bring it up
15 Dr. Muirhead and Dr. Shealy at Charleston Hand Group
16 who treated her after Dr. Buckaloo. And, again, she
17 was refer -- they attempted to refer her, she went to
18 physical therapy for her shoulders; in those two (2)
19 months of her treating for her shoulders there were --
20 they ended up stopping because she was making no
21 functional gains and so, they said there was nothing
22 more they could do as far as treatment for her
23 shoulders. And then, at that point that's when she
24 went -- underwent MRIs that revealed the tears, which
25 lead to the right shoulder being surgically repaired;

1 of course it wasn't accepted so she went privately to
2 do that through Dr. Nahigian.

3 Commissioner Wilkerson: And Muirhead was the
4 authorized treating physician?

5 Mr. Alexander: I'm sorry?

6 Commissioner Wilkerson: Was Muirhead an
7 authorized treating physician?

8 Mr. Alexander: Yes. Muirhead --

9 Commissioner Wilkerson: Okay. That's fine.

10 Mr. Alexander: -- Muirhead was treating her
11 for her right elbow, I believe --

12 Commissioner Wilkerson: Right.

13 Mr. Alexander: -- I think she was
14 transferred for the surgery on her right elbow.

15 Commissioner Wilkerson: Okay.

16 Mr. Alexander: I'm also not familiar with
17 any records from Dr. Buckaloo prior to 2014; if they
18 are somewhere in the record I may have missed them but
19 I don't see anything where he has mentioned previously
20 about this not being work related or that he did treat
21 her for anything related to her shoulders prior. So, I
22 -- I can't necessarily speak to the evidence other than
23 to say I don't know where that is if it's in the record
24 anywhere. Regarding the TTD issue, I believe she
25 testified during the hearing that she had spent

1 approximately two (2) months, maybe, sitting with a
2 friend who was, I think, on her deathbed essentially.
3 She did say she has reached out to try to find work
4 from other people but, again, has not been able to do
5 so. Again, since we've met our burden and she is still
6 not at MMI, I don't -- I feel that TTD is still, you
7 know, should be -- it should be continued until she is
8 at MMI when she has finished treatment. And then,
9 regarding appointing Dr. Nahigian, again, she went on
10 her own. The case that is cited by Appellants, you
11 know, refers to a lady that, I think, went to a
12 chiropractor and ran up forty-eight thousand dollars
13 (\$48,000.00) in bills and then sought to have that
14 authorized after the fact. I mean, we're -- we're
15 talking about a board certified orthopedic surgeon who
16 she went to to repair her shoulder. And, again, as I
17 had stated in the brief, she -- if she didn't go get it
18 fixed she'd still be sitting around -- right now we'd
19 be having the argument, well, why didn't she go get
20 this taken care of on her own; she was just sitting out
21 of work. So, you know, again, she went ahead and chose
22 to go on her own privately to get that done and the
23 left shoulder has just not been addressed at this point
24 because this case came up in the middle of treatment
25 and the left shoulder is pending based on the outcome

1 of the case. And I don't -- I don't see in the case
2 law where the Hearing Commissioner is not authorized to
3 make that order; I don't see that in there. Again, I
4 think that was allowed. I think it was the case
5 actually McKinney cited was the Risinger v. Knight
6 Textiles that allowed the Appellant Panel to appoint --
7 appoint the authorized treating physician.

8 Commissioner Beck: Okay.

9 Commissioner Wilkerson: Okay.

10 Mr. Alexander: Nothing further.

11 Commissioner Wilkerson: Any questions?

12 Okay. Thank you. I appreciate it. Thanks.

13 Three (3) minutes in reply.

14 REPLY FOR THE APPELLANT

15 By Ms. Hapeshis:

16 Just briefly, I was going to give a few APA sites.
17 He had mentioned something about Dr. Buckaloo in the
18 treatment on April 13 and those began on page 807 and
19 end on page 811 of the APAs. And I would also like to
20 take note of page 756 where the shoulder problems were
21 so severe that surgery was contemplated on August the
22 30th of 2013, and that's 756. And that it was still
23 our contention that their -- the burden of proof was
24 not met for an aggravation of a pre-existing shoulder
25 problem resulting in a repetitive injury trauma. I

1 believe, if I'm not mistaken, the hearing notice states
2 that it's on our 21 and to determine aggravation; I'm
3 -- I believe that's how they got it in but I can't
4 remember the correct wording to clarify it but --

5 Commissioner Wilkerson: It's not in the
6 order.

7 Ms. Hapeshis: -- but --

8 Commissioner Wilkerson: You didn't appeal
9 that; so, it's not in the order.

10 Ms. Hapeshis: -- but I -- I -- I do not -- I
11 do not recall exactly. That -- but that is the APA
12 sites that he had referenced to and other than that, we
13 would rely on our Appellant's brief.

14 Commissioner Wilkerson: Okay.

15 Commissioner Taylor: Okay. Thank you.

16 Commissioner Wilkerson: Any questions?

17 Thank you. I appreciate it. Thank you all for
18 being here.

19 Commissioner Beck: Thank you all.

20 (THERE BEING NO FURTHER DISCUSSION, THE FULL BOARD HEARING
21 CONCLUDED AT 4:12 P.M.)

