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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Unpublished Opinion No. 2017-UP-338
(Heard December 6, 2016 -
Filed August 2, 2017)

Clarence Winfrey, Employee, ... Petitioner,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

APPENDIX
VOLUME II OF II

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1306305

CLARENCE B. WINFREY, JR.)
Employee-Claimant,)
v.)
ARCHWAY SERVICES, INC.)
As Employer, and)
AMERICAN FIRE & CASUALTY CO.,)
as Carrier,)
Defendants.)

APPELLANT'S BRIEF TO THE
FULL COMMISSION

SCWCC

MAR 03 2014

JUDICIAL

STATEMENT OF THE CASE

This was a Form 15 III hearing. Following the accident on May 22, 2013 compensation benefits and medical care were started and authorized. SC Code §42-9-260(A) specifically provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." The Defendants while having started benefits did not comply with the Statute by filing the required form and notification and the Commission fined the Defendants for non-compliance by not filing a Form 12A or initial Form 15 which was admitted. On September 16th, one hundred and eighteen (118) days after the accident, the Claimant's attorney received one copy of a Form 15 III terminating benefits on the basis that: "based on a Good Faith

Investigation, the claim is denied." No proof of service was attached. [See: SCWCC Rule 67-201(B)(1) and 504(A)]. Pursuant to the requirements of the Regulations there was no attached documentation as to the Good Faith Investigation that was alleged to have been performed and/or the results of that investigation. [See: SCWCC Reg. 67-504(A)]. On September 18th and 21st Mr. Winfrey filed and served a Form 15 III with the Commission and the Defendants. The only additional information contained on the form as to the basis that was supposedly found during the alleged Good Faith Investigation (assuming a Good Faith Investigation is found) states the reason denied: "employee failed to meet the burden of a compensable injury under the South Carolina Workers' Compensation Act."

In an effort to determine whether a Good Faith Investigation was conducted and the results of that alleged Investigation, which lead to a termination of benefits without a hearing, the Claimant subpoenaed the adjuster as the, "managing agent", to a deposition and subpoenaed the adjuster's file requesting any and all records maintained by the adjuster and/or the employer in reference to the claim. While a Motion to Quash was filed, no Order was issued quashing the Subpoena prior to the date set for the deposition on October 2, 2013 and the adjuster failed to appear at the time for the deposition even though the Defendants were placed on notice that the deposition would go forward barring an Order quashing the Subpoena as to both the adjuster

and the adjuster's file. A Reply was filed to the Motion to Quash on October 7, 2013. The Defendants also filed Motions for Continuance/ Postponement, to Compel Deposition and for sanctions.

A Hearing Notice was issued on Friday, September 27th via email at 4:46 o'clock p.m. setting a hearing for November 13, 2013 at 1:45 o'clock p.m., listing as its "Subject: To determine if Claimant's temporary compensation was legally terminated." For the hearing set for November 13th, the moving party was required to file its APA Submissions fifteen (15) days prior to the scheduled hearing on or before October 30th (Note: the carrier is deemed to be the moving party in all hearings under Reg. 67-504(C).) The Defendants, not only did not file their Pre-Hearing Brief and APA Submissions on October 30th but did not file them on November 3rd, ten (10) days before the hearing and first filed a Pre-Hearing Brief dated as being served on November 4, 2013 (nine (9) days before the hearing) and filed an Amended Pre-Hearing Brief and Supplemental APAs on November 5th, 2013 (eight (8) days before the hearing).

On November 7, 2013 the Claimant filed a formal objection to the consideration of the Pre-Hearing Brief and APA Submissions of the Defendants and placed objections to various documents that would be submitted to the Commissioner. (See Objection Letter dated November 7, 2013).

At the time for hearing, the Commissioner held a lengthy Pre-Hearing Conference. During that conference, the Commissioner advised that while not on the Hearing Notice, he was going to proceed with all of the Motions, heard those Motions, and then entered Decisions from the Bench on those Motions which are reflected in the Order not issued until December 5, 2013. In addition, a Pre-Hearing Conference was held which was also not recorded during which the Claimant stated his position that under the statute the Defendants are the moving party and have the burden of proof to establish the grounds upon which they allege they stopped benefits. The Claimant moved and argued to exclude the Defendants' APA Submissions and Pre-Hearing Brief on the basis of their failure to comply with the Act. The Claimant also reiterated his argument made in his Pre-Hearing Brief that because the Defendants had failed to file the Form 15 as required by the Statute when benefits were started, they were barred from taking the benefit of the provisions of SC Code §42-9-260. Counsel further argued that because of their failure to comply with the Statute in that regard which is mandatory as to the filing of that form, and because they failed to file two (2) copies of the Form 15III on the Claimant and failed to attach, "documentation attached as to the reason for termination or suspension"; that the Defendants had completely failed to comply with the Statute and could not stop benefits and pursuant to the mandatory provisions of the Act under SC Code §42-9-260(G), the

Defendants had to pay the 25% penalty and had to reinstate benefits withheld in violation of the Code Section which specifically provides that, "the penalty and payment of benefits is mandatory for non-compliance with any part of the Section".

The Commissioner ruled that in his discretion he was going to admit the belatedly filed APAs and Pre-Hearing Brief; consider testimony from any witnesses that the Defendants wanted to put up; and would consider only all APA Submissions prior to, up to, and including the date that the Defendants gave verbal notice of their decision to stop benefits on September 13th. However, the Commissioner also ruled that the same restriction on evidence applied to the Claimant and the Commissioner would not consider any evidence from the Claimant or any of the APAs that were dated after September 13th.

However, the Record only reflects that the position of the parties was set out during the Pre-Hearing Conference (Hearing Transcript, p. 7, ll. 10-12) and that the parties agreed that the sole purpose of the hearing was to determine whether or not the Defendants properly stopped the Claimant's benefits under SC Code §42-9-260. (Hearing Transcript, p. 7, ll. 12-16). (The Claimant would request that the Commission note that Decisions were also made on the Motions that had been filed which the Commissioner heard and decided in an unrecorded Pre-Hearing Conference). Twenty-two (22) days after the hearing on the same day December 5th, the Commissioner filed two (2) Orders, one addressing the

Motions and one denying the Claimant's entitlement to have benefits reinstated. The Commissioner denied reinstatement on the basis that the Defendants alleged and asserted to the Commissioner that they have conducted a Good Faith Investigation; that the Claimant bears the burden of proof to prove that the Defendants did not conduct a Good Faith Investigation; and specifically held that it is only necessary that the Defendants, "represented to the Commission they conducted a Good Faith Investigation of the claim" . . . and that, "the Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith" and that therefore, "a belief of Defendants formed following a Good Faith Investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants." From that Decision and the Decision on the Motions, this appeal follows.

ARGUMENTS

- I. DID THE HEARING COMMISSIONER ERR AS A MATTER OF LAW BY HOLDING THAT THE DEFENDANTS DO NOT HAVE THE BURDEN OF PROOF TO PROVE THAT THEY CONDUCTED A GOOD FAITH INVESTIGATION ALLOWING THEM TO STOP BENEFITS WITHOUT A HEARING AND BY SHIFTING THE BURDEN OF PROOF REQUIRING THE CLAIMANT TO PROVE THAT THE DEFENDANTS DID, "NOT" CONDUCT A GOOD FAITH INVESTIGATION?

The Commissioner found both as a fact and as a ruling of law that the Defendants, "represented to the Commission" that they had conducted a Good Faith Investigation and they, "represented" that the reasons for the denial was a, "good faith belief", based

on their Investigation that the Claimant had not met his burden of establishing compensable injury. The Commissioner then went on to find that the Claimant, "did not provide any evidence," that the Defendants had not conducted a Good Faith Investigation and that the Defendants' good faith belief that the Claimant had not met his burden of proof of proving compensability was adequate grounds to deny the claim. Since the Defendants are the moving party under the Statute and Commission Regulations, the Commissioner erred by shifting the burden of proof from the Defendants to the Claimant.

First, the Defendants have the burden of proof under SC Code §42-9-260 and under the Commission Regulations implementing the Statute. SC Code §42-9-260(B) provides specifically in pertinent part that,

"once temporary disability benefits are commenced, the payments may be terminated ... if:"

one of the six (6) enumerated conditions is established that is to say proved and one of those is that a Good Faith Investigation conducted by the Employer reveals a grounds for denial. "If" is defined in Webster's Dictionary as a word, "used to say that something must happen before another thing can happen". The statute creates a condition precedent meaning that to be able to stop temporary disability benefits without a hearing they can do that "if" they meet one of the conditions precedent; such as establish a Good Faith Investigation was conducted. The fact

that the Defendants have the burden of proof of proving a Good Faith Investigation to be entitled to the benefits of the statute. of stopping benefits without a hearing is made clear by the Commission's Regulations. Regulation 67-504(A) specifically requires that the Defendants/Insurance Carrier attach documentation setting forth, "the reason for termination" and Regulation 67-612(B) (4) specifically states that the Insurance Carrier is the moving party, "the Carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67-504(C)".

The moving party has the burden of going forward as well as the burden of persuasion in an administrative hearing." 73A CJS, Public Administrative Law and Procedure §240, "Burden of Proof".

The party claiming the benefit of a Statute has the burden of proof and this burden is one of persuasion by a preponderance of the evidence, Pike v. SCDOT, 343 S.C. 224, 540 S.E.2d 87 (2000). Trial Handbook for South Carolina Lawyers, 5th Ed. (2012-2013) Burden of Proof, §9.3 and §9.4, "Statutory Allocation of Burden of Proof". Therefore under both the Statute and the Commission's Regulations, the Defendants have the burden of proof to prove the condition precedent by a preponderance of the evidence which is to prove a Good Faith Investigation which will allow them to obtain the benefit of the Statute to be able to stop benefits without a hearing. Where they start benefits, they can only stop those benefits under certain very limited circumstances and they

have the burden of proof to prove those circumstances apply and thus finally this is the specific holding of the South Carolina Court of Appeals in the case of Martin v. Rapid City Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App 2006) wherein the Court held:

"However, the statute is explicit that even under a Form 15, an employer can only terminate or suspend temporary compensation if one of the specified conditions is met." (Emphasis added).

Therefore, the Commissioner erred as a matter of law by shifting the burden of proof to the Claimant to prove that the Defendants did not conduct a Good Faith Investigation. The Defendants in this case did not submit any testimonial evidence or documentary evidence to prove that they had conducted a Good Faith Investigation prior to stopping of benefits.

II. THE HEARING COMMISSION ERRED AS A MATTER OF LAW BY NOT ORDERING REINSTATEMENT OF BENEFITS WHERE THE DEFENDANTS FAILED TO COMPLY WITH THE MANDATORY REQUIREMENTS OF SC CODE §42-9-260.

It is agreed that following the accident in this case the Defendants started benefits and that they failed to file the required Form 15 placing the Commission on notice that benefits had been started and that they were fined and paid the fine for that failure of compliance.

It is further undisputed that the Defendants did not serve the Claimant with two copies of the Form 15 or any supporting documentation as required by Commission Regulation 67-504 setting forth the reason for termination.

SC Code §42-9-260 is mandatory where there is a, "Failure to comply with this section" which, "shall" result in a 25% penalty in addition to the amount of benefits withheld.

SC Code §42-9-260(A) is also mandatory in the requirement that:

"Upon making the first payment, the Employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." (emphasis added).

This again is a mandatory requirement. Under SC Code §42-3-30 the Commission has the authority to promulgate regulations necessary to implement that the provisions of the Title and pursuant to that authority in reference to stopping payment during the first one hundred and fifty days (150), the Commission has adopted Rule 67-504 which requires under Subsection A that the Employer's representative shall, "file the Form 15 immediately with the Claims Department and shall serve two copies of the Form 15 immediately upon the Claimant according to R. 67-211 with documentation attached as to the reason for termination or suspension." As noted above, the Defendants did not file the mandatory notice form with the Commission when benefits were started; the Defendants did not serve the Claimant with two copies of the Form 15III nor is there actually an Affidavit of Service attached which is also required by the Regulations.

The Supreme Court and Court of Appeals have repeatedly held that where the provisions of the Act are mandatory, failure to

comply with the provisions bars a party from taking the benefit of the statute. Because Workers' Compensation Statutes provide an exclusive compensatory system in derogation of common law rights, the Commission and the Courts must strictly construe the requirements of the statute and leave it to the Legislature to amend or define any ambiguities. Callahan v. Beaufort County School District, 375 S.C. 92, 651 S.E.2d 311 (2007). In that case, the Supreme Court citing other Court of Appeals and Supreme Court decisions found that the provision of SC Code §42-1-560 requiring a Claimant to, "shall" file an S-2 Form notifying the Insurance Carrier/Employer and the Commission that a third party action has been filed was mandatory and failure to comply with that mandatory requirement resulted in an election of remedies and the Claimant not being able to take the benefit of SC Code §42-1-560 and barred from receiving any further benefits under the Act.

Likewise, under SC Code §42-9-260 Subsection G, provides that where there is a failure to comply with the Section in any way the provisions of Subsection (G) are mandatory that benefits wrongfully withheld be paid to the Claimant and that the 25% penalty be imposed. The same requirement for strict compliance with the Act apply to both the Defendants and the Claimant in a worker's compensation case because as the Court noted, the Workers' Compensation Statute is in derogation of common law rights and as such it must be strictly construed and

strictly complied with. Since the Defendants admittedly did not comply with the statute, they cannot claim the benefit of the statute and the mandatory penalty provisions of the statute must be imposed.

The Court further stated in Callahan that the Circuit Court in that case could not enter into an equity type analysis by excusing compliance and like that decision the Commission has no authority to do anything less than that which is required by the statute. In this case, the Hearing Commissioner thought that it was sufficient that the Defendants were fined for not filing the form in accordance with the Act but that is not the penalty that is called for under the statute. The penalty under the statute is again reinstatement of benefits and a penalty of 25% on all benefits withheld and that penalty must be imposed by the Commission in accordance with law.

III. THE HEARING COMMISSIONER ABUSED HIS DISCRETION BY
CONSIDERING THE LATE FILED PRE-HEARING BRIEF AND THE LATE
FILED APA SUBMISSIONS OF THE DEFENDANTS.

As noted above, the Defendants are the moving party and not only do they have the burden of proof but as the moving party, Regulation 67-612(B) requires the Defendants to file their APA Submissions at least fifteen (15) days before the hearing. In addition, Rule 67-611 requires all parties and each attorney representing a party to file a Form 58 with proof of service, "at least ten (10) days before the hearing with the hearing Commissioner's office identified on the Hearing Notice." The

Rule also requires that they shall serve the opposing party in accordance with the other Rules of the Commission. There is no question that the Rule requires not only compliance with the dictates of the Rule but also the dictates of the Administrative Procedures Act concerning the submission of written evidence. The Commissioner ruled that he had the discretion to admit this written hearsay evidence into the Record and while the exclusion of such evidence under the Rule is not mandatory, the Commissioner can only exercise his discretion in accordance with Regulations, specifically R. 67-613(E) and (J), the APA and due process. The Claimant would submit that the Commissioner abused his discretion and that the evidence should not have been admitted nor considered because of the clear-cut violation of the provisions of R. 67-613(B)(1), (E) and (J), the Administrative Procedures Act and due process.

The Claimant would submit first that the Commissioner abused his discretion. For appellate purposes, an abuse of discretion occurs where the ruling is based on an error of law or where the ruling is grounded upon factual findings and is without evidentiary support. Further, where there is an exercise of discretion, we must consider whether or not the exercise of that discretion is prejudicial to a party. Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011). There are two Rules that must be considered in reference to the Commissioner's exercise of discretion in admitting the evidence of the

Defendants who are the moving parties in a Form 15 III hearing. The Defendants have the burden of proof and under Rule 67-613(B)(1) as the moving party, they are required to shall file any written evidentiary support such as medical records or other documents at least fifteen (15) days prior to the hearing. While Regulation 67-613(E) is permissive and provides that the evidence may be excluded, one must take into consideration the other provisions of the Regulation, 67-613(J) and the specific provisions of the Administrative Procedures Act that provide that written evidence may only be submitted under SC Code §1-23-330 where there will be no substantial prejudice to the interest of the party. Based on this exercise of discretion by the Commissioner, an abuse should be found because the Defendants again, are the moving party and they failed to provide the Claimant or the Commission with the documentary evidence in accordance with the Statutes and Regulations that they submitted to support their position that they had conducted a Good Faith Investigation. Even under the burden of proof applied by the Commissioner, the Commissioner reviewed this evidence and found that based on its submission only, as the Commissioner surmised that the Defendants based on that evidence could have formed a good faith belief that the Claimant had failed to prove his claim of a compensable injury. In other words, the submission of this evidence was highly prejudicial to the Claimant because it allowed the Commissioner to reach that conclusion based on that

evidence alone since there was absolutely no other evidence presented to substantiate a basis for forming that good faith belief which is the standard the Commissioner applied. Of course, applying the standard that they had to establish a good faith investigation assuming arguendo that this evidence of that issue had this evidence not been submitted there would have been absolutely no other evidence in the Record or of a Good Faith Investigation. This admission under Rule 67-613 under the discretion of the Commissioner is clearly an abuse of discretion that was prejudicial to the Claimant.

Further, the provisions of R. 67-611(B) in reference to the filing of a Pre-Hearing Brief are mandatory wherein the Rule provides that the Pre-Hearing Brief shall be filed with the Commission ten (10) days before the hearing. There is absolutely no discretion for the Commissioner to accept a late filed Pre-Hearing Brief which sets out the issues of fact and law for a decision by the Commission, the position of the parties and a notification of witnesses and the evidence that would be submitted and as to whether or not that evidence is submitted in written form or by deposition. Again, the Commissioner has no discretion in the submission of the Pre-Hearing Brief. The only thing the Commissioner may do is that pursuant to Rule 67-611, if good cause is shown, the Commissioner may postpone the hearing or may mandatorily assess a fine against the attorney of up to \$100.00. The Commissioner did not request a showing of good

cause nor was any good cause shown for the late filing and therefore the Commissioner had no discretion to accept the Pre-Hearing Brief and the evidence that was submitted under it. There is a complete and utter failure of any evidentiary support barring the submission of these late filed APA Submissions and Pre-Hearing Brief which is clearly prejudicial to the Claimant and their admission constitutes an abuse of discretion as it is controlled by an error of law on behalf of the Commissioner.

IV. THE HEARING COMMISSIONER ERRED BY EXCLUDING EVIDENCE FROM THE CLAIMANT AFTER SEPTEMBER 13, 2013.

It is uncontested that the Claimant's first notice that the Defendants were stopping payment which was verbal was on September 13th and that he received written notice on September 16th. At the hearing, the Hearing Commissioner not only excluded all evidence from the Defendants after September 13th but he excluded all evidence from the Claimant after September 13th. Assuming arguendo that the Hearing Commissioner was correct in ruling that the Claimant had the burden of proof to prove that the Defendants did not conduct a Good Faith Investigation, this foreclosed the Claimant from presenting any evidence whatsoever on that issue especially where the Defendants had moved to quash the Claimant's deposition of the adjuster (which was not heard until the day of the Hearing even though it was filed in September), and where the Defendants refused to produce the adjuster's file which again was not ruled on until the day of the

hearing. Thus he had no knowledge of what the Defendants did or did not know prior to September 13th on which they allegedly based their investigation.

Further, the Commissioner found that based on a review of the medical records, they could have formed a, "good faith belief", that there was sufficient evidence to deny the claim. By excluding all evidence after September 13th, the Commissioner excluded all the opinions issued after September 13th from the treating doctors to the contrary. This in effect denied the Claimant due process of law. The Claimant is entitled to a meaningful opportunity to be heard in a meaningful way and this exclusionary ruling denied him that right including the right to submit evidence to disprove any such belief. For this reason, the Decision must be reversed.

V. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT #2 THAT THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION, "ON MAY 28, 2013".

This Finding of Fact was not an issue that was before the Commissioner for decision and is irrelevant to any issue that was before the Commissioner. This Finding is also contradictory to the other Findings, Rulings of Law and Order in this case which is that the Claimant had filed for and would have a determination made at a subsequent compensability hearing where this issue would be addressed.

Further, this Finding is not based on the evidence and is a Finding made on the basis of surmise, speculation and innuendo.

The Commissioner could only surmise this Finding from the medical records because there is absolutely no statement in the medical records that this is in fact true as to when the myocardial infarction occurred. The evidence only establishes that this is simply the date that he was admitted to the hospital. This Finding of Fact must be stricken because it is irrelevant, immaterial and high prejudicial to the Claimant and invades the province of the Commissioner who would be assigned to make the decision on compensability because it would in effect become the law of the case precluding that Commissioner from reviewing the facts and would thus deny the Claimant due process of law.

VI. THE COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING A FINDING OF FACT THAT IS NOT SUPPORTED BY THE EVIDENCE THAT AN INVESTIGATION WAS CONDUCTED AS FOUND IN FINDING OF FACT #6 AND BY MAKING OTHER FINDINGS IN FINDINGS OF FACT #4 THROUGH #9, WHICH ARE NOT SUPPORTED BY THE TESTIMONY, STIPULATIONS OR DOCUMENTARY EVIDENCE SUBMITTED IN THE RECORD.

The Commissioner found as a fact that an investigation was conducted. The Defendants put up no testimonial evidence concerning an investigation being conducted. The only testimonial evidence submitted was that of the Claimant who testified that he had not been contacted. There is no evidence from the one employer witness who testified that he was ever contacted or that any investigation was performed. There is no evidence in the documentary evidence submitted that the insurance company had contacted the employer concerning compensability nor is there any documentary evidence that an

investigation was conducted. The medical records that were placed in the Record are simply that: medical records without any statement on causal relationship. There is no statement nor is there any evidence that these records were even considered by the Defendants as part of any investigation. There is simply no evidence that an investigation was actually conducted or as to what was considered during that investigation that allows them to form a good faith belief that they had grounds to deny the claim. While it is the Claimant's position that the Defendants had the burden of proof to prove that they had conducted a Good Faith Investigation and what that investigation was and what it uncovered that lead to the denial of benefits, there is no question that the Defendants at least had to put up evidence that established the basis for forming a good faith belief. It was surmise, speculation and conjecture for the Commissioner to find that an investigation was conducted when there is simply no evidence of that.

The Commissioner also made other findings that are from forms in the file which are not evidence such as, "the Claimant fails to meet the burden of a compensable injury". In this case, the Commission file like in every other case is made a part of the Record except for self-serving declarations and unstipulated medicals. Any statements on these forms are self-serving declarations and they are not evidence.

VII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW IN MAKING FINDING OF FACT NO. 9.

The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9 and specifically:

A. Where the Claimant alleged that he was not properly served with a Form 15 because he was only served with 1 copy wherein the statute specifically provides that the Defendants are required to serve the Claimant with two (2) copies, the Commissioner made a factual conclusion that the Claimant was in no way, "prejudiced" which conclusion is not supported by the law or any evidence in the Record as the Defendants again failed in this regard in their compliance with both the statute and the Commission Regulations.

B. By making the Finding that the Defendants' failure to not only not provide the Claimant with two (2) copies of the Form 15 but also by not attaching a separate attachment setting out the grounds was not "prejudiced" and was an excusable non-compliance with the Act. This determination of the law is contrary to that as dictated by our Appellate Courts in reference to "strictly" complying with the requirements of the Act. Cox v. BellSouth Telecommunications, Inc., 356 S.C. 468, 589 S.E.2d 766, reh. den., cert. den. (SC App 2003). It is also a discretionary decision where the Statute does not allow for discretion. For this reason, the Decision must be reversed.

VIII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT NO. 10.

The Hearing Commissioner erred as a matter of law by making Finding of Fact No. 10 which is an error of law in that it shifts the burden of proof to the Claimant and provides that the Claimant not only has the burden to prove that the Defendants did not conduct a Good Faith Investigation but makes the blanket factual assumption which is based on surmise, speculation and innuendo that the Claimant did not put up evidence that would, "indicate that the Defendants acted in anything other than good faith during the investigation". There is simply no evidence and this is an error of law because whether or not the Defendants acted in good faith during the investigation is not a requirement under the Act. The requirement is whether or not they conducted a good faith investigation and this is speculation, innuendo and surmise and an abuse of discretion by the Commissioner since it also reaches the factual conclusion that an investigation was performed. The Hearing Commissioner further erred as a matter of law, abused his discretion and subjected his decision to caprice by making the statement that, "this is based on the evidence or lack thereof submitted by the Claimant at the hearing."

IX. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING FINDING OF FACT NO. 11.

This Finding in many ways is not a Finding of Fact, but specifically the following statements contained within Finding of Fact #11 constitute errors of law and fact:

A. The Commissioner alleges that the Claimant is alleging, "a medically complex condition". This is surmise, speculation and innuendo and a blanket assumption made by the Commissioner that is not supported by the Record nor any evidence in the Record.

B. Making the statement that there was an "alleged" shock. There is absolutely no evidence in the Record that the Defendants in any way challenged the fact that the Claimant suffered an electrical shock and electrocution on May 22, 2013.

C. In Finding of Fact under No. 11, the Commissioner makes the statement and Finding that a causal relationship between the Claimant's electrical shock and his current medical condition is best, "determined by review of the medical expert medical reports to which the Defendants had access by operation of §42-15-95". There is absolutely no evidence and this was a hotly contested issue at the hearing as to when the Defendants received any of the belated medical records that they were allowed to put into evidence (based on the discretionary decision of the Commissioner) and there was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received by the Defendants before September 13, 2013.

X. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY DELAYING A DECISION FROM NOVEMBER 13, 2013 UNTIL DECEMBER 5, 2013.

November 13, 2013 to December 5, 2013 is a period of

twenty-two (22) days where the singular issue before the Commissioner was whether or not the Defendants had established that they conducted a Good Faith Investigation and had denied benefits based on that investigation. The Statute contemplates a quick determination as to whether or not the Defendants properly stopped benefits on one of the limited bases as provided for under the Act. In this case the Commissioner not only delayed that Decision for over twenty-two (22) days but also did not issue the Decision until after a decision on all Motions that had been filed before the Commission.

XI. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY HOLDING A PRE-HEARING CONFERENCE FOR OVER AN HOUR AND MAKING SUBSTANTIVE DECISIONS ON MOTIONS THAT WERE NOT PROPERLY NOTICED AND WHICH INCLUDED THE PARTIES' POSITIONS ON THE ISSUES BEFORE THE HEARING COMMISSIONER.

The Hearing Commissioner held an hour long Pre-Hearing Conference of which there is absolutely no Record. During this conference he made numerous decisions on Motions that had been filed and also during which the Claimant and the Defendants extensively argued their position as to the issue before the Commissioner. There is no Record as to the arguments made and/or as to what was considered. None of this is in the Record but yet the Commissioner in his Order recites the position of the Claimant on various issues that are key to the Decision in this case. It was, is, and will always be the Claimant's position that the Defendants have the burden of proof in a Form 15 hearing but yet this is nowhere specifically reflected in the

Record and is belittled in the Commissioner's statement of the Claimant's position.

Further, it is ironic and the Claimant would submit that it is prejudicial and that the Commissioner went outside of the Record wherein he made the Findings specifically not only that the Claimant had the burden of proof, but that the Claimant had to prove that the Defendants did not conduct a Good Faith Investigation and to dispel a belief on a basis for that belief. Further, in the Motions, which were not noticed to be heard at this hearing and which are outside of the issues before the Commissioner, is a Complaint filed in a Declaratory Judgment action in the Circuit Court in which the Claimant is requesting that the Circuit Court make a decision on the law as to the Defendants having the burden of proof under the Statute and Regulations to prove that they had conducted a Good Faith Investigation. The Finding and holding of the Commissioner in this case that the Claimant has the burden of proof which is not in the Statute or Regulations is indicative that the Commissioner went outside of the Record and wrote an Order clearly contradictory to the Claimant's position, that is contrary to the dictates to the Statute and is in fact a ruling of law not supported by any previous Decision by the SC Court of Appeals or Supreme Court. This makes the Decision the subject of capriciousness.

XII. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW IN HIS
ANCILLARY AND INTERLOCUTORY ORDER CONCERNING THE MOTIONS
THAT HAD BEEN FILED.

That Order:

A. Denied the right of the Claimant to take the deposition of the adjuster as a managing agent which is clearly contrary to our Rules and case law. See for example: Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (SC App 1996). Also the Commissioner erred by not making a Finding that the Defendants had failed to obtain an Order in reference to the Deposition that had been properly and timely set prior to the time that the Deposition was to take place.

B. By not hearing a Motion to Quash a Subpoena issued for the adjuster's file prior to the date of the hearing on the Form 15(III) where such Subpoena had been issued for the production of the adjuster's file back in September to be produced before the end of September and the hearing was not held on the Motion to Quash prior to the production time nor was it held until the date of the hearing on the Form 15(III).

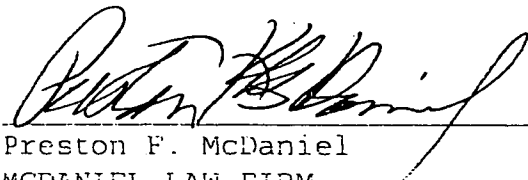
The Hearing Commissioner erred as a matter of law in his preliminary and interlocutory Order as to all legal bases set out and all conclusions of law as to the Findings of Fact and Conclusions of Law made that would justify the Commissioner's refusal to grant the Claimant the right to take the adjuster's deposition and to quash the Subpoena for that Deposition. That Decision and the hearing on that not being held until the date of

the hearing on the Form 15 (III) was prejudicial to the Claimant and in violation of his rights to due process of law in that it failed to give him "an adequate" opportunity to be heard especially in light of the Commissioner's decision in his Order that the Claimant had the duty and responsibility and burden of proof to prove that the Defendants did not, and the Claimant would emphasize did not, conduct a Good Faith Investigation.

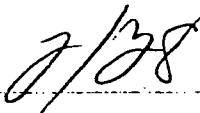
CONCLUSION

For all the forgoing reasons, the Decision of the Hearing Commissioner should be reversed, the Defendants found to have failed to establish that they had conducted a Good Faith Investigation and failed to comply with the Statute and the Claimant must be awarded the past due benefits in addition to the 75% mandatory penalty.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211



2014

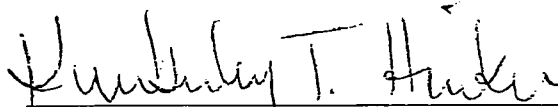
CERTIFICATE OF SERVICE BY MAIL

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the APPELLANT'S BRIEF TO THE FULL COMMISSION by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street, Ste. 500
Columbia, South Carolina 29202

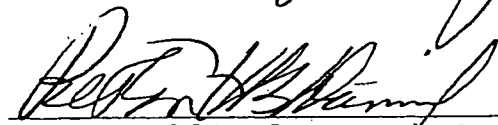
Brett H. Bayne, Esquire
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this

28th day of February, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: 10/28/18

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL GROUP

Carrier,

Defendants.

**RESPONDENTS' REPLY BRIEF TO
THE FULL COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

STATEMENT OF THE CASE

This claim arises out of an alleged accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. Claimant had scheduled time off after May 23, 2013. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant

indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before the Hearing Commissioner. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, the Hearing Commissioner conducted a standard pre-hearing conference as well as a Motions Hearing wherein the Hearing Commissioner ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing

and were necessary to have prior to the hearing. The Hearing Commissioner gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for the Hearing Commissioner to determine was whether or not Defendants had conducted a good faith investigation. In order to make that determination, the Hearing Commissioner limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, the Hearing Commissioner issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30 and this appeal followed.

LEGAL ISSUES RAISED BY CLAIMANT

- I. Did the Hearing Commissioner err as a matter of law by holding that the Defendants do not have the burden of proof to prove that they conducted a good faith investigation allowing them to stop benefits without a hearing any by shifting the burden of proof requiring the Claimant to prove that the Defendants did, “not” conduct a good faith investigation?
- II. The Hearing Commissioner erred as a matter of law by not ordering reinstatement of benefits where the Defendants failed to comply with the mandatory requirements of SC Code §42-9-260.
- III. The Hearing Commissioner abused his discretion by considering the late filed pre-hearing brief and the late filed APA submissions of the defendants.
- IV. The Hearing Commissioner erred by excluding evidence from the Claimant after September 13, 2013.
- V. The Hearing Commissioner erred as a matter of law by making the Finding of Fact #2 that the Claimant suffered a myocardial infarction, “on May 28, 2013”.
- VI. The Commissioner erred as a matter of law by making a finding of fact that is not supported by the evidence that an investigation was conducted as found in finding of fact #6 and by making other findings of fact #4 through #9, which are not supported by the testimony, stipulations or documentary evidence submitted in the record.
- VII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9.

- VIII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 10.
- IX. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 11.
- X. The Hearing Commissioner erred as a matter of law by delaying a decision ~~from~~ November 13, 2013 until December 5, 2013.
- XI. The Hearing Commissioner erred as a matter of law by holding a pre-hearing conference for over an hour and making substantive decisions on motions that were not properly noticed and which included the parties' positions on the issues before the Hearing Commissioner.
- XII. The Hearing Commissioner erred as a matter of law in his ancillary and interlocutory order concerning motions that has been filed.

EVIDENCE OF THE CASE

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 complaining that he woke up sweating. (Def. APA p. 1). Doctor's Care noted that he had some tenderness in his shoulder and neck area. Id. Further, Doctor's Care noted that Claimant did not complain of any chest pressure. Id. Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred

Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

LEGAL ANALYSIS

The legal issues raised by Claimant as noted above have been rephrased below for clarity. They retain their original numbering in accordance with Claimant's Brief.

I. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY DETERMINING CLAIMANT WAS REQUIRED TO PRESENT REBUTTAL EVIDENCE PROVING DEFENDANTS DID NOT CONDUCT A GOOD FAITH INVESTIGATION AFTER THE HEARING COMMISSIONER DETERMINED DEFENDANTS HAD MET THE REQUIREMENTS FOR CONDUCTING A GOOD FAITH INVESTIGATION.

The record is clear that the Hearing Commissioner reviewed all of the evidence relevant to the hearing¹, received testimony, and rendered a decision on whether or not Defendants conducted a good faith investigation as required by S.C. Code § 42-9-260. The record is also clear that the Hearing Commissioner determined by a preponderance of the evidence (i.e. more likely than not) that Defendants conducted a good faith investigation based on the medical records available by statute at the time of the denial of benefits as well as the Form 15 filed in this case. There is no dispute that the burden rests with Defendants in proving that a good faith investigation occurred. Nowhere in the Hearing Commissioner's Decision and Order does the Hearing Commissioner state that Claimant has the burden of proving Defendants did not conduct a good faith investigation. Rather, the only finding by the Hearing Commissioner on this subject is a finding that Claimant presented no evidence to rebut Defendants' assertions that a good faith investigation occurred. This is not an error of law. The Hearing Commissioner did not shift or place the burden on Claimant. Rather, the Hearing Commissioner noted that once Defendants

¹ As will be discussed further in other exceptions raised by Claimant, the relevant evidence for this hearing was limited to only the evidence dated prior to the denial of benefits as that would have been the only evidence available to Defendants to make a decision on compensability.

showed by a preponderance of the evidence that a good faith investigation occurred, Claimant could present no rebuttal evidence that disputed that a good faith investigation occurred.

Therefore, because no contrary evidence was presented by Claimant, the Hearing Commissioner was required by law to make a finding that Defendants conducted a good faith investigation pursuant to S.C. Code Ann. § 42-9-260. For these reasons, the Full Panel should uphold the Hearing Commissioner's Decision and Order in its entirety.

II. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY NOT ORDERING REINSTATEMENT OF BENEFITS BECAUSE DEFENDANTS COMPLIED WITH S.C. CODE § 42-9-260.