22

23

24

25



MILLER, DOROTHY

57 Y old Female, DOB: [REDACTED]

Account Number: 00005331004

1268 DOUGLAS MACARTHUR ST, ORANGEBURG, SC.
29115-7608

Home: 803-347-5232

Guarantor: MILLER, DOROTHY

Appointment Facility: Charleston Hand Group MC

07/16/2015

WILLIAM R MUIRHEAD, MD

Reason for Appointment

1. 6 WKF/U
2. Right wrist injection 2/11/2015 and 3/11/2015
3. s/p 6/4/2015 injection ELBOW
4. Patient sts injection helped some on the right elbow

Current Medications

Taking

- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- Medications reported as directed by the ordering provider
- ibuprofen
- Naproxen
- Oxycodone
- Gabapentin 100 MG Capsule as directed Three times a day
- Medication List reviewed and reconciled with the patient

Review of Systems

ENT:

Ear trouble No. Stuffy nose No. Sore throat No.

Respiratory:

Breathing pattern Yes.

Cardiovascular:

Heart problems No. High blood pressure No.

Gastrointestinal:

Indigestion No. change in bowel movements No.

Musculoskeletal:

Joint stiffness No.

Hematology:

Bleeding problems No.

Extremities:

Numbness/Tingling Yes.

Genitourinary:

Loss of Bowel/Bladder Control No.

Neurologic:

Balance difficulty Yes. Fainting No.

Cancer Self-Management:

Cancer No.

General:

vision problems No.

Patient: MILLER, DOROTHY DOB: [REDACTED] Progress Note: WILLIAM R MUIRHEAD, MD 07/16/2015
Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

<http://rsfhapp.ecw.carealliance.com/mobiledoc/jsp/catalog/xml/printChartOptions.jsp?enco...> 8/10/2015

Vital Signs

Ht 67 in, Wt 240 lbs, BMI 37.59.

Assessments

1. Carpal tunnel syndrome - 354.0 (Primary)
2. Thumb pain - 729.5

Ms. Dorothy Miller has continued with some symptoms but overall she states that her hand function is good. She does have some pain and points to her first CMC joint. Also having some discomfort and forearm. The primary location of her pain at this time seems to be her right shoulder and she states that she has rotator cuff tear and is undergoing current workup and treatment.

Exam: right upper extremity shows limited forward flexion and abduction of shoulder. She has full range of motion of her elbow wrist and digits. All surgical sites are well-healed. Tenderness over the radial tunnel is equal to that on the contralateral side. 5 out of 5 strength EPL and FPL. Negative Wartenberg. All digits well perfused. Skin intact. No tenderness over right first dorsal compartment.

Impression: With a reasonable degree of medical certainty the patient is thought to be at a maximum medical endpoint with regards to her right elbow wrist and hand. Impairment rating is calculated 7 percent secondary to continued symptoms after right cubital tunnel and carpal tunnel releases and release of right first dorsal compartment. Restrictions are less than 1 pound and no repetitive activities right upper extremity. These are given to the patient today as guidelines and her activities may be able to be increased over time particularly with hopeful relief of her shoulder symptoms.

Treatment

1. Others

Continue Medications reported as directed by the ordering provider

Follow Up

prn



Electronically signed by WILLIAM MUIRHEAD MD on 07/16/2015 at 05:10 PM EDT
Sign off status: Completed

Charleston Hand Group PC
730 Stoney Landing Road
MONCKS CORNER, SC 29461
Tel: 843-763-2320
Fax: 843-606-8067

Patient: MILLER, DOROTHY DOB [REDACTED]

Progress Note: WILLIAM R MUIRHEAD, MD 07/16/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

<http://rsfhapp.ecw.carealliance.com/mobiledoc/jsp/catalog/xml/printChartOptions.jsp?enco...> 8/10/2015

Reason For Exam
Shoulder pain

FINAL REPORT

Three views of the right shoulder.

HISTORY: Pain.

FINDINGS: High riding right humerus with bone-on-bone articulation greater tuberosity with the acromion. Lateral downsloping of the acromion. Osseous structures, articular surfaces and joint spaces are otherwise preserved.

IMPRESSION:

1. Findings consistent with advanced chronic rotator cuff tearing and subacromial impingement
2. No evidence for acute process

Signature Line

***** Final Report *****

Dictated by: Reidman, Daniel A

07/02/2015 8:00 am

Signed by: Reidman, Daniel A

07/02/2015 8:00 am

Transcribed by: Reidman, Daniel A

Completed Action List:

- Order by FAVOR MD, Fa-Tanisha on 02 July 2015 7:26 EDT
- Perform by Insbines RT(R), Elisabeth on 02 July 2015 7:44 EDT
- VERIFY by Reidman, Daniel A on 02 July 2015 8:00 EDT

Result type: XR Shoulder Complete Right
Result date: 02 July 2015 7:44 EDT
Result status: Auth (Verified)
Result title: XR Shoulder Complete Right
Performed by: Reidman, Daniel A on 02 July 2015 8:00 EDT
Verified by: Reidman, Daniel A on 02 July 2015 8:00 EDT
Encounter info: 1001462932, RMC, Emergency, 07/02/2015 - 07/02/2015

Printed by: Spence, Courtney H
Printed on: 12/08/2015 14:30 EST

Page 1 of 1
(End of Report)

P.008 1109282808

MEDICAL RECORDS RMC

FEB-20-2001 14:35

Southeast Neuropathy & Treatment

1737 Village Park Drive

Orangeburg, SC 29118

Test Date: 2/5/2016

Patient:	Dorothy Miller	DOB:	[REDACTED]
Sex:	Female	Height:	5' 7"
ID#:	M	Weight:	225 lbs.