Claimant next argues that the Hearing Commissioner erred in not reinstating medical and temporary disability benefits. Out the outset it should be noted that Claimant misstates the series of event surrounding the Form 15. Defendants ultimately were not fined and did not pay any fine associated with the Form 15 in this case.

Claimant likewise misstates that it is "undisputed" that Defendants did not serve Claimant with "any supporting documentation as required by Commission Regulation 67-504 setting forth the reason for termination." Defendants provided Claimant with the supporting documented reasons for the termination of benefits. This is undisputed as it appears on the face of the Form 15. Claimant cannot say that he was not put on notice as to the reason for the denial nor can Claimant say that Defendants did not comply with Regulation 67-504 related to the reason for termination. There is likewise no dispute that Claimant received a copy of the Form 15 when it was filed. The Hearing Commissioner specifically notes this is shown by Claimant filing a Form 15, Section III (which would not have been done unless Claimant received a Form 15, Section II). Claimant's exception or complaint is that he did not receive two copies of the Form 15. The Hearing Commissioner determined that because Claimant was represented by

counsel at the time the Form 15, Section II was served, the requirement to serve two copies was unnecessary. Case law on this issue indicates only that an employer *should* apply to the commission for permission to terminate benefits and that the employee *should* receive notice of the application².

Because the Form 15, Section II was determined to be properly filed and served and because Defendants complied with the "reason for denial" component of Reg. 67-504, the denial of benefits was properly enacted under the Act. Therefore, for the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

III. THE HEARING COMMISSIONER DID NOT ABUSE HIS DISCRETION BY CONSIDERING THE DEFENDANTS' PRE-HEARING BRIEF AND APA SUBMISSIONS.

Claimant next argues that the Hearing Commissioner erred by allowing Defendants pre-hearing brief and APA submissions into the record. This is based on two factors: (1) pursuant to Reg. 67-612(B)³, Defendants are the moving party and, therefore, were required to serve their APA submission fifteen days prior to the hearing; and (2) Reg. 67-611 requires all parties filed a Form 58 ten days before the hearing. Each of these will be addressed in turn.

First, Claimant is incorrect that Reg. 67-612(B) makes Defendants the moving party insofar as it subjects Defendants to filing APA submissions fifteen days before a hearing. Reg. 67-612(B) specifically is limited in scope to the admission of expert reports as evidence. Defendants did not submit any expert reports into the record that were considered by the Hearing Commissioner for the purpose of this hearing⁴ (e.g. determining if a good faith investigation occurred prior to denial of benefits). Therefore, Reg. 67-612(B) simply does not apply to the

² See e.g. Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946).

³ Claimant repeatedly refers to Reg. 67-613 in his Brief. Defendants presume this to be an error and presume Claimant is referring to Reg. 67-612.

⁴ Defendants did submit the report of Dr. Barry Feldman but the Hearing Commissioner excluded it from evidence.

hearing before the Hearing Commissioner. In addition, it should be noted that Claimant submitted his pre-hearing brief and APA submissions fifteen days prior the hearing⁵. This is evidence that Claimant, in fact, believed himself to be the moving party under the Act and did not believe Defendants were the moving party under the Act.

Second, Claimant is correct that Reg. 67-611 requires a Form 58 be filed ten days before a hearing. In this case, this requirement was met by Defendants. Ten days prior to the November 13, 2013 hearing was November 3, 2013. November 3, 2013 was a Sunday. The Commission is not open on Sundays and cannot accept service of documents on that day. Likewise, Claimant's attorney's office is not open on Sundays and cannot accept service of documents on that day. Because all entities available for service were closed and unable to accept service on November 3, 2013, Defendants Form 58 was filed on Monday, November 4, 2013. South Carolina Rule of Civil Procedure 6 states "[i]n computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, **unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the period runs until the end of the next day** which is neither a Saturday, Sunday nor such holiday." Monday, November 4, 2013 was the first day available to file and serve Defendants Form 58 and readily complies with the Act and the South Carolina Rules of Civil Procedure.

Therefore, for the foregoing reasons, the Hearing Commissioner did not abuse any discretion in allowing Defendants' Pre-Hearing Brief and APA Submissions to be submitted and the Hearing Commissioner's Decision and Order should be upheld in its entirety.

⁵ Claimant filed his brief on October 30, 2013 for the November 13, 2013 hearing.

IV. THE HEARING COMMISSIONER DID NOT ERR BY EXCLUDING ANY EVIDENCE DATED AFTER SEPTEMBER 13, 2013.

Claimant next argues that the Hearing Commissioner erred by limiting the evidence in the record to any evidence created prior to the verbal denial of benefits on September 13, 2013. The basis for this ruling is that Defendants could not have had access on or before September 13, 2013 to any documents or records created after September 13, 2013. When the Hearing Commissioner was asked to determine if Defendants conducted a good faith investigation, the only relevant documents to review were the documents available to Defendants at the time the decision to deny benefits was made. To permit or consider documents produced or created after September 13, 2013 would circumvent and undermine the stated purpose of the hearing on the Notice of Hearing.

Claimant argues that by excluding evidence after September 13, 2013, the Hearing Commissioner excluded written opinions from medical doctors related to causation. Again, that was the purpose of the decision by the Hearing Commissioner. The records and written opinions created after September 13, 2013 were not available to Defendants prior to September 13, 2013 and therefore cannot be weighed against the evidence used to deny benefits to Claimant. The only relevant evidence to the Hearing Commissioner's inquiry was the evidence available prior to September 13, 2013.

Therefore, for the foregoing reasons, the Hearing Commissioner's Decision and Order should be upheld in its entirety.

V. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #2 WHEN HE DETERMINED CLAIMANT SUFFERED A MYOCARDIAL INFARCTION ON MAY 28, 2013.

The Hearing Commissioner accepted all evidence and medical records created or produced prior to September 13, 2013. This medical evidence included numerous records from

Doctor's Care, Lexington Medical Center, and Drs. Travis and Lide. The evidence indicates ~~that~~ Claimant experienced an electrical shock at work on May 22, 2013. The Hearing Commissioner indicated that he reviewed the medical records from Lexington Medical Center wherein Claimant presented on May 28, 2013 (six days post-accident) with severe three vessel coronary disease, ~~an~~ *acute* myocardial infarction, and an *acute* post-infarct ventral septal defect. The evidence ~~from~~ Doctor's Care indicated that Claimant "woke up sweating" on May 28, 2013 (six days post-accident) and that he was experiencing "no chest pressure" prior to May 28, 2013 (six days post-accident). (See Def. APA p. 1). The evidence from Dr. Dasgupta at South Carolina Heart Center indicates that Claimant had pain in his left shoulder and neck region but did not have any chest pain prior to May 28, 2013. (See Def. APA p. 2). The medical records also revealed ~~that~~ Claimant smoked a pack of cigarettes per day for 35 years, drank a "12-pack" each week, ~~and~~ that he had a family history of coronary disease and myocardial infarction (namely his father passed away at the same age as Claimant of coronary disease with a myocardial infarction). (See Def. APA p. 3, 5). In addition, the Hearing Commissioner reviewed evidence of communication between Claimant and Employer. These communications revealed that Claimant only complained of neck pain, that Claimant worked the remainder of May 22, 2013 (the day of the shock) and worked his shift on May 23, 2013 (the day after the shock). (See Def. APA p. 9-11). Further, the Hearing Commissioner reviewed a note from Claimant's supervisor who stated ~~that~~ Claimant only complained of neck pain following the shock and that Claimant did not wish to go to a doctor. (See Def. APA p. 8).

When all of the medical and testimonial evidence in the record is viewed, it is clear that any reasonable person could reach the conclusion without surmise, conjecture, or speculation that Claimant suffered a myocardial infarction on May 28, 2013. The Hearing Commissioner

clearly reviewed the evidence and made this finding as it is supported by the medical records.

Claimant argues that this issue was not before the Hearing Commissioner and it was irrelevant to any issue before the Hearing Commissioner. This is incorrect. One of the central issues to denying compensability of this claim is the sequence of events that occurred and when Claimant's various medical issues manifested themselves. The medical records can be reasonably interpreted without surmise, speculation, or conjecture that Claimant did not experience any symptoms related to a myocardial infarction prior to May 28, 2013 (six days post-accident). It logically and reasonably follows then that a conclusion can be made that the myocardial infarction did not occur until May 28, 2013 (six days post-accident). A determination by Defendants that the myocardial infarction did not occur until May 28, 2013 (six days post-accident) would provide more than ample evidence to deny compensability of the claim. The Hearing Commissioner was tasked with determining whether a good faith investigation occurred. Part of that determination could, and should, include findings from the evidence and medical records that would support a good faith investigation and denial of benefits. That is exactly what the Hearing Commissioner did in this case. He looked at the same evidence Defendants had available and made a finding supported by that evidence that directly relates to Defendants' decision to deny compensability of this claim. Therefore, the Hearing Commissioner's finding that Claimant suffered a myocardial infarction on May 28, 2013 (six days post-accident) is proper because it is (1) supported by the evidence in the record and (2) necessary for a finding that Defendants conducted a good faith investigation and had sufficient grounds to deny compensability on September 13, 2013. For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VI. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #4 THROUGH #9 BY MAKING FINDINGS RELATED TO AN INVESTIGATION BY DEFENDANTS.

Claimant next argues that the Hearing Commissioner erred as a matter of law by making findings of fact and conclusions of law related to Defendants investigation. Specifically, Claimant challenges any finding that indicates an investigation was conducted as Defendants did not present testimony from Employer or Carrier related to an investigation. While Claimant is correct that Defendants did not present testimonial evidence, Defendants did present documentary evidence in the form of medical records and form filings with the Commission. The evidence presented and the forms filed with the Commission make it clear that an investigation was performed and a conclusion that the claim was not compensable was reached based on a review of the medical records produced prior to September 13, 2013.

Because the record is clear that Claimant's denied compensation benefits because Claimant failed to meet his burden of proving a compensable claim, the Hearing Commissioner did not err in relying on those form filings and submitted medical records to support a conclusion that Defendants conducted an investigation in this claim. Therefore, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #9.

Claimant next argues that the Hearing Commissioner erred in Finding of Fact #9 for two reasons: (1) the finding is in error because the Hearing Commissioner found Claimant was not prejudiced by receiving only one copy of the Form 15 when there is no evidence of lack of prejudice to Claimant; and (2) the finding is in error because Claimant was prejudiced when Defendants did not attach a separate attachment setting forth the grounds for denial. Each of these will be addressed in turn.

First, Finding of Fact #9 is not an error of law because there was no evidence of lack of prejudice. If Claimant was prejudiced by receiving only one copy of the Form 15, Claimant was required to present evidence of prejudice to rebut the Hearing Commissioner's finding. Claimant failed to present any evidence that he was prejudiced by receiving only one copy of the Form 15. Therefore, the Hearing Commissioner properly determined that Claimant was not prejudiced by receiving only one copy of the Form 15.

Second, Finding of Fact #9 is not an error of law because Defendants *did* attach the grounds for denial of benefits. Claimant reasserts issues raised previously in his brief that Defendants Form 15, Section II was deficient because it did not include the reasons for denial. In fact, the Form 15, Section clearly includes the information required by the Act. Defendants Form 15, Section II states that Claimant's claim is being denied because "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act." Therefore, Claimant cannot say he was prejudiced by receiving the very notice the Act requires.

Because Claimant presented no evidence of prejudice by only receiving one copy of the Form 15, Section II and because Defendants complied with the Act in stating the reasons for denial, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

VIII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #10.

Claimant next argues that Finding of Fact #10 shifts the burden of proof to Claimant. This is incorrect. Finding of Fact #10 comes sequentially after previous findings of fact indicating that Defendants terminated benefits following an investigation. Once the Hearing Commissioner made that determination based on the evidence presented, Claimant had the opportunity to rebut and/or show evidence that Defendants did not, in fact, conduct a good faith investigation. Claimant failed to present any evidence to rebut Defendants proof that they

conducted a good faith investigation.

Therefore, the Hearing Commissioner properly found that Claimant failed to present any evidence to rebut the finding that Defendants conducted a good faith investigation. For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

IX. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN FINDING OF FACT #11.

Claimant next argues that the Hearing Commissioner erred as a matter of law in Finding of Fact #11 in three instances: (1) the Hearing Commissioner erred by finding this claim is medically complex; (2) the Hearing Commissioner erred by using the phrase "alleged" to describe the electrical shock; (3) the Hearing Commissioner erred by making a finding that Defendants had Claimant's medical records prior to September 13, 2013. Each of these will be addressed in turn.

First, Claimant argues that the Hearing Commissioner erred by determining and stating this claim is medically complex. Claimant, on his Form 50 and Form 58 indicates that he is seeking medical benefits for his heart, left hand, left arm, left shoulder, neck, head, brain, chest, and all organs, members, and body parts. Simply alleging the entire body, including brain injury, necessarily makes this a medically complex claim. Therefore, the Hearing Commissioner did not err by stating this claim is "medically complex."

Second, Claimant argues that the Hearing Commissioner erred by using the phrase "alleged" to describe the electrical shock. Defendants do not dispute that Claimant suffered an electrical shock on May 22, 2013. Defendants have never admitted and do dispute that Claimant was electrocuted or suffered an electrocution as described by Claimant in his brief. However, even considering Defendants do not dispute that Claimant suffered an electrical shock, it was not

an error of law for the Hearing Commissioner to use the word "alleged."

Third, Claimant argues that there is no evidence Defendants had any of Claimant's medical records prior to September 13, 2013. Both medical and temporary disability benefits were paid for a period of time during the pendency of Defendants investigation. It is both common sense and practice in South Carolina that a Carrier has access to all medical reports of Claimant (especially when paying benefits). In addition, it is undisputed that Claimant's own attorney provided medical records related to Claimant's heart surgery and heart condition to Carrier via email on at least one occasion on June 26, 2013. It is therefore disingenuous to argue that Defendants may not have had access to Claimant's medical records when Claimant's attorney sent the medical records to Defendants on June 26, 2013. Because Claimant's attorney submitted Claimant's medical records to Defendant prior to September 13, 2013 and because Defendants had access to Claimant's medical records by operation of statute, the Hearing Commissioner did not err in finding Defendants had reviewed Claimant's medical records.

For all the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

X. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY ISSUING HIS DECISION AND ORDER ON DECEMBER 5, 2013.

Claimant next argues the Hearing Commissioner erred as a matter of law because the Hearing Commissioner took 14 business days to issue his Decision and Order. This is not an error of law. Therefore, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

XI. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW BY CONDUCTING A ONE HOUR PRE-HEARING CONFERENCE AND RULING ON OUTSTANDING PROCEDURAL OR SUBSTANTIVE MOTIONS.

Claimant next argues that the Hearing Commissioner erred as a matter of law by

conducting an un-recorded pre-hearing conference and ruling on outstanding motions. The motions Claimant refers to are motions that directly affected whether or not the Form 15 hearing could proceed. At least one of the motions was actually made and raised by Claimant⁶. In addition, Defendants motions were timely filed and served on Claimant. Because of the nature of the motions, the Hearing Commissioner was required to conduct a hearing on these motions before a Form 15 hearing could occur. Further, Claimant was given the opportunity during the pre-hearing conference with the Hearing Commissioner to adjourn and postpone the Form 15 hearing for additional time to prepare responses to various motions filed in the claim. Claimant refused that opportunity and chose to proceed with the hearing. Therefore, the Hearing Commissioner did not err in conducting an un-recorded pre-hearing conference nor did the Hearing Commissioner err in ruling on motions that directly affected whether or not the Form 15 hearing could be held.

Claimant also argues, again, that the Hearing Commissioner erred by shifting the burden of proof to Claimant. Again, there is nothing in the Hearing Commissioner's Decision and Order that shifts the burden to Claimant. Therefore, the Hearing Commissioner did not err in issuing his Decision and Order because he did not shift the burden to Claimant.

For the foregoing reasons, the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

XII. THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN ANY OF HIS ORDERS RELATED TO THE OUTSTANDING MOTIONS.

Claimant finally argues that the Hearing Commissioner erred as a matter of law related to specific findings and decisions in the Motions Hearing conducted prior to the Form 15 hearing. Prior to addressing each sub part of this exception, Defendants would assert that attempting to

⁶ Therefore, Claimant cannot argue he was prejudiced by having to argue all of the motions.

appeal decisions made on Motions is both interlocutory and improper through a Form 30. In the event the Full Panel determines that an appeal on a Form 30 of certain motions is not interlocutory, Defendants would respond to each sub part of the exception as follows:

(a) Claimant first argues that the Hearing Commissioner denied his right to take the deposition of the adjuster "as a managing agent" of Carrier. Claimant also asserts error in that the Hearing Commissioner did not make a finding of fact that Defendants failed to obtain an Order prior to adjuster refusing to appear for the deposition. First, Claimant's request to depose the adjuster failed for several reasons. However, the chief reason is that the adjuster is not a managing agent of Carrier and, therefore, is not subject to subpoena for a deposition. Simply naming the adjuster as a managing agent does not make it so. Claimant sought to depose the wrong person with Carrier and the Hearing Commissioner properly denied his request. Second, the Hearing Commissioner properly refused to make a finding that Defendants failed to obtain an Order prior to the adjuster refusing the deposition. Interestingly, Claimant refused to appear for his own properly noticed deposition without filing a Motion to Quash and without obtaining an Order to postpone the deposition and took the position that no Order was needed to not appear at the deposition because "15 days" notice was not provided⁷. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.

(b) Next, Claimant argues the Hearing Commissioner erred by not holding a hearing on the Motion to Quash the deposition of the adjuster prior to the Form 15 hearing. Claimant never requested an alternate date for the motion to quash and never asked that it be expedited. Therefore, Claimant has waived any objection to its expediency. Further, Claimant's position previously was that the motions should not have been heard at all at

the Form 15 hearing (rather, they should have been done later). If Claimant was successful on that issue, it would be at odds with this request. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.

CONCLUSION

Based on all the foregoing reasons, the Hearing Commissioner's Decision and Order should be AFFIRMED in its entirety.



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Columbia, South Carolina
March 14, 2014

⁷ However, 10 days notice (as required by statute) was provided. This was undisputed.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1306305

CLARENCE WINFREY,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	
	}	
AND	}	
	}	
AMERICAN FIRE & CASUALTY INSURANCE	}	
COMPANY C/O LIBERTY MUTUAL GROUP,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	
	}	

**CERTIFICATE
OF
SERVICE**

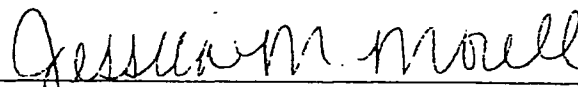
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY
South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT: Other - Respondents' Reply Brief to the Full Commission

DATE OF
MAILING: March 14, 2014



Jessica M. Morell
Legal Assistant to Brett H. Bayne

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1306305

Clarence Winfrey, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Defendants/Respondents.

NOTICE OF APPEAL

RECEIVED

AUG 25 2014

SC Court of Appeals

Appellant Clarence Winfrey appeals the Decision of the Appellate Panel of the South Carolina Workers' Compensation Commission filed July 25, 2014 which affirmed the Form 15(III) Hearing Commissioner's Decision with amendments. Appellant received notice of entry of the Appellate Panel Order (the final Agency Decision which is attached) according to an unsigned "Affidavit of Service" by email on July 25, 2014.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That the Commission erred as a matter of law by not reversing the Decision of the Hearing Commissioner pursuant to

S.C. Code of Laws §42-17-40, based on its review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Commission and the Hearing Commissioner erred as a matter of law by shifting the burden of proof at a Form 15 hearing to require the Claimant to prove that the Defendants did not conduct a Good Faith Investigation.

3. That the Commission and the Hearing Commissioner erred as a matter of law concerning the shifting of the burden of proof as set forth in #2 above wherein SC Code §42-9-260 and Commission Reg. 67-504(C) and 67-612(B)(4), all provide that the employer and the insurance carrier are the moving parties at the subsequent hearing held in a Form 15 situation wherein benefits are stopped without a hearing and as the moving parties have the burden of proof to prove that they have complied with the Act and by not applying the law established by the Court of Appeals in the case of Martin v. Rapid City Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) which held that the employer and its insurance carrier have the burden of proof to prove that they have met one of the conditions under the Act wherein the Court specifically held:

"However, the statute is explicit that even under a Form 15, an employer can only terminate or suspend temporary compensation if one of the specified conditions is met." (Emphasis added).

4. That the Commission and the Hearing Commissioner erred as a matter of law where the Record is uncontroverted that the Defendants failed to comply with the requirements of SC Code §42-9-260 which provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." This is a mandatory provision and the Commission erred by failing to find that the Defendants could not take the benefit of the remainder of the Statute for having failed to comply with the Statute, which would allow them to stop payment of benefits without a hearing under the other provisions of that Statute.

5. That the Commission and the Hearing Commissioner not only erred by shifting the burden of proof to the Claimant but where the Record is uncontroverted that the Claimant's first notice that the Defendants were alleging they were entitled to stop benefits based on a good faith investigation was on September 13, 2013, by then holding and refusing to allow any evidence on behalf of the Claimant subsequent to that date into the Record therein placing the Claimant in a paradoxical situation of being required to prove that the Defendants did not conduct a Good Faith Investigation but at the same time being

denied the right to take the deposition of the adjuster after that date with no ruling until the hearing; being denied the file by the Defendants of the adjuster until after the Form 15 hearing; and being denied the right to submit any evidence after that date that would establish that he had sustained a compensable injury by accident which would rebut/contradict any evidence in the Record to the contrary.

6. That the Commission and the Hearing Commissioner erred as a matter of law by admitting into evidence and considering both the Defendants' Pre-Hearing Brief and their APA Submissions which were not only not submitted 15 days or more prior to the hearing in accordance with the Commission Regulations, but were not even timely served 10 days before the hearing as a non-moving party and were only served 9 and 8 days respectively prior to the date of the hearing, which is uncontroverted in the Record. The Commissioner abused his discretion in admitting these documents into the Record and then relying on those documents to rule against the Claimant.

7. That the Commission and the Hearing Commissioner erred as a matter of law by first finding that there was a stipulation and then setting forth the position of the Claimant that it was the position of the Claimant that the only issue before the Commission was whether the Defendants had properly terminated workers' compensation benefits, wherein to the contrary it was the position of the Claimant that the Defendants had the burden of proof to prove that they had stopped disability benefits

without a hearing under the alleged exception to the Act which allows them to do so; as claimed in this case that they had conducted a Good Faith Investigation.

8. That the Commission and the Hearing Commissioner erred as a matter of law by finding that the Defendants had properly stopped payment of benefits where the Defendants had failed to comply with the requirements of the Rule 67-504(A) by failing to comply with the provisions of that subsection which specifically require that, "shall" serve two copies of the Form 15 immediately on the Claimant according to Rule 67-211 with documentation attached as to the reason for termination or suspension. The Hearing Commissioner erred by failing to apply the law as dictated to the Commission by our Appellate Courts wherein the SC Court of Appeals has specifically held in the case of Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (SC App. 2006) that an employer and its insurance carrier may not stop temporary total disability benefits and shall be required to resume such benefits where it:

"Failed to follow the proper procedure for doing so as outlined in §42-9-260 and Reg. 67-504. Rapid Plumbing terminated the compensation on August 10, 2002 . . . and failed to attach the supporting documentation as required by §42-9-260. These deficiencies are not mere technicalities but are substantial deviations from the statutory procedure." (Emphasis added).

9. That the Commission and the Hearing Commissioner erred as a matter of law by not assessing the mandatory 25% penalty and ordering reinstatement where the Defendants had failed to comply

with the statute at least admittedly in one regard, that being that they failed to file the mandatory form with the Commission at the time that benefits were started. In Rapid City the Court of Appeals held that the provisions of §42-9-260(G) which provides that the failure to comply with that section (doesn't specify in which regard but generally specifies in any regard) is mandatory as far as the imposition of the 25% penalty and the reinstitution of benefits. The Court of Appeals specifically stated, "the language of §42-9-260(G) is mandatory."

10. That the Commission and the Hearing Commissioner erred as a matter of law by considering evidence irrelevant and immaterial to the singular issue at a Form 15 hearing before the Commission by considering the Motion to Quash the deposition of the adjuster, the Motion to Compel Deposition for cause, the Motion for Continuance, the Summons and Complaint, and a Temporary Restraining Order, all of which were immaterial and irrelevant to the issue before the Hearing Commissioner on a Form 15(III) hearing under SC Code §42-9-260.

11. That the Commission erred as a matter of law by affirming Hearing Commissioner Order Finding of Fact No. 6 and specifically by finding as a fact in violation of the statute that, "a determination was based on the denial of the claim following an investigation." There is no documentation attached to the Form 15 in violation of the Statute to establish that an investigation was conducted and the statute specifically provides

that not only must an investigation be conducted, but a, "good faith" investigation must be conducted.

12. That while the Hearing Commissioner erred as a matter of law in making Findings of Fact Nos. 4-9 in that they refer to statements contained in various forms on file with the Commission as being in evidence and are not based on either testimony, stipulations or documentary evidence submitted pursuant to the Administrative Procedures Act, the Commission specifically erred by affirming his finding in Finding of Fact No. 8 finding that the Form 15, section 2, documented that the reason for termination was the employee failed to meet the burden of proof of compensable injury under the Workers' Compensation Act. This Finding of Fact by the Commissioner is not based on evidence in the Record.

13. That the Commission and the Hearing Commissioner erred as a matter of law in affirming and by making Finding of Fact No. 9 and specifically:

A. That the Claimant alleged that he was not properly served with a Form 15 because he was only served with 1 copy wherein the statute specifically provides that the Defendants are required to serve the Claimant with 2 copies. The Commissioner then goes on to make a factual conclusion that the Claimant was in no way, "prejudiced" which is not supported by the law or any evidence in the Record as the Defendants again failed in this regard in their compliance with both the statute and the

Commission Regulations and stopped benefits without hearing in violation of due process.

B. By making the conclusory statement that the Defendants' failure to comply with the statute by not only not providing the Claimant with 2 copies of the Form 15 but also by not setting forth a separate attachment as to the grounds was not improper, where such failures of compliance are an undisputed violation of the law. This statement violates one of the fundamental principles of the law as dictated by our Appellate Courts in reference to strict construction of the wording of the Act and the Defendants' requirement to "strictly" meet the requirements of the Act.

14. That the Commission and the Hearing Commissioner erred as a matter of law by affirming and making Finding of Fact No. 10 which is a violation of law and an error of law in that it shifts the burden of proof to the Claimant and provides that the Claimant not only has the burden to prove that the Defendants did not conduct a Good Faith Investigation but makes the blanket factual assumption which is based on surmise, speculation and innuendo that the Claimant did not put up evidence that would, "indicate that the Defendants acted in anything other than good faith during the investigation". There is simply no evidence and this is an error of law because whether or not the Defendants acted in good faith during the investigation is not a requirement under the Act. The requirement is whether or not they conducted a good faith investigation and this is speculation, innuendo and

surmise and an abuse of discretion by the Commissioner since it also reaches the factual conclusion that an investigation was performed. The Hearing Commissioner further erred as a matter of law, abused his discretion and subjected his decision to caprice by making the statement that, "this is based on the evidence or lack thereof submitted by the Claimant at the hearing."

15. That the Commission and the Hearing Commissioner erred as a matter of law by affirming and making the Hearing Commissioner's Finding of Fact No. 11, which in many ways is not a Finding of Fact, but by specifically making the following statements contained within that Finding that:

A. The Commissioner states that the Claimant is alleging, "a medically complex condition". This is surmise, speculation and innuendo and a blanket assumption made by the Commissioner that is not supported by any evidence in the Record;

B. Making the statement that it is an "alleged" shock. There is absolutely no evidence in the Record that the Defendants in any way challenged the fact that the Claimant suffered an electrical shock and electrocution on May 22, 2013; and

C. Making the statement that a causal relationship between the Claimant's electrical shock and his current medical condition is best determined by review of the medical expert medical reports to which the Defendants had access by operation of §42-15-95. There is absolutely no evidence, and this was a

hotly contested issue at the hearing, as to when or how the Defendants received any of the belated medical records that they were allowed to put into evidence (only based on the discretionary decision of the Commissioner). There was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received before September 13, 2013.

16. That the Commission and the Hearing Commissioner erred by affirming and making a Finding of Fact that is not supported by any facts and evidence that the Defendants' refusal to continue benefits and the reason for stopping benefits was a determination as to whether or not his heart condition was causally related to the alleged electrical shock. The only, and the Claimant would reiterate the only, evidence in the Record as to a causal relationship is that set forth in the statement of the insurance carrier's own assigned rehab nurse wherein she specifically refers to the Claimant's treatment as being directly related to his electrical shock. That in fact is the uncontradicted evidence and the Commissioner's statement in that regard is speculation, surmise and innuendo and is the subject of being capricious and an abuse of discretion.

17. That the Commission and the Hearing Commissioner erred as a matter of law in affirming and by making the Hearing Commissioner's Conclusion of Law 2, subparagraph c, holding as a matter of law that the Defendants do not have to establish that they conducted a Good Faith Investigation but only that they have

to have, "represented to the Commission" that they had conducted such an investigation; and by shifting the burden of proof and requiring that, "the Claimant did not provide any evidence that the Defendants conducted their investigation in anything other than good faith", thus placing the burden of proof on the Claimant to prove that the Defendants did not conduct a Good Faith Investigation where they did not put in one iota of evidence that they had conducted a Good Faith Investigation or in any way met their burden of proof or even that of a prima facie case.

18. That the Commission and the Hearing Commissioner erred by holding as a matter of law that the Defendants' investigation, "revealed a good faith belief" that the Claimant had failed to meet his burden of proof. There is absolutely no evidentiary support of an investigation by the Defendants nor that this is what such investigation revealed. Under subsection (e) the Commissioner further erred by shifting the burden of proof to the Claimant where the benefits had been started on the basis that a prima facie case had been established that the Claimant had suffered a compensable injury. The Hearing Commissioner erred in a Form 15 hearing, which only comes about after the Defendants have started benefits on the basis that a compensable injury has occurred, by citing to law under SC Code §42-1-160 as to the Claimant's burden of proof where it is denied that a compensable injury has occurred.

19. That the Commission and the Hearing Commissioner erred as a matter of law by finding as a Conclusion of Law that, "therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants." The error being among many that the Defendants put up no substantial evidence to meet their burden of proof that they conducted a, "Good Faith Investigation" or that they in fact conducted any investigation as to what factually that investigation was, or the facts that substantiated that the Claimant had not met his burden of proof on compensability. That Finding or actually that Conclusion of Law is and makes the Commission Decision based on surmise, speculation and innuendo and the subject of caprice, prejudice and the subject of an abuse of discretion. The Commission failed in their oath of office by not complying with the dictates of the law as dictated by the Legislature, the Commission in its Regulations and under the decisions of the SC Appellate Courts. There is simply no evidence put into the Record to support this conclusion of law and this is an error of law under the law which the Commission is sworn by oath to uphold. It also violates the fundamental principles of the Act, which is that the Act shall be liberally construed in favor of benefits to the injured worker.

20. That the Court and the Hearing Commissioner erred as a matter of law by making Hearing Commissioner Order Conclusion of Law No. 3 which improperly states the position of the Claimant

stated on the Record repeatedly, in his Pre-Hearing Brief and at the Hearing, and in the unrecorded Pre-Hearing Motion Conference.

21. That the Court and the Hearing Commissioner erred as a matter of law in making Hearing Commissioner Order Conclusion of Law No. 4 for all the reasons as set forth hereinabove and in addition, by making the statement that it is, "possible" for the Defendants to have drawn a conclusion in good faith based on the Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify in denying the claim." There is no medical evidence to this effect nor is there any evidence to that effect, nor is there any testimony nor documentary evidence to that effect and in addition, assuming that the Claimant is correct that the Defendants have the burden of proof, they have a burden of proof to establish by a preponderance of the evidence that they conducted a good faith investigation and the basis for denial based on that good faith investigation, none of which is met in this conclusion or case.

22. That the Commission erred in affirming and the Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013, a period of 22 days where the singular issue before the Commissioner was whether or not the Defendants had established that they conducted a Good Faith Investigation and had denied benefits based on that investigation. The statute contemplates a quick determination as

to whether or not the Defendants properly stopped benefits on one of the limited bases as provided for under the Act, wherein in this case the Commissioner not only delayed the Decision for over 22 days but also did not issue the Decision until after a decision on all Motions that had been filed before the Commission.

23. That the Commission by affirming and the Hearing Commissioner erred as a matter of law where the Hearing Commissioner stated that the purpose of the Hearing was to determine whether or not the Claimant was entitled to a reinstatement of benefits by holding, without notice prior to that hearing, an off the Record hearing on filed motions that took over an hour and ruling on all motions before even reaching the only issue of which the parties had notice on the date of the hearing.

24. That the Commission by affirming and the Hearing Commissioner erred as a matter of law in an ancillary and interlocutory Order concerning motions issued by:

A. Denying the right of the Claimant to take the deposition of the adjuster and in that regard, also by not making a Finding that the Defendants had failed to obtain an Order in reference to the Deposition that had been properly and timely set prior to the time that the Deposition was to take place; and

B. By not hearing a Motion to Quash a Subpoena issued for the adjuster's file prior to the date of the hearing on the Form 15(III) hearing where such Subpoena had been issued for the

production of the adjuster's file back in September to be produced before the end of September and the hearing was not held on the Motion to Quash prior to the production time nor was it held until the date of the hearing on the Form 15 (III).

25. That the Commission erred in affirming and the Hearing Commissioner erred by making as a matter of law in his preliminary and interlocutory Order all of legal bases set out and all conclusions of law as to the Findings of Fact and Conclusions of Law made that would justify the Commissioner's refusal to grant the Claimant the right to take the adjuster's deposition and to quash the Subpoena for that Deposition. That Decision and the hearing on that not being held until the date of the hearing on the Form 15 (III) was prejudicial to the Claimant and in violation of his rights to due process of law in that it failed to give him "an adequate" opportunity to be heard especially in light of the Commissioner's decision in his Order that the Claimant had the duty and responsibility and burden of proof to prove that the Defendants did not, and the Claimant would emphasize did not, conduct a Good Faith Investigation.

26. That the Commission erred as a-matter of law under the provisions of the Administrative Procedures Act and the Worker's Compensation Act by allowing a party to draft the three Commissioner consensus Decision representing the final decision of the Commission and by not making its own detailed Findings of Fact and Conclusions of Law as is required by law.

27. That the Full Commission erred as a matter of law by issuing an Order drafted by Defense Counsel with a Statement of the Case which contains evidence outside of the Record, misstatements of the Record, assumptions from the Record and statements that constitute surmise, speculation, and innuendo and reference to an action filed in the Circuit Court which establishes that the Commission considered information outside of the Record.

28. That the Full Commission erred as a matter of law by adding Finding of Fact #7 specifically including but not limited to as a basis that said finding:

A. Was not requested or addressed to any issue raised;

B. Consists of no evidence in the Record establishing possession of Records, knowledge of Defendants or evidence supporting a good faith denial; and

C. Is the subject of surmise, speculation and innuendo.

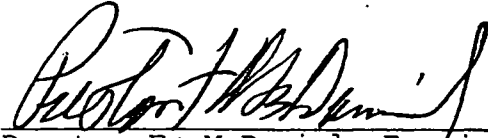
29. That the Full Commission erred as a matter of law by adding Finding of Fact #8 specifically including but not limited to that said Finding:

A. Is not a statement of fact but is an unsupported, inaccurate conclusion of law;

B. Is a statement of law non-supported by any case law and statutory law; and

C. Exceeds the authority of the Commission as fact-finder.

Respectfully submitted,



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Attorney for Appellant

August 22, 2014

Other Counsel of Record:

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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1306305

Clarence Winfrey, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 2014 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 AND also serving a copy upon Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: August 22, 2014



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Attorney for Appellant

RECEIVED

AUG 25 2014

SC Court of Appeals

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY c/o LIBERTY
MUTUAL GROUP,

Carrier,

Defendants.