Patient Complaints: Presently, Mrs. Miller complains of constant moderate cervical pain and radiation into the upper extremities. Patient also reports paresthesias in the bilateral hands and arms. Patient reports symptoms are more severe on the right. Patient reports difficulty grasping objects with her right hand and difficulty lifting objects with her bilateral arms. Patient reports difficulty sleeping and with activities of daily living due to her chief complaint. Patient reports a previous right elbow and wrist surgery. Electrodiagnostic consultation recommended to rule out cervical radiculopathy and/or median and/or ulnar neuropathy.

NCV & EMG Findings: Evaluation of the Left median sensory and the Right median sensory nerves showed prolonged distal peak latency (L4.2, R4.8 ms) and decreased conduction velocity (Wrist-2nd Digit, L33, R29 m/s). The Right ulnar sensory nerve showed prolonged distal peak latency (3.8 ms) and decreased conduction velocity (Wrist-5th Digit, 37 m/s). The Right median/ulnar (palm) comparison nerve showed prolonged distal peak latency (Median Palm, 3.4 ms), prolonged distal peak latency (Ulnar Palm, 4.1 ms), and abnormal peak latency difference (Median Palm-Ulnar Palm, 0.7 ms). All remaining nerves (as indicated in the following tables) were within normal limits.

Needle evaluation of the Right flexor carpi radialis muscle showed slightly increased spontaneous activity. The Right C8 paraspinal muscle showed increased insertional activity. All remaining muscles (as indicated in the following table) showed no evidence of electrical instability.

Impression: This individual exhibits electrophysiological findings consistent with the following:

1. Mild to moderate bilateral median sensory neuropathy and right ulnar sensory neuropathy in the region of the bilateral wrists.
2. Spontaneous potential noted in the left flexor car muscles, which may be suggestive of a subacute right C6 radiculopathy.
3. SSR results are present.

Recommendations: Further imaging studies may be necessary. Further laboratory testing may be required to rule out metabolic polyneuropathies. Current treatment protocol is still warranted.

Reviewed By

A.H.
2-11-16

MRI Shoulder w/o Contrast Left

Miller, Dorothy Ann - 0000174021

* Final Report *

* Final Report *

Reason For Exam

Rt and Lt Rotator Cuff tear, MRI Rt Lt Shoulder w/o contrast

FINAL REPORT

LEFT SHOULDER MRI

Technique: Coronal T1, coronal proton density fat sat, coronal STIR, axial T2 fat sat, axial proton density fat sat, sagittal T1, and sagittal T2 fat sat weighted images are obtained on a 1.5 Tesla MR unit.

HISTORY: 57-year-old female with shoulder pain and decreased range of motion. There are no comparison examine done available.

FINDINGS: The humeral head is high riding within the glenoid fossa. There is acromioclavicular hypertrophy and small joint effusion extending into the subacromial/subdeltoid bursa. Small amount of fluid noted within the subcoracoid bursa. No acromioclavicular or Hill-Sachs deformity. Complete tear of the supraspinatus tendon with retraction to the level of the acromioclavicular joint noted with associated atrophy of the supraspinatus muscle belly suggesting long-standing injury. Tendinopathy of the infraspinatus tendon noted with muscular atrophy. No partial or full thickness tear identified in this location. The subscapularis and teres minor tendons are intact. Long head biceps tendon is appropriately located within the bicipital groove. Long head biceps tendon anchor is intact. There is degenerative change of the glenohumeral articulation with osteophyte formation and small degenerative tear of the superior labrum. No large displaced labral tear, occult fracture, osseous destructive lesion, or soft tissue mass identified.

IMPRESSION:

1. Complete tear of the supraspinatus tendon, retracted to the level of acromioclavicular joint. Atrophy of the supraspinatus muscle belly noted.
2. Acromioclavicular hypertrophy.
3. Tendinopathy of the infraspinatus tendon with muscular atrophy.
4. Small nondisplaced degenerative tear of the superior labrum.

Result type: MRI Shoulder w/o Contrast Left
Result date: 28 July 2015 15:00 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Left
Performed by: Hatakus DO, Scott J on 28 July 2015 15:31 EDT
Verified by: Hatakus DO, Scott J on 28 July 2015 15:48 EDT
Encounter info: 1001472101, RMC, Outpatient 07/17/2015 - 07/17/2015

Printed by: Spence, Courtney H
Printed on: 12/08/2015 14:30 EST

Page 1 of 3
(Continued)

00012 1107388838

00012 1107388838

00012 1107388838

0267

MRI Shoulder w/o Contrast Left

Miller, Dorothy Ann - 0000174021

* Final Report *

Signature Line

----- Final Report -----

Dictated by: Habakus DO, Scott J
07/28/2015 3:31 pm
Signed by: Habakus DO, Scott J
07/28/2015 3:46 pm
Transcribed by: Habakus DO, Scott J

Completed Action List:

- * Order by Anosh-Apraku, Bismarck on 1 July 2015 13:41 EDT
- * Perform by Huggins RT(R), Rodrick O on 28 July 2015 15:00 EDT
- * VERIFY by Habakus DO, Scott J on 28 July 2015 15:46 EDT

Result type: MRI Shoulder w/o Contrast Left
Result date: 28 July 2015 15:00 EDT
Result status: Auth (Verified)
Result title: MRI Shoulder w/o Contrast Left
Performed by: Habakus DO, Scott J on 28 July 2015 15:31 EDT
Verified by: Habakus DO, Scott J on 28 July 2015 15:46 EDT
Encounter info: 1001472101, RMC, Outpatient, 07/17/2015 - 07/17/2015

Printed by: Spence, Courtney H
Printed on: 12/08/2015 14:30 EST

Page 2 of 2
(End of Report)



**CAROLINA SHOULDER
& KNEE SPECIALISTS**

A Lexington Medical Center Physician Practice

Carolina Shoulder and Knee Specialists
810 Mallet Hill Road
Columbia, SC 29223
(803) 419-6646

Patient: DOROTHY MILLER
1268 DOUGLAS MCARTHUR ST
ORANGEBURG, SC 29115

DOS: 11/11/2015
DOB: [REDACTED]
Gender: F
MR#: 2149170
Provider: Kevin K. Nahigian MD

Chief Complaint
right shoulder pain

Results/Data

All Results [Data Includes: Current Encounter]
11 Nov 2015 11:52AM

XR Shoulder Right AP Internal AP External Axillary

XR Shoulder Right AP Internal AP External Axillary: The report for these images resides in the Doctors Office Electronic Health Record that performed the exam.