**FULL COMMISSION DECISION
AND ORDER ON CLAIMANT'S
APPEAL FROM COMMISSIONER
BECK'S DECISION AND ORDER**

DATE OF HEARING: Hearing held in Columbia, South Carolina on May 19, 2014.

APPEARANCES: Claimant appeared and represented by Preston F. McDaniel, Esquire, of The McDaniel Law Firm of Columbia, South Carolina.

Defendants represented by Brett H. Bayne, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Claimant's Form 30.

COMMISSIONER:

FILED:

July 25, 2014

STATEMENT OF THE CASE

This claim arises out of a work-related accident on May 22, 2013. On that date, Claimant was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was

rescinded, the Commission set Claimant's Form 15, Section III for a hearing before the Hearing Commissioner. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, the Hearing Commissioner conducted a standard pre-hearing conference as well as a Motions Hearing wherein the Hearing Commissioner ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. The Hearing Commissioner gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for the Hearing Commissioner to determine was whether or not Defendants had conducted a good faith investigation. In order to make that determination, the Hearing Commissioner limited the review of evidence to only those documents produced prior to the date of denial - September 13, 2013. Following the hearing, the Hearing Commissioner issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30 and this appeal followed. A hearing on this appeal was held on May 19, 2014 before the Full Commission. After hearing oral argument from both parties and considering the evidence submitted in the record, the Single Commissioner's Decision and Order is AFFIRMED AS MODIFIED.

SINGLE COMMISSIONER'S FINDINGS OF FACT

Based on my consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, I make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. Claimant suffered a myocardial infarction on May 28th, 2013. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The

termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.

7. The Form 15, Section II was received by the Commission no later than September 12th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
8. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
9. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of This is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

10. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
11. I find the Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

Based on the foregoing, I make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.

- b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
- c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
- d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11.
- e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act"); Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); S.C. Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117, 576

S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, I find that Defendants properly stopped benefits under § 42-9-260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had knowledge of the course of Claimant's treatment through its Nurse Case Manager. See Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6.

Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

LEGAL ISSUES RAISED BY CLAIMANT-APPELLANT

- I. Did the Hearing Commissioner err as a matter of law by holding that the Defendants do not have the burden of proof to prove that they conducted a good faith investigation allowing them to stop benefits without a hearing any by shifting the burden of proof requiring the Claimant to prove that the Defendants did, "not" conduct a good faith investigation?

- II. The Hearing Commissioner erred as a matter of law by not ordering reinstatement of benefits where the Defendants failed to comply with the mandatory requirements of SC Code §42-9-260.
- III. The Hearing Commissioner abused his discretion by considering the late filed pre-hearing brief and the late filed APA submissions of the defendants.
- IV. The Hearing Commissioner erred by excluding evidence from the Claimant after September 13, 2013.
- V. The Hearing Commissioner erred as a matter of law by making the Finding of Fact #2 that the Claimant suffered a myocardial infarction, "on May 28, 2013".
- VI. The Commissioner erred as a matter of law by making a finding of fact that is not supported by the evidence that an investigation was conducted as found in finding of fact #6 and by making other findings of fact #4 through #9, which are not supported by the testimony, stipulations or documentary evidence submitted in the record.
- VII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9.
- VIII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 10.
- IX. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 11.
- X. The Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013.
- XI. The Hearing Commissioner erred as a matter of law by holding a pre-hearing conference for over an hour and making substantive decisions on motions that were not properly noticed and which included the parties' positions on the issues before the Hearing Commissioner.

XII. The Hearing Commissioner erred as a matter of law in his ancillary and interlocutory order concerning motions that has been filed.

EVIDENCE OF THE CASE

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 complaining that he woke up sweating (6 days post-accident). (Def. APA p. 1). Doctor's Care noted that he had some tenderness in his shoulder and neck area. Id. Further, Doctor's Care noted that Claimant did not complain of any chest pressure. Id. Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

FULL COMMISSION FINDINGS OF FACT

Based on our consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, We AFFIRM AS MODIFIED and make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. The claimant was admitted to Lexington Medical Center on May 28, 2013 and underwent surgery for a myocardial infarction. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.

6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.
7. We find that the communications by and through the Claimant's attorney and the Defendants' representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial.
8. We find that a heart attack and its relationship to a work related injury is a medically complex case.
9. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
10. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
11. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of this

is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

12. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
13. We find Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

FULL COMMISSION CONCLUSIONS OF LAW

Based on the foregoing, we make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments ~~are~~ commenced, the payments may be terminated or suspended immediately at any ~~time~~ within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.
 - b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
 - c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
 - d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11
 - e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation

Act".); Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased, and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); S.C. Second Injury Fund v. Luberty Mut. Ins. Co., 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, we find that Defendants properly stopped benefits under § 42-9260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had

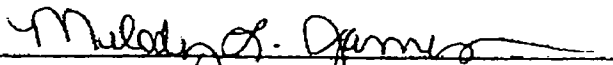
knowledge of the course of Claimant's treatment through its Nurse Case Manager ~~See~~ Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6. Congestive heart failure."). The fact that there also exists evidence ~~that~~ was available to Defendants that could lead to the conclusion that Claimant's ~~current~~ condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

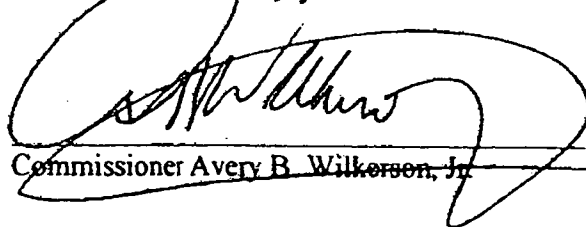
ORDER

IT IS HEREBY ORDERED that the Single Commissioner's Decision and Order is
AFFIRMED AS MODIFIED.

AND IT IS SO ORDERED.


Commissioner Melody James


Commissioner Aisha Taylor


Commissioner Avery B. Wilkerson, Jr.

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 Kim Falls on July 25, 2014

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

CLARENCE WINFREY,

Employee

-VS-

ARCHWAY SERVICE, INC.,

Employer

and

AMERICAN FIRE AND CASUALTY CO.,

Carrier

WCC FILE NO.
1306305

Pursuant to Notice of the Workers' Compensation Hearing taken on the 13th day of November 2013, heard before the Honorable T. Scott Beck, and commencing at the hour of 3:50 p.m. in Columbia, South Carolina.

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<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
	(None Offered)	

LEGEND OF THE TRANSCRIPT

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

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P R O C E E D I N G S

1
2 COMMISSIONER BECK: Today's date is
3 November 13, 2013. This is Workers' Compensation
4 File Number 1306305. Claimant in this matter is
5 *Clarence Winfrey*, represented today by Attorney
6 *Preston Daniel*. The Employer is *Archway Service,*
7 *Inc.*, the Carrier is *American Fire and Casualty*
8 *Company*, they are represented today by Attorney
9 *Rocky Hughey* and *Brett Bayne*. Date of accident in
10 this matter is May 29, 2013. We are here today as
11 a result of a Form 15 hearing request filed on
12 behalf of the Claimant pursuant to 42-9-260(c).

13 Either of you gentlemen have APAs to submit?

14 MR. HUGHEY: Yes, your Honor.

15 COMMISSIONER BECK: I will note for the record
16 that there was an objection by the Claimant for me
17 to exclude the APA evidence and/or any witness
18 evidence on behalf of the Defendants as a result of
19 a late filing of their pre-hearing brief and
20 submissions to the Claimant. I'm going to overrule
21 that objection with the caveat that I'm only
22 considering information prior, up to, and including
23 September 13, 2013. That date being the date in
24 which Defendants made a decision to terminate
25 temporary total disability benefits that were

1 previously being paid to Mr. Winfrey.

2 Mr. Hughey, do you have your APAs?

3 **MR. HUGHEY:** Sure, your Honor. I just wanted
4 to let Preston know what I'm doing, is withdrawing
5 what was marked Exhibit 1, removing it from our APA
6 submissions.

7 Thank you, your Honor.

8 **COMMISSIONER BECK:** Other than that are there
9 any other objections to APAs, jurisdiction, venue,
10 or any other matter, Mr. Hughey?

11 **MR. HUGHEY:** None from the Defendants, your
12 Honor.

13 **COMMISSIONER BECK:** Mr. McDaniel?

14 **MR. McDANIEL:** Commissioner, I would
15 interpose, just for the record, a further objection
16 to several of the documents. As for those
17 documents under Exhibit 2 there's been -- and
18 Exhibit 3 there has been no foundation laid for the
19 submission of those records under any evidentiary
20 basis, and in addition to those, they're hearsay.
21 But I just want to note that for the record.
22 Really don't have any, you know, problem with them,
23 but, I mean, they are not properly submitted and
24 the proper foundation has not been laid.

25 I don't -- I think as to five, six, and seven,

1 and eight, and nine, those are all court documents,
2 but they're all postdated September 13th and I
3 think you've already stated that in reference to
4 any document that's submitted past that date you
5 would not consider that, so I just note that for
6 the record.

7 **COMMISSIONER BECK:** And I may also note that,
8 at least as it relates to five, six, seven, those
9 issues were the subjects of some Motions Hearings
10 that we had prior to going on the record today and
11 those matters have been ruled upon and an order is
12 being drafted dealing with each of those respective
13 issues.

14 Other than that, Mr. McDaniel, I'm going to
15 allow them in. Again, with the caveat that I'm
16 only considering information up to and including
17 September 13, 2013.

18 Any other objections?

19 **MR. McDANIEL:** And the -- Commissioner, just
20 for -- Tab -- what has been given to me as Tab --
21 I'm not sure, I believe that's four?

22 **MR. HUGHEY:** Yeah, we didn't submit that.

23 **MR. McDANIEL:** You didn't submit it? Okay.
24 That's fine.

25 **COMMISSIONER BECK:** Mr. Hughey, any

1 objections?

2 MR. HUGHEY: Not from the Defendants, your
3 Honor.

4 MR. McDANIEL: It's not submitted, so.

5 COMMISSIONER BECK: All right. Without any
6 further objection the Commission File becomes a
7 part of the record with the exception of self-
8 serving declarations or un-stipulated medical
9 reports.

10 Also during the pre-hearing conference the
11 respective position of both the parties was
12 discussed. Parties stipulate that the sole purpose
13 for today's proceeding is to determine whether or
14 not the Defendants properly stopped the Claimant's
15 temporary total disability benefits under Section
16 42-9-260.

17 Mr. Hughey, do you concur with that?

18 MR. HUGHEY: We do, your Honor.

19 COMMISSIONER BECK: Mr. McDaniel?

20 MR. McDANIEL: Yes, your Honor.

21 COMMISSIONER BECK: All right. As a moving
22 party, Mr. Hughey, you may call your first witness
23 and I believe that is Mr. Winfrey.

24 MR. HUGHEY: Thank you, your Honor.

25 *****

1 Whereupon,

2 CLARENCE WINFREY,

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

5 *****

6 MR. McDANIEL: Your Honor -- I'm sorry.

7 COMMISSIONER BECK: Please state your full
8 name for the record.

9 THE WITNESS: Clarence B. Winfrey, Junior.

10 COMMISSIONER BECK: Mr. Winfrey, you can put
11 your hand down. I'm going to ask, if you would,
12 during the course of your testimony, sir, try to
13 keep your voice up a little bit. These recording
14 devices have to be able to pick up everything that
15 you're saying and the court reporter actually has
16 to hear the words come out of your mouth, as well,
17 and I'm a little hard of hearing, okay?

18 WITNESS: I understand.

19 COMMISSIONER BECK: Mr. McDaniel, do you have
20 something?

21 MR. McDANIEL: Yeah, I just wanted to note one
22 thing additional for the record. I noted that they
23 did not give me notice of any witnesses as part of
24 their case. They did not list Mr. Winfrey as a
25 part of their case. However, we are allowing him

1 to testify on the limited issues concerning prior
2 to September 13th. However, we did list him as a
3 witness in our case.

4 COMMISSIONER BECK: I understand.

5 Mr. Hughey.

6 MR. HUGHEY: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. HUGHEY:

9 Q. Mr. Winfrey, can you hear me okay?

10 A. Yeah.

11 Q. Okay. You and I haven't met yet. I'm Rocky
12 Hughey, I represent your employer and their
13 insurance carrier on the workers' compensation
14 claim --

15 A. Nice to met you.

16 Q. I just have a few questions for you, all right?
17 Before we went on the record Mr. McDaniel and the
18 Commissioner let you know you can take a break if
19 you feel uneasy at any point. Just let me know and
20 we'll do that, all right?

21 A. (No Response.)

22 Q. Is that okay?

23 A. Yeah.

24 Q. Okay. Be sure you give verbal responses if you
25 can.

1 A. All right.

2 Q. Mr. Winfrey, I'm going to ask you about some of
3 your medical records. I understand you don't have
4 all of it in front of you. But what I'm going to
5 do is direct the Court to APA four. This is
6 Claimant's APA four.

7 COMMISSIONER BECK: Page four?

8 MR. HUGHEY: APA four, page ten, of the
9 Claimant's APAs.

10 Q. Mr. Winfrey, at some point after your incident at
11 work you went to Doctors Care, is that correct?

12 A. Yes.

13 Q. I'm looking at a report dated May 28, 2013, does
14 that sound like your first visit to Doctors Care?

15 A. I believe so.

16 Q. Okay. And I have a date of injury, or a date of an
17 incident, of May 22, 2013, does that sound about
18 right to you?

19 A. It was the Thursday before.

20 Q. Your accident was the Thursday before this medical
21 visit?

22 A. Yes.

23 Q. Okay. So you don't disagree with your accident
24 date being May 22, 2013?

25 A. I'm not sure about that, my friend.

1 Q. Did you go to Doctors Care days after your incident
2 at work or did you go to Doctors Care the same day
3 you were hurt?

4 A. It was over the weekend.

5 Q. Okay. So you didn't immediately go to Doctors
6 Care?

7 A. No.

8 Q. I'm looking at this report, says you were shocked,
9 you were complaining of neck pain on that day, is
10 that correct?

11 A. Yes.

12 Q. Did you complain of any chest pressure to the
13 doctor at Doctors Care?

14 A. That was Dr. Greenfield. And my neck was
15 excruciating from my shoulder up and it was so
16 severe I didn't feel nothing else but this.

17 Q. Were you having chest pain on that day?

18 A. If I was I couldn't feel it because of all the pain
19 here (indicating).

20 Q. So you don't have any recollection of feeling chest
21 pain on the day of this visit to Doctors Care?

22 A. No.

23 Q. All right. And just by way of background,
24 Mr. Winfrey, you are, or at least before this
25 accident, were a pack and a half a day smoker, is

1 that right?

2 A. Yes.

3 Q. And you also drank periodically?

4 A. Beer, yes.

5 Q. And in terms of your family history, not to upset
6 you, but unfortunately your father did have some
7 issues with his heart, is that correct?

8 A. He was an alcoholic, yes.

9 Q. And your father's cause of death, did he have a
10 heart attack?

11 A. Yes.

12 Q. Okay. Looks like on page 14 of the APAs for the
13 diagnosis from Doctors Care, and this is on May
14 28th, they diagnosed you with a cardiac arrhythmia,
15 do you know what that is, Mr. Winfrey?

16 A. No, sir.

17 **COMMISSIONER BECK:** What page?

18 **MR. HUGHEY:** This is on page 14, your Honor,
19 of the APAs.

20 **COMMISSIONER BECK:** Got it.

21 **MR. HUGHEY:** Page two, your Honor, of the
22 Defendant's APAs.

23 Q. Mr. Winfrey, I'm looking at a report from the South
24 Carolina Heart Center, this is dated May 28, 2013,
25 do you remember being seen there?

1 A. Doctor Lide.

2 Q. You did see Dr. -- Dr. Lide is the one you saw
3 there?

4 A. Yeah. I'm not sure about the dates.

5 Q. Okay. And it says in this report at the end of the
6 first paragraph, (As Read): At the time of this
7 interview the patient denied any chest pain, but
8 had minimal left shoulder pain.

9 When you went to the South Carolina Heart
10 Center do you remember whether or not you were
11 having chest pain?

12 A. When I went to the heart center I've already been
13 released from the hospital.

14 Q. Well, I'm looking a report, office consult, May 28,
15 2013 on South Carolina Heart Center letterhead, do
16 remember going there?

17 A. The only time I been there is after I got released
18 to visit Dr. Lide.

19 MR. McDANIEL: Your Honor, not to -- it might
20 be -- well, if there were no objection, but it
21 might be a benefit to Mr. Hughey to look at who
22 that report was from and it might help Mr. Winfrey
23 in properly responding to his questions.

24 COMMISSIONER BECK: All right.

25 Q. It looks like you saw a cardiologist there,

1 Dr. Dasgupta, do you remember seeing her?

2 A. Oh, yeah, that's the one -- I'm sorry. That's the
3 one Dr. Greenfield sent me to over there by
4 Lexington Hospital.

5 Q. And it looks like, down at the bottom of this first
6 page, they counseled you on stopping smoking, do
7 you remember that?

8 A. I was only in there for about an hour. He did an
9 ECHO of my heart and then they rushed me to the
10 hospital in an ambulance.

11 Q. And on page three of the APAs, the second page of
12 this report under Impression and Plan, here it
13 actually says, Chest pain unspecified. On the
14 first page it said you deny chest pain. Do you
15 know if you had chest pain at the time of that
16 visit?

17 A. I was profusely sweating at Dr. Dasgupta's and so
18 he did an ECHO of my heart.

19 Q. Right.

20 A. And then he called the ambulance to take me across
21 the street to the hospital.

22 Q. It looks like they -- part of the impression was
23 obesity. Would you consider yourself overweight at
24 the time of that visit on May 28th?

25 A. I'm overweight, yes.

1 Q. Okay. Looking at page four of the APAs -- of the
2 Claimant's APAs. This looks like a June 8, 2013
3 report when you were discharged from Lexington
4 Medical Center. Were you there for a period of
5 time, at Lexington Medical Center?

6 A. I think it was two and a half, three weeks, but I
7 might be wrong.

8 Q. I'm looking on page five at about the second
9 sentence down. It says you were found to have an
10 occlusion -- (As Read): He was found to have an
11 occlusion of his posterior descending coronary
12 artery, as well as three vessel coronary disease
13 and a VSD.

14 Did your doctors talk to you about any of
15 that?

16 A. I don't remember.

17 Q. On page six of the APAs, looks like this same visit
18 or this same discharge, under Final Diagnoses they
19 have coronary arteriosclerosis of native coronary
20 artery and they, again, mention tobacco use and
21 alcohol abuse, did they talk to you about those
22 items?

23 A. And this is at Lexington Hospital?

24 Q. Lexington Medical Center, it looks like.

25 A. I don't remember nobody talking about smoking and

1 drinking at the hospital.

2 Q. It does look like they performed a procedure that
3 involved a coronary artery bypass, is that your
4 understanding of the procedure that was performed?

5 A. All I know is that Dr. Travis told me that I had
6 entrance and exit wounds from electricity in my
7 heart. He has pictures. And far as everything
8 else, I'm not sure of, buddy. I'm sorry.

9 Q. That's fine.

10 MR. HUGHEY: Your Honor, can you bear with me
11 for just one second?

12 COMMISSIONER BECK: Yes, sir.

13 MR. HUGHEY: Thank you, your Honor.

14 Q. Mr. Winfrey, I'm now looking at page eight of the
15 APAs submitted by your attorney, Mr. McDaniel.
16 This appears to be a May 30, 2013 report and this
17 is the op note from Dr. Travis. Dr. Travis is the
18 one that did your surgery, is that correct?

19 A. Yes.

20 Q. And I'm looking at the paragraph running on to that
21 page, on page eight. It says, (As Read): Patient
22 also had very significant pericarditis with large
23 calcific plaques located anteriorly and
24 posteriorly. It goes on to say, (As Read): They
25 were heavily calcified and there was a real

1 weirdness to the adhesions throughout.

2 Did he talk to you at all about the content or
3 what he found in your heart when he was in there?

4 A. No.

5 Q. And, Mr. Winfrey, you hadn't seen a doctor for your
6 heart in the years leading up to this, is that
7 correct?

8 A. Not to my memory, no.

9 Q. You don't have a regular family doctor that you
10 treat with?

11 A. No, sir, I sure don't.

12 Q. Mr. Winfrey, and finally in conclusion, the day
13 this happened, May 22, 2013, this incident happened
14 at the Publix on Rosewood, is that correct?

15 A. Rosewood Drive, yes.

16 Q. And you finished working that day, is that right?

17 A. Yes.

18 Q. In fact, you traveled somewhere after that, is that
19 correct?

20 A. I went to Aiken and I finished up two rotisseries
21 there and I called Bobby Ruppe and I said I
22 couldn't do no more.

23 Q. You didn't go anywhere else after that that day?

24 A. Well, I went home.

25 Q. Did you work the following day, Friday?

1 A. I got up and I got dressed and I went on to
2 Wal-Mart on 378, and from there I had to call Bobby
3 Ruppe again and say, I can't do it. Because I was
4 dumping sweat and my neck was killing me 'cause I
5 was trying to hold my head up. I couldn't do it.

6 Q. At the time of that conversation with Mr. Ruppe did
7 you tell him you were having chest pain?

8 A. I told him my neck was killing me.

9 MR. HUGHEY: Thank you, Mr. Winfrey. I don't
10 have anything else for you right now.

11 COMMISSIONER BECK: Mr. McDaniel, do you have
12 any questions, sir?

13 MR. McDANIEL: Very briefly. Your Honor,
14 first off, based on Mr. Winfrey's testimony, which
15 was un-objected to, I would ask the Court for it's
16 consideration of -- Mr. Winfrey testified as to
17 what Dr. Travis told him about the entrance and the
18 exit wounds, your Honor will recall that testimony?

19 COMMISSIONER BECK: Yes.

20 MR. McDANIEL: All right. In confirmation of
21 that I would ask for the Court's consideration of
22 Claimant's Exhibit under Tab two, page three from
23 Dr. Jeffery Travis, the authorized and treating
24 cardio vascular surgeon, as to his confirmation of
25 the entrance and the exit places that he found on

1 Mr. Winfrey's heart.

2 CROSS-EXAMINATION

3 BY MR. McDANIEL:

4 Q. Mr. Winfrey --

5 MR. HUGHEY: Your Honor, can I reply to that
6 just briefly?

7 COMMISSIONER BECK: Yes, sir.

8 MR. HUGHEY: We'd object to that coming into
9 evidence in that, number one, it's dated September
10 30, 2013, which is outside of your rule. I
11 understand Mr. McDaniel's trying to link the
12 foundation based on what Mr. Winfrey testified to
13 earlier. However, if this report comes in from
14 Dr. Travis we think it's fair game for any evidence
15 from Dr. Felton to come in.

16 COMMISSIONER BECK: Well, the report's in. If
17 I understand your request, Mr. McDaniel, it's only
18 for the purpose of corroborating the testimony I
19 just heard.

20 MR. McDANIEL: Correct.

21 COMMISSIONER BECK: Not for the opinion --

22 MR. McDANIEL: Not any of the rest of it, just
23 as to that limited part in reference to what
24 Dr. Travis stated in his report about what he found
25 as to being corroborative of what the Claimant

1 testified.

2 COMMISSIONER BECK: Mr. Hughey?

3 MR. HUGHEY: Your Honor, I think the point is
4 that we didn't know anything about that at the time
5 that this was supposedly told to Mr. Winfrey.

6 COMMISSIONER BECK: And that may go to the
7 weight of the evidence.

8 MR. HUGHEY: Sure.

9 COMMISSIONER BECK: But I'll allow it, limited
10 to that specific purpose.

11 MR. HUGHEY: Thank you, your Honor.

12 COMMISSIONER BECK: Any other questions?

13 MR. McDANIEL: Very briefly.

14 Q. Mr. Winfrey, you had an assigned rehab nurse at
15 some point in time, is that correct?

16 A. Yes.

17 Q. All right. And she attended all the appointments
18 with you when you went to your doctors?

19 A. Yes.

20 Q. A couple more questions. Has any adjuster or any
21 person from the insurance company called you and
22 has any way questioned whether or not your injuries
23 stem from your work related accident?

24 A. No.

25 Q. All right. Has at any time anybody from your

1 employer called you and questioned you or contacted
2 you or questioned you in any way as to whether or
3 not this was related to your electrical shock?

4 A. No.

5 Q. Now, when you saw Dr. Greenfield --

6 MR. McDANIEL: Commissioner, in reference to
7 Claimant's APA number ten, which was also submitted
8 by Mr. Hughey under their APA submissions, which
9 have been objected to, which have been admitted
10 over objection.

11 Q. According to that you advised Dr. Greenfield that
12 you had a 400 -- you were working on a 480 volt
13 rotisserie, shocked on Thursday, does that sound
14 like the history you gave her?

15 A. Yeah, I got shocked in my neck.

16 Q. And when she saw you what did she do, as far as
17 where did she send you?

18 A. Well, when she seen me I just wanted some Flexeril
19 and stuff and I was going to go back to work. She
20 put a thing on my finger and I had like 117 beats
21 per minute and I was only supposed to have 72.
22 That's when she did the ECHO and she said there's a
23 hole in my heart. That's when she sent me to
24 Gupta.

25 Q. Dasgupta?

- 1 A. Yeah.
- 2 MR. McDANIEL: Madam court reporter, it's
- 3 D-a-s-g-u-p-t-a.
- 4 Q. Now, when you saw Dr. Dasgupta, I want to ask you
- 5 if this sounds correct as to the history that you
- 6 gave him. (As Read): A review of his records
- 7 today shows that he received an electrical shock in
- 8 five days ago and since then has complained of pain
- 9 in his left shoulder radiating into his left
- 10 scapular region, left side of his neck, left
- 11 interclavicular region, and left arm.
- 12 A. Yeah, from the neck, all this right here
- 13 (indicating).
- 14 Q. Okay. Now, does that sound correct as to what you
- 15 told him?
- 16 A. It sounds it, but I'm not sure.
- 17 Q. But in other words, when he says that you received
- 18 an electrical shock five days ago and since then
- 19 has complained of pain?
- 20 A. Dr. Greenfield's friends with Dasgupta. She's the
- 21 one that said, He's my friend, I can send you there
- 22 or you can go to the emergency room, but you've got
- 23 to go.
- 24 Q. And then after that, according to Dr. Dasgupta's
- 25 records and I believe your testimony, they had EMS

1 take you across the street from his office to the
2 emergency room?

3 A. Yes.

4 Q. And then you were treated there by Dr. Travis?

5 A. No, I met Dr. Lide.

6 Q. There?

7 A. At the hospital.

8 Q. And then after that Dr. Travis did the surgical
9 work?

10 A. Dr. Travis -- I think, I'm not positive about
11 dates, but he -- I think it was the next day, or
12 the following day, that's when they opened me up.

13 MR. McDANIEL: No further questions, your
14 Honor.

15 COMMISSIONER BECK: Mr. Hughey, anything
16 further?

17 MR. HUGHEY: Very briefly, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HUGHEY:

20 Q. Mr. Winfrey, do you know whether or not Liberty
21 Mutual contacted Mr. McDaniel about taking your
22 recorded statement at any point in the past?

23 A. I'm not sure.

24 Q. In terms of the specific amount of volts that were
25 involved in this wiring -- and I'm not trying to

1 give you a hard time -- are you able to say the
2 precise amount of voltage that was involved in this
3 rotisserie --

4 A. It was high voltage, I mean, 240, 480, one of the
5 two.

6 Q. Sure. But you don't know for sure whether it was
7 480 versus 240?

8 A. I've never been hit that hard.

9 MR. HUGHEY: Thank you, Mr. Winfrey. I don't
10 have anything further.

11 COMMISSIONER BECK: Anything further?

12 MR. McDANIEL: Nothing further. Thank you.

13 COMMISSIONER BECK: You may step down, sir.
14 Thank you very much.

15 WITNESS: Thank you.

16 COMMISSIONER BECK: Any other witnesses on
17 behalf the Defendants?

18 MR. HUGHEY: We'll rest, your Honor. We don't
19 have any other witnesses.

20 COMMISSIONER BECK: Any witnesses on behalf
21 the Claimant?

22 MR. McDANIEL: I understand they've rested?
23 None, your Honor.

24 COMMISSIONER BECK: All right. That will
25 conclude this proceeding. I'd like to see --

1 **MR. McDANIEL:** Your Honor -- I'm sorry. I
2 would like to put something on the record if I can.

3 We are here on a Form 15 Hearing. They have
4 an obligation to at least put up a *Prima facie*
5 case. They have not established that any of --
6 even any of the medical records were received by
7 them. They have put up no testimony, no evidence,
8 whatsoever, to establish when and if these -- even
9 these medical records were received by the
10 Defendants. They have miserably failed in
11 submitting any evidence to this Court upon which it
12 can -- there is a foundation been laid to submit
13 any evidence as to this man's condition was not
14 caused by -- that they conducted a Good Faith
15 Investigation. I just put that on the record, your
16 Honor.

17 **COMMISSIONER BECK:** All right.

18 Mr. Hughey, anything in reply to that?

19 **MR. HUGHEY:** Your Honor, just quickly in
20 response, since Mr. McDaniel felt the need to speak
21 on it. I won't summarize all of it. But, again,
22 we think we certainly had evidence in the record,
23 which was evidence in the Carrier file and the
24 medical records documenting a history of drinking,
25 smoking, coronary artery disease noted in the

1 medical records. No question arrhythmia was
2 diagnosed, but of course winds up with a coronary
3 bypass procedure. By the very language in the
4 medical records we believe it causes -- raises
5 question as to what's related to what. And we
6 certainly would stand by our positions that it was
7 absolutely a Good Faith Denial of benefits, your
8 Honor.

9 COMMISSIONER BECK: All right.

10 MR. McDANIEL: Commissioner, the only thing I
11 would note to you is that in part of Mr. Hughey's
12 discussion he went outside the record and said,
13 Which is obviously in the adjuster's file. And I
14 just ask that to note that that is not into
15 evidence and he has not submitted any evidence of
16 that point.

17 Thank you, your Honor.

18 MR. HUGHEY: We do have medical records that
19 Mr. McDaniel represented to the Court earlier that
20 he'd provided to the Defendants on multiple
21 occasions. So we did have the records from the
22 initial authorized physicians and that we paid for
23 those records -- paid those bills.

24 COMMISSIONER BECK: All right.

25 MR. McDANIEL: Again, I don't want to belabor

COMMISSIONER BECK: All right. That will conclude this proceeding.

* * * *

(Whereupon, the hearing concluded at 4:18 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

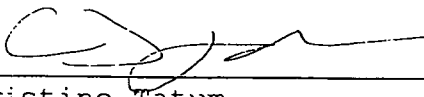
Be it known that I, Christine Tatum, a Professional Court Reporter and Notary Public, did hear the matter of **Clarence Winfrey -vs- Archway Service, Inc.**, Workers' Compensation File No. 1306305 on, Wednesday, November 13, 2013, in Columbia, South Carolina, before the Honorable T. Scott Beck;

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

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

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

In Witness whereof, I have hereunto set my hand this 11th Day of December 2013.



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

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COUNTY OF RICHLAND

WCC CASE NO.

CLARENCE WINFREY,)

1306305

CLAIMANT/EMPLOYEE,)

-VS-)

ARCHWAY SERVICES, INC.,)

EMPLOYER,)

AMERICAN FIRE and CASUALTY)

INSURANCE,)

INSURER,)

Deposition of JEFFREY TRAVIS, a witness called by
Counsel on behalf of the DEFENDANT, pursuant to the
applicable provisions of the South Carolina Rules of
Civil Procedure, taken before Timothy Robinton, a
Professional Court Reporter and Notary Public in and for
the State of South Carolina, on Monday, December 16,
2013, at The Lexington Cardiovascular Surgery, 2728
Sunset Blvd. Suite 101, Columbia, South Carolina,
commencing at the hour of 7:00 a.m.

Job No. CS1783715

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22		
23	dashes [--]	intentional or purposeful interruption
24	[ph]	denotes phonetically written
25	[sic]	written as said

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

It is hereby stipulated and agreed by counsel for the respective parties that the Witness will waive the reading and signing of the deposition transcript, and also that the witness is a expert in the field.

Whereupon,

JEFFERY A. TRAVIS,

having been first duly sworn,

was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. BAYNE:

Q. Doctor Travis, how are you doing today?

A. Good. How are you?

Q. Good. My name is Brad Bayne I am an attorney with McAngus Goudelock & Courie. I represent Archway Services and America Fire and Casualty Insurance Company in this case related to Mr. Clarence Winfrey. At this time it's a denied claim based on an investigation that we conducted. It's my understanding that you conducted or you performed the heart surgery on Mr. Winfrey when he presented to the hospital so we are here today to ask a few questions about that. Mostly related to

1 causation, his health history and kind of going forward
2 what needs to be done if the commission determines this
3 claim is dispensable. Do you have any questions before
4 I get started?

5 A. No.

6 Q. Can you give me just a brief run down what your
7 background is, your qualification and everything?

8 A. Sure. Medical Physician finish medical school in
9 1997, attended General Surgeon residency six years at
10 Wake Forest finished fellowship at Wake Forest as
11 Cardiothoracic surgery and been practicing about nine
12 years.

13 Q. And a day to day bases what do you in your
14 practice?

15 A. Open heart surgery, thorastic surgery, including
16 Lung surgery, Esophageal surgery, Vascular surgery,
17 Carotid in pumps and Triple A's.

18 Q. How many heart surgeries have you performed in your
19 nine years plus your fellowship? - -

20 A. About -- Including fellowship probably about 1500,
21 since I have in private practice about a 1000.

22 Q. Okay. Have you any occasion treat Mr. Winfrey in
23 this case?

24 A. I did.

25 Q. And what did you treat Mr. Winfrey for?

1 A. Specifically had a ventricular septal defect was
2 the primary presenting problem?

3 Q. And what is a ventricular septal defect?

4 A. There is a septum between the two ventricles, the
5 right, left ventricle and because the tissue having died
6 between those two septum hole developed or defect, so
7 blood went from one side to the other which is
8 anatomically incorrect and not compatible with long term
9 survival.

10 Q. Okay. That hole is inside of the heart?

11 A. Correct.

12 Q. Okay. And when Mr. Winfrey presented to you what
13 were his complaints at the time?

14 A. He had chest pain, shortness of breath and he just
15 kind of had full body aches all over for four or five
16 days prior to the presentation.

17 Q. Okay. I believe that day he presented been May
18 28th is that correct?

19 A. If that's what record reflects

20 Q. On that morning -- I guess he didn't present to you
21 first thing that morning, he was referred?

22 A. Correct.

23 Q. And if the medical records from that referral
24 indicate that he did not have any chest pressure would
25 that be consistent with what he presented with that

1 morning or did he have some --

2 A. When I saw him that was not his specific complaint
3 he did not relate this specifically to -- what he would
4 considered or what we considered a heart attack pain and
5 he said he had kind of total body didn't feel well all
6 over.

7 Q. And is that typical of someone that has suffered
8 from a ventricular septal defect?

9 A. In general, someone who has post in-fart VSD,
10 ventricular septal defect will present with chest pain,
11 other words they do have acute heart attack, that's what
12 causes the ventricular septal defect.

13 Q. Okay. So, usually, they would, but it's not
14 certainty that they'll have chest pain?

15 A. No. Not everybody has chest pain, but a majority,
16 a great majority people will.

17 Q. You said post in-fart, is that a mild cardio
18 infarction your talking about?

19 A. Correct.

20 Q. Okay. And in this case I think the records had
21 indicated they he had a mild cardio infarction, and then
22 -- I think you said a post in-fart VSD is that correct?