Results: X-Ray Review: right Shoulder

Views: AP and outlet view

Bone lesions: Grossly normal without lesions

Joint space narrowing: Significant joint space narrowing

Congruence: Normal

GH joint: Significant degenerative changes

AC joint: Severe

Scapula: Significant type 2 acromion

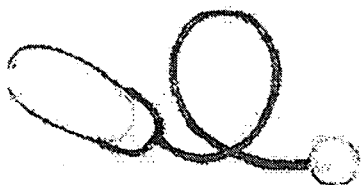
Humerus: No abnormalities

Diagnosis: AC joint arthrosis

Signatures

Electronically signed by: Kevin Nahigian, MD: Nov 18 2015 4:51PM EST

A 14
12-9 15



Miller, Dorothy

58 Y old Female, DOB: [REDACTED]

Account Number: 9983

1268 Douglas McArthur St., Orangeburg, SC-29115

Home: 803-997-2522

Occupation: Miller, Dorothy Insurance: Medicare Payer

ID: SCMCOR

Appointment Facility: Southeast Neuropathy & Treatment Center - Orangeburg

12/07/2015

Angele L. Hampton

Current Medications

Taking

- Gabapentin 600 MG Tablet 1 tablet Three times a day
- Cetirizine HCl 10 MG Tablet 1 tablet as needed Once a day
- Naproxen 500 MG Tablet 1 tablet as needed every 12 hrs
- Meloxicam 15 MG Tablet 1 tablet Once a day
- Albuterol Sulfate 108 (90 Base) MCG/ACT Aerosol Powder Breath Activated 1 puff as needed every 4 hrs

Past Medical History

Asthma
Allergic Rhinitis
Neuropathy

Surgical History

3 right arm/wrist surgeries
2 hernia repair
cholecystectomy
Bilateral tubal ligation

Social History

Tobacco Use:

Tobacco Use/Smoking
Are you a nonsmoker

Drugs/Alcohol:

Drugs

Have you used drugs other than those for medical reasons in the past 12 months? No
Alcohol Screen (Audit-C)

Did you have a drink containing alcohol in the past year? No

Points 0

Interpretation: Negative

Previous Drug usage 23 years ago.

Allergies

N.K.D.A.

Hospitalization/Major

History of Present Illness

Carpal Tunnel Syndrome:

Subjective:

Symptoms Same

Are you experiencing any discomfort Yes

What Symptoms are you having? Numbness, Weakness, Pain,

Sharp, shooting pain, Cold

Pt used air guns and machines at Husquiana and has had 3 "nerve" release surgeries x 1 year ago. Two in right wrist and right medial elbow, but is still with pain and numbness in right arm and three fingers. Bilateral Rotator cuff teas and scheduled for right repair tomorrow. (is out on disability now) Has had SX 2013.

Weakness 7/10; numbness 10/10; pain 7.5/10; Throbbing (elbow) 6.5/10; Inability to fully extend elbow or raise shoulder 7.5/10; Coldness 9/10. On Gabapentin x 3 mos. and NSAIDS x 2 years. Went PT several times. Has had several cortisone injections. Had a NCS about 2 years. Pain interferes with sleep. (sleeps in recliner) Unable to do household chores, lift heavy pots, or flower pots. Majority of sx are in the right. Minimal sx in left. (Just started about 2 months ago)

Treatment process explained to pt. who desires to proceed with PE today and get scheduled for NCS. Pt scheduled for Outpatient surgery tomorrow so NCS and treatments will be delayed until New Year. OOP expense explained to pt by myself and Office co-ordinator and pt voiced understanding and will bring a payment back tomorrow. PE completed today.

Examination

Upper Extremity Examination:

What Symptoms are you having? Right handed Numbness, Weakness, Pain, Sharp, shooting pain, Other: Coldness.

Cap Refill <3 sec.

Radial Pulses Present.

Grips

Right Hand Grip Moderate

Left Hand Grip Strong

Reflexes

SENT ROS:

Skin Denies. Cardiovascular/
Resp Denies. Had EKG and ECHO,
And Stress test for pre-surgical
clearance and all was well..
GI Hernia x 2 repair (abdominal).
Neuro Denies. MSK Arthritis Lower
back.. Females Tubal ligation.

Temperature Fingers Warm.

ROM

Right Finger Flexion *Full*
Left Finger Flexion *Full*
Right Finger Extension *Full*
Left Finger Extension *Full*
Right Wrist Flexion *Full*
Left Wrist Flexion *Full*
Right Wrist Extension *Full*
Left Wrist Extension *Full*
Right Wrist Circles *Full*
Left Wrist Circles *Full*

Strength

Right 5th and Thumb *Weak*
Left 5th and Thumb *Strong*
Right 4th and Thumb *Weak*
Left 4th and Thumb *Strong*
Right 3rd and Thumb *Moderate*
Left 3rd and Thumb *Strong*
Right 2nd and Thumb *Strong*
Left 2nd and Thumb *Strong*

Monofilament

Right Dorsal Web *Present*
Left Dorsal Web *Present*
Right Lateral Distal Index *Present*
Left Lateral Distal Index *Present*
Right Medial Distal 5th *Present*
Left Medial Distal 5th *Present*
Right Proprioception (vibration) *Present*
Left Proprioception (vibration) *Present*

Tinels Exam Negative Bilat.