23 A. Mostly likely. Yes, sir.

24 Q. Okay. Is that something like, I don't know, how
25 things in current time, is that infarction would occur

1 days before and then the VSD happened or is it
2 essentially the infarction, the VSD and then within
3 seconds kind of thing?

4 A. In general it takes a little bit of time before the
5 VSD fully develops other words you suffer the infarction
6 and sometime within 36 hours after that, depending on
7 the exact presentation. The muscle dies, as the muscle
8 dies it gets weak, the blood pushes through it, creates
9 the defect,--

10 Q. Okay.

11 A. -- usually there's a time lapse there.

12 Q. So based on that are you able to determine when the
13 infarction occurred in this case?

14 A. Not specifically, no.

15 Q. Is there's time - like a -- ballpark time frame
16 that you're able to back up to figure out?

17 A. It happened sometime with in the last week based on
18 his cardio enzymes.

19 Q. Okay. I believe that you've issued a questionnaire
20 in this case, you've indicated that his condition was
21 brought about by electrical shock of 480 volts is that
22 correct?

23 A. I believe it, absolutely, had cause the defect on
24 this presentation.

25 Q. And I wanted to ask specifically about the 480

1 volts, is that something you were able to determine from
2 looking at the equipment or --

3 A. No. I wouldn't have any knowledge of the amount of
4 voltage or the pertinence that.

5 Q. So that would be -- so if that was your opinion
6 that would be based on what you were told by Mr.
7 Winfrey?

8 A. Correct.

9 Q. Okay. Do you have any opinion or knowledge as to
10 what amount of electricity it would take to cause this
11 infarction or is it a case by case, how does that work?

12 A. It would be a case by case bases, it's not a --

13 Q. Okay. What I am asking, generally is, if for
14 example it was 400 volts or 300 volts or 200 volts is
15 there a point at which a shock is so small it's not
16 going to cause an infarction or a point which you hit is
17 becomes more likely and more likely that it's going to
18 cause a mild cardio infarction.

19 A. - I think that's known, as far as, a gradation.-

20 Q. Okay. And Mr. Winfrey in his deposition, I
21 believe, he indicated that he was at work and he
22 suffered from electrical shock working on a rotisserie
23 oven. Is it your understanding that or your believe
24 that's when the mild cardio infarction occurred, when
25 that shock occurred or something that would have

1 occurred later in the day?

2 A. I think it would of occurred within, you know,
3 minutes, hours after that.

4 Q. Okay. In a immediate aftermath of suffering that
5 infarction, so he gets shocked and it minutes to hours
6 after. What in a typical patient what would he be
7 experiencing as far as pain related symptoms or
8 complaints?

9 A. In general, in most people again as we discussed
10 have chest pain a lot of people will interpret that
11 differently. Certainly people will have shortness of
12 breath as a lot of people presenting symptoms of a heart
13 attack or simply or just I don't feel well, shortness of
14 breath they don't truly describe chest pain some people
15 are dull pain. It can be referred in a lot of different
16 ways. And then again, a lot of people don't have the
17 typical pressure or pain they have other symptomatology,
18 nausea or vomiting.

19 Q. Would some who was experiencing mild cardio
20 infarction be able to continue work that day?

21 A. Sometimes they are.

22 Q. Okay.

23 A. Sometimes they can.

24 Q. What about the next day would they, as it developed
25 and progress, would they be able to return to work that

1 day as well?

2 A. I have seen people you know struggle through mild
3 cardio infarction for one, two, three, four days and
4 just continue to push through their normal live even
5 though --

6 Q. And as in a scenario in which that occurred where
7 they suffered it and worked or kept and stayed at home,
8 work their kids or whatever. Would those symptoms be
9 worsting on a daily bases or is kind of a plateau?

10 A. Most people will plateau with in 36 to 48 hours but
11 not always.

12 Q. Okay.

13 A. And sometimes it continues to conscendo and that's
14 what brings them into the hospital, so that's why we see
15 them at variable times.

16 Q. And in the medical records, I think they were your
17 records related to the surgery you did, you found that
18 he had three vessel, I believe, artery disease, is that
19 something related to this electtrical shock or is that a
20 congenital condition he had?

21 A. Well, not a congenital, but an acquire over his
22 life time.

23 Q. Okay. And what would cause someone to acquire that
24 over their life time?

25 A. After a Socratic cardio vascular disease caused by

1 high blood pressure, diabetes, elevated cholesterol
2 family history, cigarette smoking.

3 Q. Pretty much the whole gamete.

4 A. Yeah.

5 Q. Okay. And someone -- so someone for example who
6 smoke a pack a day or a half a pack a day would be an
7 increase risk for that?

8 A. Absolutely.

9 Q. Someone who drank a case a beer a week would be an
10 increase risk to that.

11 A. In general drinking it's not directly correlated to
12 coronary disease.

13 Q. Okay. If someone had a family history of close
14 relatives who suffering from coronary artery disease
15 that would be a risk factor?

16 A. Most likely.

17 Q. Okay. In the medical records it also talks about a
18 occlusion I believe of the coronary artery, is that a
19 condition that resulted from the electrical shock or is
20 that part of the artery disease he had acquire over his
21 life time?

22 A. I think it was related to the electrical shock.

23 Let me explain that just a little bit, you have
24 arterosclerosis or the hardening of the arteries, so you
25 have plaque in your arteries, because there at a base

1 line, based on those things that we talked about and
2 then some, every heart attack is caused by some process
3 causing that plaque to rupture. And so what you have an
4 injury or cut, basically, inside the artery and the body
5 tries to heal that much as it tries to heal a cut on
6 your skin it tries to form a scab, but instead it the
7 scab is forming inside an artery, and so the scab forms
8 and causes that artery to completely occlude . So it
9 doesn't matter if the plaque was ten percent blockage,
10 twenty, thirty, forty, whatever, it goes to 100 percent
11 because the blood begins to clot within the artery. So
12 that's why the artery becomes occluded, that's why
13 people have heart attacks.

14 Q. Okay. And so the -- I guess the question is the
15 plaque build up that was the occlusion. Was that plaque
16 build up directly caused by the electrical shock or did
17 the rupture of that plaque build up?

18 A. The rupture of the plaque is what causes the acute
19 heart attack. - - -

20 Q. Okay.

21 A. The build up happens over years and then it can be
22 any sort of activity that can cause that to rupture.

23 Q. Okay. So for in this scenario if the electrical
24 shock is what caused it, it would be the shock caused
25 the rupture, that then caused the heart attack, and then

1 caused the VSD?

2 A. Correct.

3 Q. Okay. But that plaque rupture could occur as you
4 said, it could occur for many things --

5 A. It can.

6 Q. -- from getting up the wrong way, strenuous
7 activities something like that.

8 A. It can. A stressful event in your life. People
9 that walk in and find a love one dead it can trigger
10 that any type of stress. Or whether it be physical,
11 emotional.

12 Q. And other than the timing of the heart attack, as far
13 as, some time of last week, there's way to know for
14 certain the plaque rupture was caused by the electrical
15 shock, is that correct?

16 A. Is there any definitive way to --

17 Q. Correct.

18 A. -- collate one to another absolutely not.

19 Q. It's more likely not, I guess. This is your
20 opinion on it?

21 A. Correct.

22 Q. Okay. As far as, his treatment goes, what is, I
23 guess once he goes through -- going cardio
24 rehabilitation right now, is that correct? As far as,
25 that treatment goes once he's completed with that care,

1 what is his prognoses or what is his outlook, both for
2 life and for getting back to normal life?

3 A. It certainly most of that depends on ventricular
4 function which is fairly reduced and also depends on his
5 other coronary disease and how stable that stays over
6 time.

7 Q. Okay.

8 A. I'm certainly think he has a short life span and
9 based on his ventricular function difficulty and
10 returning to full activities that he able to
11 accomplished before all this.

12 Q. And is the fact that the coronary disease existed
13 previously that he had acquired, the fact that exist is
14 that something that effects his recovery from the VSD
15 that he suffered?

16 A. It's more related what his ventricular function is
17 going to inhibit his -- I don't know what his
18 ventricular function was prior to all this. We see him
19 at time zero, I don't know what was at t minus one. His
20 ventricular function was normal at that point than
21 certainly this is correlated with his increase of
22 disability, but I don't know what that, that --

23 Q. As a general kind of hypothetical someone presents
24 with type of artery disease that he had absent the VSD
25 is there a reduce ventricular function in a patient that

1 would present with all the symptoms he had except for
2 what you believed caused by the shock?

3 A. In general, no. In general there ventricular
4 function can be anywhere, again there's a thousand
5 different factors that go into that.

6 Q. In the medical reports I believe in the post
7 surgical report you talked about seeing, I guess white
8 marks on either other side of the heart --

9 A. Correct.

10 Q. -- what, I think your opinion was, that probably
11 caused or most likely caused by an electrical shock,
12 entering and exiting the heart, is that correct?

13 A. Correct.

14 Q. Have you've seen anything like that in your career
15 prior to that point?

16 A. Not with the heart, I've certainly seen electrical
17 injuries, when I took care of burn patients, you would
18 see people that were burn electrically and you would see
- 19 the type of changes as it entered or exited the
20 extremity which is more common. I've never seen it on a
21 heart, I've never seen anything that looked liked that
22 on the heart.

23 Q. Okay.

24 A. That's what made me think this was related to his
25 electrical injury, certainly, looked like a entry, exit

1 wound. It's shriveled, drawn up, kind of welded
2 together around the tissues around it, so I have seen it
3 in other locations, I've never seen it in the heart.

4 Q. Would the electricity if that -- if those marks are
5 indicative of that, would that electricity, I guess,
6 going through the heart had caused any issues other than
7 it may have led to the infarction itself?

8 A. It could of rupture the plaque led to the
9 infarction. I don't think it was directly related to
10 the -- I don't think it made a hole in the heart,

11 Q. Okay.

12 A. -- I think the hole in the heart came from the
13 infarction you know muscle dying over time and the hole
14 developing. I do think it could relate to any
15 electrical disturbance in the heart and ventricular
16 function.

17 Q. Okay.

18 A. Those are the things that it could effect.

19 Q. And in examining Mr. Winfrey, I guess prior to and
20 after surgery where you able to determine if there were
21 any exit wounds from the body of the electricity other
22 than what you observed in the heart, so did it come out
23 of his hand, foot?

24 A. I didn't observe any. No, sir.

25 Q. And in your practice have you've been involved -- I

1 guess you did the surgeries, are you involved in the
2 post cardiac care, as far as, the rehabilitation for
3 returning someone to work or returning someone to their
4 normal live, or do you --

5 A. I am.

6 Q. Okay. As far as, just a generic heart patient
7 someone that came in and had that ventricular defect,
8 that we talked about just kind of what, what based on
9 ventricular function, but, as far as, for example, going
10 back to our is there a level of work no heart patient
11 should go back to or is it a case by case bases?

12 A. It's always a case by case.

13 Q. Okay. And in someone like Mr. Winfrey's case do
14 you have an opinion yet, is to what, whether or not he
15 be able to return to work or is it still to early to
16 tell in his care?

17 A. I think based on his recovery he could return to
18 some form of work. Correct.

19 Q. Do you think he could be able to return being an
20 electrician or is that an area you would advise he
21 avoid?

22 A. I would advise him to avoid that.

23 Q. Is that because of the risk of electrical shock or
24 is that based on the nature of work?

25 A. A little bit of both.

1 Q. Okay. What is a rough time frame of being able to
2 return to work after a surgery like this?

3 A. In general most open heart surgery patients are
4 ready to go back to work in sometimes two to three
5 months. This is a little bit bigger type problem. I
6 could tell you that I've never had anybody who had this
7 particular injury make it back to work, most people
8 don't live through this. It is very uncommon for people
9 to live through this so.

10 Q. Okay. And your referring to the --

11 A. VSD.

12 Q. -- VSD

13 A. Yes, VSD.

14 Q. Is that based on where it was located or just the
15 fact it was as large as it was or --

16 A. Just --

17 Q. Just happened --

18 A. -- difficult problem to fix -- it's hard to fix.

19 Q. All right. Once it's fixed, absence some, for -
20 example, another electrical shock or something like
21 that, is it an issue that it's going to remain fix or is
22 he kind of going to always be at risk of that patch that
23 was placed rupturing again?

24 A. I think he is at very low risk.

25 Q. Okay.

1 A. Again most -- I don't know of any people that have
2 been followed for twenty years this problem. I think
3 it's a low risk, once it's fixed it should be fixed.

4 Q. Okay. And just to clarify one thing on the plaque
5 rupture itself, the causation of it. You testified that
6 it's -- I guess it's possible or in practice it's
7 possible that those incur from any number stimuli's via
8 physical activity, stress, you said walking in on a
9 loved one that kind of thing?

10 A. Correct. And some people it could happens in the
11 middle of the night while they are sleeping.

12 Q. It could happen.

13 A. Yes.

14 Q. Okay.

15 MR. BAYNE: I believe that is all I have.

16 Preston, do you have anything.

17 MR. MCDANIEL: I got a few questions.

18 CROSS EXAMINATION

19 MR. MCDANIEL: - - -

20 Q. It's been since May that you, actually, had an
21 opportunity to look back at the actual presented history
22 will that be fair?

23 A. Yes, sir.

24 Q. All right. I wanted to ask you a couple of
25 questions in reference to your operate note and found

1 that he had very significant per carditis --

2 A. Right.

3 Q. --I believe that basically inflammation --

4 A. Correct.

5 Q. -- and that presents as far as symptoms your going
6 to have, that presents jointlage pain.

7 A. Correct.

8 Q. Okay. In looking over that, correct me if I'm
9 wrong. A lot of times as you've already testified
10 people don't have chest pain, but I saw and lived here a
11 lot of times the pain is in the neck and over the
12 trapazees area of the shoulder or into the left arm.

13 A. That's correct.

14 Q. Is that a general presenting type process, or that
15 when sustain a mild cardio infarction?

16 A. It is, again presentation can be varied, I mean
17 some people just get shortness of breath or they fell
18 they have reflux, left arm pain, left jaw pain, neck
19 pain all those common in presenting signs and symptoms
20 for a heart attack.

21 Q. And the reason I am asking that is. And I believe,
22 of course your aware, -- had the history available from
23 the emergency doctor that who saw him at the Doctor's
24 Care, then the Cardiologist's who saw him, then sent him
25 directly by ambulance to the hospital. And does this

1 sound familiar on the based, this be the history that
2 you remember Mr. Winfrey presenting with -- when he said
3 that a fifty year old gentleman who on Wednesday prior
4 to admission was working on some electrical equipment
5 got a large shock, he went home from work and experience
6 significant chest pain as well as back and shoulder
7 pain, persisted through the weekend and he really did
8 not do much of the weekend. Then the doctor at the
9 Doctor's care recorded that, he's working got a
10 rotisserie shock on Thursday, sweated Thursday p.m. he
11 had pain immediately down the left shoulder, in the left
12 arm, and had jerk his neck and shoulder -- neck and
13 shoulder pain, tenderness over the left trapezes and
14 that's the area we referred to earlier, an entrance
15 wound on the third finger of the left hand. Is that
16 typical that left arm, left shoulder, neck pain, again I
17 believe you already said that is typical of
18 presentation.

19 A. It is.

20 Q. All right. So, let me then ask you this. I'm
21 going to show you a report that you were kind enough to
22 -- when you knew the causation was an issue, you issued
23 that report on September 30th. 2013. Does that
24 represent you're opinions and reference to this?

25 A. It does.

1 Q. I just want to ask you again. I know Mr. Bayne
2 went over this, but just in summary fashion would you
3 just tell me -- I just hand you copy of your optative
4 note, but just specifically -- just tell me -- and you
5 already testified, you haven't seen anything like this
6 before -- just tell me in your own words, basically,
7 what you observed, and just tell me what formulated this
8 opinion, that my opinion, my understanding, you believed
9 everything that caused him, required treatment by you
10 and the open heart surgery stemmed from this electrical
11 shock.

12 A. Right. And so if you mean, your asking me to put
13 together a time line of events. So he's working under
14 goes electrical shock that causes a plaque rupture
15 causing a heart attack. He feels bad all over has some
16 chest pain, pain other places related to that would be
17 typical, goes home and just tries to gut it out sort of
18 speak doesn't get better, finally shows up to the
19 emergency room or urgent care, the signs and symptoms in
20 the EKG changes components is consistence with him
21 having a heart attack. Brought over to the hospital,
22 optimally taken to the CAT lab found that has blockage
23 that we saw where there was 100 percent occluded artery,
24 including VSD, so sometime along that time course this
25 heart attack caused that muscle to die, the blood pushed

1 through that dead muscle caused the VSD. You know when
2 I saw him it would seemed to me that, that was the
3 typical course of what happened. That he had a plaque
4 rupture, artery occluded, the muscle died, VSD presented
5 in that time course, all of that seemed very normal to
6 me. When we operate on him the thing that was different
7 to me, made me think that this was directly related to
8 the electrical shock and not just two events that happen
9 to co-inside was the amount of change that I saw in his
10 heart. Again what was definitely entry and exit wound
11 where the Peri-cardiac was almost fused like you would
12 weld something together and that was Per carditis. It's
13 not a typical Per carditis that people have after a
14 heart attack, that it's global it's every where, it's
15 just kind of a general Per carditis, this was different
16 these were specific areas interior, posterior. We
17 really had to do a lot of work to clean those off to get
18 the Pericardium which is the sack around the heart off
19 the heart, off the heart proper, almost again, welded to
20 it on the front and back so we can pick the heart up to
21 actually work on it, it really took us thirty minutes to
22 get that done before we really start the operation, so
23 it was after operating on him that it seemed to me that
24 this electrical shock was directly related to the
25 primary problem that he presented with even though he

1 might of have a life long condition coronary disease,
2 I'm sure he did or after arteriosclerosis, I'm sure he
3 did, but I was fairly convinced this electrical shock
4 passed through his heart, it was likely the causative
5 event that started the domino effect. Again a lot of
6 things were in place already, but that electrical shock
7 was the thing that pushed the first domino over and
8 everything that we saw after that followed it. That's
9 just my opinion

10 Q. You also used the term soldier plaques.

11 A. Correct.

12 Q. And tell me about those.

13 A. We find sometimes on the heart what are called
14 soldiers plaque again that just kind of a nomenclature
15 that's been pasted down, they'll just be quarter size,
16 silver dollar size, white areas on the heart. That
17 don't have any type of reason or obvious you know
18 causation you find them variable, I don't know one or
19 two percent of hearts that you operate on, you just see
20 this little white -- whitish plaque areas. They are not
21 inflammatory they are not stuck to anything and they
22 have just passed down through -- along people just
23 called soldier plaques. We don't know what causes them,
24 we don't know why they are there, there just there. And
25 so, you know, I dictated that specifically because this

1 was very different. This was not just simple soldier
2 plaques that we see sometimes, this was you know a
3 fusing and what you know kind of drawn up area, it was
4 whitish, but it was not soldier plaques that sometimes
5 we see.