Phalens Exam Negative bilat.

Several keloided surgical scars noted including 5 inch medial
elbow, and 2 inch radial wrist, and classic CTS release scar all on the
right.

Pt 5th digit DIP Left with permanent flexion (from a old knife
wound); Right 4th digit with ulnar deviation. No atrophy appreciated
with hands bilat.

Pt wrist ROM is full and strong but with pain/discomfort on right.

General Examination:

GENERAL APPEARANCE: in no acute distress, well developed,
well nourished.

SKIN: no suspicious lesions, warm and dry.

HEAD: normocephalic, atraumatic.

EYES: extraocular movement intact (EOMI).

NECK/THYROID: neck supple, full range of motion, no cervical
lymphadenopathy, no thyromegaly.

HEART: no murmurs, regular rate and rhythm, S1, S2 normal.

LUNGS: clear to auscultation bilaterally.

ABDOMEN: normal bowel sounds present, soft, nontender.

CHEST: normal shape and expansion.

Assessments

1. Unspecified mononeuropathy of right upper limb - G56.91 (Primary)

Procedures

Plan of Care:

Short Term Goal

: Decrease Inflammation, Improve Biomechanical Function,
Increase Range of Motion, Decrease Compensatory Patterns, Increase
Strength, Increase Mobility, Increase ADL's, Increase Stability,
Increase General Fitness

Frequency of Visits

of visits 20

times per week 2

For how many weeks 10

Re-evaluation in (weeks) 5

Immunization

Flu vaccine no Preserv 3 and >

Follow Up

3 Weeks

Electronically signed by Angela Hampton, PA on 12/09/2015
at 02:22 PM CST

Sign off status: Completed

Southwest Neuropathy & Treatment Center - Orangeburg

1737 Village Park Drive

ORANGEBURG, SC 29118

Tel: 803-937-6843

Fax: 803-937-6845

Patient: Miller, Dorothy DOB: [REDACTED] Progress Note: Angela L. Hampton 12/07/2015

Note generated by eClinicalWorks EHR/PM Software (www.eClinicalWorks.com)



Miller, Dorothy

58 Y. old Female, DOB: [REDACTED]

Account Number: 9983

1268 Douglas McArthur St., Orangeburg, SC-29115

Home: 803-997-2522

Guarantor: Miller, Dorothy Insurance: Medicare Payer

ID: SCMCR

Appointment Facility: Southeast Neuropathy & Treatment Center - Orangeburg

02/08/2016

NCS: Angela I. Hampton

Current Medications

Taking

- Gabapentin 600 MG Tablet 1 tablet Three times a day
- Cetirizine HCl 10 MG Tablet 1 tablet as needed Once a day
- Naproxen 500 MG Tablet 1 tablet as needed every 12 hrs
- Meloxicam 15 MG Tablet 1 tablet Once a day
- Albuterol Sulfate 108 (90 Base) MCG/ACT Aerosol Powder Breath Activated 1 puff as needed every 4 hrs
- Medication List reviewed and reconciled with the patient

Past Medical History

Asthma
Allergic Rhinitis
Neuropathy

Allergies

N.K.D.A.

Assessments

1. Carpal tunnel syndrome, right upper limb - G56.01 (Primary)
2. Carpal tunnel syndrome, left upper limb - G56.02

Procedures

EMG/NCV Study:

Patient Visit Note The patient presented today for EMG/NCV study. The test was performed by Dr. Ryan Bowers and the report is scanned into the patient's medical record..

EMG/NCV Results I was present during the test and have interpreted the results as follows:.

Results 1. Mild to moderate bilateral median sensory neuropathy and right ulnar sensory neuropathy in the region of the bilateral wrists. 2. Spontaneous potential noted in the left flexor car muscles, which may be suggestive of a subacute right C6 radiculopathy. 3. SSR results are present..

Procedure Codes

95886 MUSC TEST DONE W/N TEST COMP
95913 NRV CNDJ TEST 13/> STUDIES
95923 AUTONOMIC NERV FUNCTION TEST

Follow Up

2 - 3 Days

Electronically signed by Angela Hampton, PA on 02/11/2016
at 02:59 PM CST

Sign off status: Completed



Miller, Dorothy

38 Y old Female, DOR: [REDACTED]

Account Number: 9983

1268 Douglas McArthur St., Orangeburg, SC 29115

Home: 803-997-2522

Guarantor: Miller, Dorothy

Appointment Facility: Southeast Neuropathy & Treatment Center - Orangeburg

02/23/2016

Angela L Hampton

Current Medications

Taking

- Gabapentin 600 MG Tablet 1 tablet Three times a day
- Cetirizine HCl 10 MG Tablet 1 tablet as needed Once a day
- Naproxen 500 MG Tablet 1 tablet as needed every 12 hrs
- Meloxicam 15 MG Tablet 1 tablet Once a day
- Albuterol Sulfate 108 (90 Base) MCG/ACT Aerosol Powder Breath Activated 1 puff as needed every 4 hrs

Past Medical History

Asthma
Allergic Rhinitis
Neuropathy

History of Present Illness

Carpal Tunnel Syndrome:

Subjective

Are you using your tens unit? Yes

What level is your tens unit on? 1

Symptoms Same

Are you experiencing any discomfort Yes

Right Side 7

Left Side 5

What Symptoms are you having? Numbness, Pain, Achey decreased ROM (right shoulder) due to pain/shoulder surgery.

Pt in for first tx. C/o continued right forearm pain esp. on the thumb side of the arm. Also pt just ~4 weeks out from right shoulder surgery and is in fact coming in today from PT.. TENS unit given in office and first session given in office.

Reviewed NCS results with patient which shows bilateral sx, but treatment is restricted to Right only due to patient insurance.

ADDENDUM : billing error made and corrected for right only modifier as specified in chart notes. (3/3/16).

Vital Signs

BP 139/88 mm Hg, HR 101/min, Oxygen sat % 97 %.

Examination

Axillary Examination:

Objective

Bruising No

Redness No

Swelling No

Tenderness on Palpation No

Pt had good hand strength after procedure Yes

Pt presents with therapeutic taping on right shoulder.

Assessments

1. Carpal tunnel syndrome, right upper limb - G56.01 (Primary)

Procedures

Axillary Procedure:

the injection may not provide the desired results. The patient understands and wishes to proceed.

Procedure The patient's right axillary nerve was covered with sterile drapes and prepped with Chloraprep. The injection site was anesthetized with 1% Lidocaine. A 22g Tuohy needle was inserted under ultrasound guidance in the right axillary and advanced until the needle tip was visualized adjacent to the axillary nerve. After aspiration revealed no blood in the catheter, a total of 2cc of Marcaine 0.25% was placed adjacent to the right axillary nerve with visual confirmation via ultrasound image.

Treatment Plan Continue treatment of the right axillary nerve.

Visit Number

Visit Number 1

Procedure Codes

64450 N BLOCK, OTHER PERIPHERAL

76942 ECHO GUIDE FOR BIOPSY

Follow Up

2 - 3 Days

Electronically signed by Angela Hampton, PA on 03/03/2016
at 12:04 PM CST

Sign off status: Completed

Southeast Neuropathy & Treatment Center - Orangeburg
1737 Village Park Drive
Orangeburg, SC 29118
Tel: 803-937-6843
Fax: 803-937-6843

Patient: Miller, Dorothy DOB: [REDACTED] Progress Note: Angela L. Hampton 02/23/2016

Note generated by eChoiceWorks EMR/PM Software (www.eChoiceWorks.com).

Cerner Imaging Exam Report

Facility: BMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

FIN: 1001473101

Patient Type: Outpatient

Accession No: MR-15-02741

Exam Date/Time: 07/17/2015 4:30 PM

Ordering Physician: Amoski-Apraku, Bismarck

Resident:

Interpreting Physician: Morgan, Gerard E

Reason for Exam: Rt and Lt Rotator Cuff tear, MRI Rt Lt Shoulder w/o contrast

DOB/Age/Sex: [REDACTED]

Location: MRI

Exam: MRI Shoulder w/o Contrast Right

Exam Status: Completed

Transcriptionist: Morgan, Gerard E

Report Status: Final

Transcribed Date/Time:

FINAL REPORT

PROCEDURE: MRI right shoulder without contrast

Technique: High-field MRI of the right shoulder was performed utilizing the following sequences: Axial PD fat-sat, axial T2 fat-sat, coronal PD fat-sat, coronal STIR, sagittal T2 fat-sat, and sagittal T1.

COMPARISON: Plain film dated 2 July 2015

CLINICAL HISTORY: Shoulder pain for years with limited range of motion, evaluate for rotator cuff tear

FINDINGS:

The humeral head is high riding on the bony glenoid. No fracture or dislocation are seen. No there is mild edema of the acromioclavicular joint. No Hill sac deformity or bony Bankart lesion are seen. The long head of the biceps tendon is normally positioned in the intertubercular groove. The biceps lateral anchor appears intact. The superior labrum is degenerated and likely torn. There is a full-thickness fullwidth tear of the supraspinatus muscle with approximately 3 cm of tendinous retraction. There is also tendinopathy of the infraspinatus. There is soft tissue fullness and some edema at the rotator cuff interval, query symptoms of a frozen shoulder. Tendinopathy of the subscapularis tendon is also seen. Fluid is seen in the subacromial and coracoid bursa. There is muscle atrophy of the supraspinatus and infraspinatus.

IMPRESSION:

1. Full-thickness fullwidth tear of the supraspinatus tendon with approximately 3 cm of tendinous retraction.

Cerner Imaging Exam Report

Facility: RMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

FIN: 1001472101

Patient Type: Outpatient

Accession No: MR-15-02741

Exam Date/Time: 07/17/2015 4:30 PM

Ordering Physician: Amoah-Apraku, Bismarck

Resident:

Interpreting Physician: Morgan, Gerard E

Reason for Exam: Rt and Lt Rotator Cuff tear, Mri Rt Lt Shoulder w/o contrast

DOB/Age/Sex: [REDACTED]

Location: MRI/7

Exam: MRI Shoulder w/o Contrast Right

Exam Status: Completed

Transcriptionist: Morgan, Gerard E

Report Status: Final

Transcribed Date/Time:

4. Soft tissue fullness of the rotator cuff interval with mild associated edema, Query symptoms of a frozen shoulder.

5. Tendinopathy of the subscapularis tendon.

***** Final Report *****

Dictated by: Morgan, Gerard E

07/17/2015 4:33 pm

Signed by: Morgan, Gerard E

07/17/2015 4:40 pm

Transcribed by: Morgan, Gerard E

11/11/2015 11:38

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RADIOLOGY

PAGE 01/04

Cerner Imaging Exam Report

Facility: RMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

ETN: 1001472101

Patient Type: Outpatient

Accession No: MR-15-02740

Exam Date/Time: 07/28/2015 3:00 PM

Ordering Physician: Amogh-Apraku, Dismarek

Resident:

Interpreting Physician: Habakus DO, Scott J

Reason for Exam: Rt and Lt Rotator Cuff tears, Mill Rt Lt Shoulder w/o contrast

DOB/Age/Sex: [REDACTED]

Location: MRI

Exam: MRI Shoulder w/o Contrast Left

Exam Status: Completed

Transcriptionist: Habakus DO, Scott J

Report Status: Final

Transcribed Date/Time:

FINAL REPORT

LEFT SHOULDER MRI

Technique: Coronal T1, coronal proton density fat sat, coronal STIR, axial T2 fat sat, axial proton density fat sat, sagittal T1, and sagittal T2 fat sat weighted images are obtained on a 1.5 Tesla MR unit.

HISTORY: 57-year-old female with shoulder pain and decreased range of motion. There are no comparison examinations available.

FINDINGS: The humeral head is high riding within the glenoid fossa. There is acromioclavicular hypertrophy and small joint effusion extending into the subacromial/subdeltoid bursa. Small amount of fluid noted within the subscapoid bursa. No os acromiale or Hill-Sachs deformity. Complete tear of the supraspinatus tendon with retraction to the level of the acromioclavicular joint noted with associated atrophy of the supraspinatus muscle belly suggesting long-standing injury. Tendinopathy of the infraspinatus tendon noted with muscular atrophy. No partial or full thickness tear identified in this location. The subscapularis and teres minor tendons are intact. Long head biceps tendon is appropriately located within the bicipital groove. Long head biceps tendon anchor is intact. There is degenerative change of the glenohumeral articulation with osteophyte formation and small degenerative tear of the superior labrum. No large displaced labral tear, occult fracture, osseous destructive lesion, or soft tissue mass identified.

IMPRESSION:

Complete tear of the supraspinatus tendon, retracted to the level

07/17/2015 01:30 8632052882

RADIOLOGY

PAGE 03/04

Cerner Imaging Exam Report

Facility: RMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

FIN: 1001472101

Patient Type: Outpatient

Accession No: MR-15-01741

Exam Date/Time: 07/17/2015 4:30 PM

Ordering Physician: Amoah-Apraku, Niamaruk
Resident:

Interpreting Physician: Morgan, Gerard E

Reason for Exam: Rt and Lt Rotator Cuff tear, Mri Rt Lt Shoulder w/o contrast

DOR/Age/Sex: [REDACTED]

Location: MRI

Exam: MRI Shoulder w/o Contrast Right

Exam Status: Completed

Transcriptionist: Morgan, Gerard E

Report Status: Final

Transcribed Date/Time:

FINAL REPORT

PROCEDURE: MRI right shoulder without contrast

Technique: High-field MRI of the right shoulder was performed utilizing the following sequences: Axial PD fat-sat, axial T2 fat-sat, coronal PD fat-sat, coronal STIR, sagittal T2 fat-sat, and sagittal T1.

COMPARISON: Plain film dated 2 July 2015

CLINICAL HISTORY: Shoulder pain for years with limited range of motion, evaluate for rotator cuff tear

FINDINGS:

The humeral head is high riding on the bony glenoid. No fracture or dislocation are seen. No there is mild edema of the acromioclavicular joint. No Hill see deformity or bony Bankart lesion are seen. The long head of the biceps tendon is normally positioned in the inter tubercular groove. The biceps labral anchor appears intact. The superior labrum is degenerated and likely torn. There is a full-thickness fullwidth tear of the supraspinatus muscle with approximately 3cm of tendinous retraction. There is also tendinopathy of the infraspinatus. There is soft tissue fullness and some edema at the rotator cuff interval, query symptoms of a frozen shoulder. Tendinopathy of the subscapularis tendon is also seen. Fluid is seen in the subacromial and coracoid bursa. There is muscle atrophy of the supraspinatus and infraspinatus.

IMPRESSION:

1. Full-thickness fullwidth tearing of the supraspinatus tendon (3cm).

07/17/2015 11:30 8033952000

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PAGE 04/04

Cerner Imaging Exam Report

Facility: RMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

FIN: 1001472101

Patient Type: Outpatient

Accession No: MR-15-02741

Exam Date/Time: 07/17/2015 4:30 PM

Ordering Physician: Amosh-Apraku, Bismarck

Resident:

Interpreting Physician: Morgan, Gerard E

Reason for Exam: Rt and Lt Rotator Cuff tear. Mri Rt Lt Shoulder w/o contrast

DOB/Age/Sex: [REDACTED]

Location: MRI

Exam: MRI Shoulder w/o Contrast Right

Exam Status: Completed

Transcriptionist: Morgan, Gerard E

Report Status: Final

Transcribed Date/Time:

4. Soft tissue fullness of the rotator cuff interval with mild associated edema. Query symptoms of a frozen shoulder.

5. Tendinopathy of the subscapularis tendon.

***** Final Report *****

Dictated by: Morgan, Gerard E

07/17/2015 4:33 pm

Signed by: Morgan, Gerard E

07/17/2015 4:40 pm

Transcribed by: Morgan, Gerard E

11/11/2015 11:00

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PAGE 02/04

Cerner Imaging Exam Report

Facility: RMC

Patient Name: Miller, Dorothy Ann

MRN: 0000174021

FIN: 1001472101

Patient Type: Outpatient

Accession No: MIR-15-02740

Exam Date/Time: 07/28/2015 3:00 PM

Ordering Physician: Amnah-Apraku, Hienarch

Resident:

Interpreting Physician: Habakus DO, Scott J

Reason for Exam: Rt and Lt Rotator Cuff tear, Mild Rt Lt Shoulder w/o contrast

DOB/Age/Sex: [REDACTED]

Location: MRI/7

Exam: MRI Shoulder w/o Contrast Left

Exam Status: Completed

Transcriptionist: Habakus DO, Scott J

Report Status: Final

Transcribed Date/Time:

07/28/2015 3:31 pm

Signed by: Habakus DO, Scott J

07/28/2015 3:46 pm

Transcribed by: Habakus DO, Scott J



**SHELLY LEEKE
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May 26, 2016

VIA FACSIMILE - (803) 419-6626

Kevin K. Nahigian, M.D.
Carolina Shoulder and Knee Specialists
810 Mallett Hill Road
Columbia, SC 29223

RE: Your Patient: Dorothy Miller
Date of Birth: [REDACTED]
Type of Accident: Worker's Compensation

Dr. Nahigian,

I represent Dorothy Miller regarding injuries that occurred on October 2, 2013. As you are aware, she sustained a work-related injury from operating an air gun. Your treatment records have noted complaints of shoulder pain related to repetitive use of an air gun. Your office already has a medical authorization signed by Mrs. Miller that authorizes you to disclose information to me. At your earliest convenience, I am hereby respectfully requesting that you answer the questions below, provided that you can respond to a reasonable degree of medical certainty.

Should you have any questions please feel free to contact me at 843.297.8485 (office) or chip@leekelaw.com.

1. The patient, more likely than not, suffered rotator cuff tears in her left upper extremity due to repetitive trauma injury:

☒ Yes ☐ No.

2. The patient, more likely than not, suffered rotator cuff tears in her right upper extremity due to repetitive trauma injury:

☒ Yes ☐ No.

3. There is a direct causal relationship between the condition under which the work is performed and the injuries.

☒ Yes ☐ No.

4. My opinion is based on the history and symptoms reported by the patient and the signs shown on physical examination.

☒ Yes ☐ No.

5. The patient will benefit from additional treatment:

☒ Yes ☐ No.

If yes, please explain:

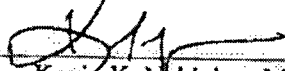
6. The patient is under the following work restrictions: *With time will be without restriction permanently.*

a)	Up to 5 lbs.	Never	Occasionally	Frequently	Continuously
b)	6-10 lbs.	Never	Occasionally	Frequently	Continuously
c)	11-20 lbs.	Never	Occasionally	Frequently	Continuously
d)	21-25 lbs.	Never	Occasionally	Frequently	Continuously
e)	26-50 lbs.	Never	Occasionally	Frequently	Continuously
f)	51-100 lbs.	Never	Occasionally	Frequently	Continuously

7. Is there anything else you feel is pertinent to the issues at hand?

The above responses represent our opinions to a reasonable degree of medical certainty and are supported by a preponderance of the evidence.

6/4/16
Date


Kevin K. Nahigian, M.D.

Thank you for your assistance in this matter. If there are any charges for your assistance in this matter, please advise me, and I will promptly forward your fee to you.

Very truly yours,



**SHELLY LEEKE
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July 1, 2016

VIA E-MAIL – SCMANIS@LEXHEALTH.ORG

Kevin K. Nahigian, M.D.
Carolina Shoulder and Knee Specialists
810 Mallett Hill Road
Columbia, SC 29223

RE: Your Patient: Dorothy Miller
Date of Birth: [REDACTED]
Type of Accident: Worker's Compensation

Dr. Nahigian,

I want to thank you again for your time during the deposition this week. I did have a couple of follow up questions that I did not get addressed on Monday. At your earliest convenience, I am hereby respectfully requesting that you answer the questions below, provided that you can respond to a reasonable degree of medical certainty.

Should you have any questions please feel free to contact me at 843.297.8485 (office) or chip@leekelaw.com.

1. Based on the facts presented and information you were given during your deposition, has anything changed regarding your opinion or answers from the May 26, 2016 questionnaire you answered (see attached):

____ Yes ☒ No.

If yes, please explain:

2. Could you provide a balance to date for what the patient has paid you and what is owed for the treatment at your office:

☒ Yes ____ No.

If yes, how much:

Patient paid \$133.00, \$16.18 is in Bad Debt, \$72.16 is due. Total owed \$288.34
In addition Medicare paid \$1,651.60

3. Please circle the most applicable for future medical costs due to Ms. Miller's left shoulder condition or please list the future treatment she will require:

Less than \$10,000

\$10,000 - \$20,000

Greater than \$20,000

Future Treatment Required:

MRI / ? SURGERY / THERAPY

The above responses represent our opinions to a reasonable degree of medical certainty and are supported by a preponderance of the evidence.

7/16/16
Date


Kevin K. Nahigian, M.D.

Thank you for your assistance in this matter. If there are any charges for your assistance in this matter, please advise me, and I will promptly forward your fee to you.

Very truly yours,



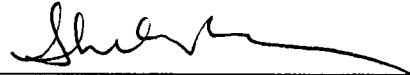
Chip Alexander
Attorney at Law

RCA/CA

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and no other material.

September 29, 2017



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American Insurance Company, Appellants