6 Q. I'm not going to try and keep you much longer I'm
7 going to just ask you. If you could mark that as
8 Plaintiff's exhibit 1

9 MR. MCDANIEL: Mark that as Exhibit No. 1

10 Whereupon, the below described, Report was
11 marked Plaintiff's Exhibit No. 1

12 Q. Doctor, this is a report that was issued on
13 September 30th I believe you dictated that, does that
14 represent your opinions and reference to the causation
15 issue and you opinions about what caused Mr. Winfrey
16 condition?

17 A. That's correct.

18 Q. Is that your opinion to a reasonable degree of
19 certainty?

20 A. It is.

21 Q. Now, I want to ask you one other thing. One
22 conversation you were very nice enough just to call me
23 in reference to another physicians issued reviewed some
24 records and you made a statement to me I'm not forget.
25 You said I held this man's hand in my heart, his heart

1 in my hand. Tell me about how important you think that
2 is based on your observation and opinions in this case
3 as compared to somebody just reviewing records.

4 A. Well it's specifically was reviewed by a
5 cardiologist who has never done a open heart surgery.
6 He does all his works by looking at x-ray's and images.
7 So you know in this gentleman's case you know somebody
8 that, actually, operated on a heart held it in their
9 hands is very important in determine the causation,
10 again causing an effect here and I think anybody that
11 had been in my shoes that had looked at the heart and,
12 actually, seen it and had seen a thousand other hearts
13 have never looked like this that had this exact problem

14 I don't think you can draw any other conclusion, so
15 I think it's hard for somebody that's never seen a heart
16 that certainly never seen -- and also did not see Mr.
17 Winfrey heart, could just make that assumption based on
18 just records. I don't disagree with that's how most
-19 heart attacks happen, that's how most VSD happens,
20 plaque rupture, MI, things rupture, but then to say para
21 partitas just post MI para partitas, when they never saw
22 what I saw and have actually never seen a heart. It's
23 just a little hard to say that you could -- your reading
24 ten percent of the important, you know, facts. A lot
25 of the facts are covered up or not revealed by just

1 reviewing the records I guess that was my point is, you
2 know that cardiologist who, one never seen a heart, two
3 never saw Mr. Winfrey's heart to make those assumptions.
4 I think is just a little bit of leap of faith, I just
5 think they have all the information.

6 Q. How much can you, actually, see, if you actually --
7 I know you filmed the heart, the surgery, is that
8 correct?

9 A. Well I have a picture. We just took a picture we
10 just thought, again something we never seen before.

11 Q. Oh okay. So you actually took a picture. So
12 another cardiovascular surgeon could look at that and
13 they would -- I guess you took it because it was so
14 unusual?

15 A. Correct.

16 Q. All right.

17 A. Which is not uncommon in the operating room, we
18 find things that are different, abnormal, education we
19 tried to report those so that others can learn and
20 experience.

21 Q. All right.

22 MR. MCDANIEL: Thank you very much I think
23 that is all the questions I have.

24 MR. BAYNE: I just have a couple of follow
25 ups Doctor if I may.

RE DIRECT EXAMINATION

1

2 Q. In the 1000 to 1500 surgeries you've done. Have
3 you -- was this your first electrocution related open
4 heart surgery or have you had those before?

5 A. No. It's the first one.

6 Q. Okay. Are you -- Have you consulted with anyone to
7 find out if the plaques that you saw if that's kind of a
8 normal thing in a electrocution type surgery or is that
9 something or just to you a regular and --

10 A. Yeah. I never, I never, I didn't discuss this
11 specifically, but I never read about it or seen
12 anything. No.

13 Q. -- Okay. As far as, I think you said a second ago
14 that the main driver of why you believed to cause this
15 electrical shock was those plaques. Is that correct?

16 A. Correct.

17 Q. Okay. And I think you said it has to do with
18 timing but the main thing you got in there, you said
19 these plaques that's what this is, that's why you think
20 it was caused by the electrical shock.

21 A. Right. Again most of the time we can't identify a
22 specific causative trauma, so to speak, but here there
23 was a specific cause of trauma that could of started
24 again the whole domino effect.

25 Q. Is it possible that he was shocked and that and he

1 ends up with these plaques on his heart, but that is not
2 what actually caused the mild cardio infarction?

3 A. I think saying that the two things happened at the
4 same time but weren't related. I just don't think that
5 is plausible.

6 Q. Okay. And we were talking earlier, I was kind of
7 asking you about some symptoms he would be experiencing
8 and Mr. McDaniel went into the shoulder and the scapular
9 and the whole body pain, if -- if the record indicated
10 or the testimony indicated, that the only pain he was
11 experiencing until, say Friday, he was shocked on
12 Wednesday say until Friday, was neck pain, would that be
13 consistence with this mild cardio infarction or would
14 you except more than just neck pain to be experiencing
15 --

16 A. No. It could be just neck pain.

17 Q. -- okay. And one more time your believe or the
18 records indicate that sometime with in the week prior to
19 him presenting to you when that infarction occurred?

20 A. Correct.

21 Q. Okay. Is there a more likely than not, for example
22 the week prior could mean that day before, but is it
23 more likely it occurred Wednesday, Thursday, than it did
24 on Sunday?

25 A. I don't remember specific days but the time frame

1 for a heart attack to lead to VSD is usually thirty six
2 hours.

3 Q. Okay.

4 A. And then any time after that within the next
5 probably two weeks is possible.

6 Q. Okay. So it would at least be thirty six hours old
7 and up to two weeks old?

8 A. Correct.

9 Q. Okay.

10 A. That would be the typical time for a post infarct
11 VSD.

12 Q. Okay.

13 MR. BAYNE: That's all I got.

14 MR. MCDANIEL: Nothing further.

15 MR. BAYNE: All right.

16 RE CROSS

17 MR. MCDANIEL:

18 Q. Doctor Travis, Mr. Bayne asked you about this being
19 the first known electrical-open heart shock surgery that
20 you did, electrical shock -- but you testified earlier
21 that you seen many electrical shock patients where
22 you've seen the damage to the tissue and other parts of
23 the body.

24 A. Correct.

25 Q. And I believe you testified earlier of coarse you

1 did in these open heart surgeries you done cardio of all
2 types of thorastic surgery and all that, and worked on
3 burn patients?

4 A. Correct. Part of general surgery training is
5 taking care of trauma and burn patients.

6 Q. Okay. And so you have seen in the tissue damage --
7 type of tissue damage you saw in Mr. Winfrey's heart is
8 reminiscent of the tissue damage that you've seen in
9 other parts of the body?

10 A. Correct.

11 Q. Okay.

12 MR. MCDANIEL: Nothing further.

13 MR. BAYNE: No. I got nothing.

14 *

15 Deposition concluded at 7:40 a.m.

16

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1
2 STATE OF SOUTH CAROLINA
3 CERTIFICATE

4 Be it known that I, Timothy Robinton, a
5 Professional Court Reporter and Notary Public, did have
6 JEFFREY TRAVIS, appear before me on Monday, December 16,
7 2013, at 7:00 a.m., at The Lexington Cardiovascular
8 Surgery, 2728 Sunset Blvd. Suite 101, Columbia, South
9 Carolina;

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

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

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

20 In Witness whereof, I have hereunto set my
21 hand and this 30th Day of December 2013.

22
23
24 Timothy M. Robinton,
25 Notary Public For South Carolina
My Commission Expires May 1, 2023



September 30, 2013

Re: Clarence Winfrey

To Whom It May Concern:

Mr. Winfrey is a patient who presented with a very unusual cardiac lesion after suffering a large electrical shock. The lesion, a ventricular septal defect, is normally only seen very rarely in a setting of an acute myocardial infarction. I believe that Mr. Winfrey's electrical shock caused his heart attack and his ventricular septal defect.

Operative photos confirm a large white patch on both sides of his heart that were almost certainly entrance and exit wounds of the electricity. I have never seen anything like these patches in my 15 years of surgery. I have a photo of the anterior surface of the heart that demonstrates either the entrance or exit site.

I find it quite unbelievable that his surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no other plausible explanation other than a direct cause and effect.

Sincerely,

Jeffrey A. Travis, MD

1 South Carolina Workers' Compensation Commission
WCC File No.: 1306305

2 - - -

3 CLARENCE WINFREY, :

4 Employee, :

5 Claimant, :

6 vs. :

7 ARCHWAY SERVICES, INC., :

8 Employer, :

9 and :

10 AMERICAN FIRE & CASUALTY :

11 INSURANCE COMPANY C/O LIBERTY :

12 MUTUAL GROUP, :

13 Carrier, :

14 Defendants. :

15 - - -

16 THURSDAY, JANUARY 9, 2014

17 - - -

18 ORAL DEPOSITION OF KAREN GREENFIELD, MD,

19 taken at Doctors Care, 100 Jimmy Love Lane,

20 Columbia, South Carolina, commencing at 2:05 p.m.,

21 before Deidre Osborne, a Court Reporter and Notary

22 Public.

23 - - -

24 Job No. CS1787777

25

**Certified
Transcript**

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18 (INDEX AT REAR OF TRANSCRIPT.)
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1 (It is hereby stipulated and agreed by and
2 between counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Workers'
5 Compensation Commission and the Administrative
6 Procedures Act; and that the deponent waives
7 reading and signing of this deposition
8 transcript.)

9 - - -

10 KAREN GREENFIELD, MD, after having been
11 first duly sworn, was examined and testified
12 as follows:

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. BAYNE:

17 Q. Doctor, how are you doing today?

18 A. Good.

19 Q. My name is Brett Bayne. I'm an attorney
20 with McAngus, Goudelock & Courie. We represent
21 Archway Services and the insurance carrier in this
22 claim that Mr. Winfrey has filed. I'm just here
23 to ask you a few questions about the care you
24 provided him. I believe it was on May 28, 2013.
25 But before we begin, can you state your full name

1 for the record and also just go through your
2 background for me.

3 A. Karen G. Greenfield, MD. Undergraduate,
4 Wheaton College, Illinois. Doctor of Medicine,
5 University of Illinois, 1979. Residency and
6 internship at Richland Hospital in family practice
7 finishing in '82, and I've been working at Doctors
8 Care since '82.

9 Q. Okay. And what is it that you do at
10 Doctors Care on a daily basis?

11 A. Staff physician. See whatever illnesses,
12 accidents come in.

13 Q. Just general practitioner?

14 A. Right.

15 Q. Do you have any board certifications or
16 specialties?

17 A. Family practice.

18 Q. Okay. And you've -- have you had an
19 occasion to treat Mr. Clarence Winfrey in this
20 case?

21 A. Yes.

22 Q. And what was it that -- when did you
23 treat him and what did you treat him for?

24 A. It was Tuesday the 28th of May, and he
25 presented to the front desk just as a regular

1 patient, no urgency to it, and had complaints
2 about neck pain and left arm pain, and so when he
3 came in, in talking to him it was ascertained that
4 this was in the line of duty, that a rotisserie
5 had shocked him with 480 volts.

6 I have to admit that we don't see a lot
7 of electrocution things in here. Usually that's
8 emergency room kind of stuff, so I went real quick
9 and read what I could on it, and it said, really,
10 anything over probably 220 can cause some damage.
11 So he was saying that his left arm and shoulder
12 were hurting him and that the shock had kind of
13 jerked his neck down, and that's what he was
14 concerned about.

15 But in just observing him I saw that his
16 pulse was rapid and he was a little short of
17 breath which I actually had questioned him about,
18 but he said he didn't feel short of breath, and
19 then I advised him that it was work-related, that
20 this was going to be an EKG and some other things
21 and that he probably would need to have workmen's
22 comp cover that as opposed to -- because he put
23 himself down as self-pay, didn't have insurance.
24 He was going to just pay for that.

25 And I said, "Well, you better see about

1 workmen's comp on that." So we waited a little
2 while, in the meantime did the EKG and got
3 approval from workmen's comp to go ahead and treat
4 him.

5 Q. When you say he put self-pay, where did
6 he -- where did he put that down?

7 A. Well, where it is on the chart is where
8 it says copay, and S/P means self-pay.

9 Q. Would that have been something he filled
10 out on an intake form?

11 A. Right. Right.

12 Q. Okay. Do you have a copy of his intake
13 form?

14 A. I should because this was before our
15 computer revolution. All I have is his patient
16 information form, and it doesn't have any kind of
17 insurance listed, so if they don't have insurance,
18 by necessity, they're there for self-pay.

19 Q. Is there anywhere on that form to mark
20 whether it was work-related or not?

21 A. No. They don't ask them that at the
22 front desk.

23 Q. That's something you do during your
24 initial --

25 A. Well, I mean, it's obvious if they come

1 in with an authorization to be treated. Then
2 that's fine. And sometimes they'll say it was
3 work-related, but he did not offer that
4 information to start with.

5 Q. Okay. You had mentioned a minute ago
6 that he was shocked with 480 volts of electricity,
7 and I believe you've filled out a questionnaire as
8 well that indicates he was shocked with 480 volts
9 of electricity. Where did that information come
10 from?

11 A. He told me it was 480.

12 Q. So you haven't seen the device he was
13 using?

14 A. No.

15 Q. And you didn't do any testing on it?

16 A. No.

17 Q. Okay. So if it -- 480 volts is correct,
18 it would be because that's where Mr. Winfrey got
19 it from; is that right?

20 A. Right. Uh-huh.

21 Q. Okay. But you don't know for certain?
22 It could have been 240 or 110?

23 A. I would not have the foggiest.

24 Q. Okay. On your -- I believe it is your
25 medical report from that day where you have your

1 handwritten notes on it. You have written that he
2 had no chest pressure. What does that mean?

3 A. He was not complaining of any type of
4 thing that would go along with a heart attack.

5 Q. Okay. So he had no chest pain at that
6 time --

7 A. Right.

8 Q. -- that he was complaining of?

9 A. Right.

10 Q. Did you make any notes at all about
11 whether or not he was complaining of chest pain
12 before May 28th when he came in?

13 A. No.

14 Q. Okay.

15 A. The only thing that I wrote down there
16 was -- I guess it was on Thursday when he was
17 shocked, and he said he had some sweating issues
18 that evening --

19 Q. Okay.

20 A. -- apparently, and then came in on
21 Tuesday because he woke up sweating.

22 Q. Okay. Between the Thursday night
23 sweating and when he came in on Tuesday, did you
24 get any indication from him that he suffered from
25 that sweating or suffered from any chest pain --

1 A. No.

2 Q. -- during that time?

3 A. No.

4 Q. Okay. And you performed an EKG on him;
5 is that correct?

6 A. Yes.

7 Q. And what did that EKG reveal?

8 A. That he was tachycardic, pulse of 122
9 when normal is 60 to 100. He had some ST
10 elevation in the inferior part of his heart as
11 well as depression in the lateral leads which went
12 along with possible cardiac damage and also a
13 bundle branch block which is a widening of the
14 QRS.

15 Q. Okay. And tachycardia is just an
16 elevated heartbeat; is that correct?

17 A. Right. Heart rate. Yeah.

18 Q. And what is -- you said the right bundle
19 branch block. What does that mean?

20 A. The time interval between the time that
21 the impulse of the heart travels, I believe,
22 through the -- from the top of the heart to the
23 bottom of the heart. There's a regular time
24 period that it should be under, and it was wider
25 than that.

1 Q. Okay.

2 A. So it was taking longer to conduct the
3 electricity.

4 Q. And that would be indicative of a
5 blockage of the heart; is that correct?

6 A. No. That was an electrical problem.

7 Q. Okay.

8 A. Yeah.

9 Q. And then I believe it says inferior, you
10 said, ST elevation. And what does that mean?

11 A. ST elevation goes along with part of the
12 heart not getting blood supply to it.

13 Q. Okay. Are you able to tell from the EKG
14 that you performed and the findings that were
15 found what was wrong with his heart at that time?

16 A. Well, it would lead you to think that the
17 lower part of his heart had some lack of blood
18 control to -- or blood supply to it, and the rate,
19 obviously that his heart was struggling to try and
20 do what it needed to do.

21 Q. And when you say the lack of blood
22 supply, are you -- is that, again, an electrical
23 issue or is that --

24 A. No. That would be --

25 Q. -- a blockage?

1 A. -- a blockage probably.

2 Q. Okay. At that time does this EKG reveal
3 whether or not he was -- he was later -- let me
4 rephrase the question. He was later found to have
5 a -- what's called a ventricle septal defect, a
6 hole in his heart.

7 A. Yeah. You can't -- you can't see that
8 on --

9 Q. Okay.

10 A. -- an EKG.

11 Q. That's -- there's no way to know whether
12 or not he was suffering from it at the time of the
13 EKG or not; is that right?

14 A. Well, I guess. I'm not a cardiologist,
15 but the electrical impulse travels through the
16 septum, so if there was a hole in the septum, it
17 may -- that may explain why that was a little
18 longer delay getting there.

19 Q. But the EKG itself wouldn't actually
20 directly reveal that to you?

21 A. No.

22 Q. Okay. And what was your -- by the time
23 you got -- you read the EKG, what was your
24 determination of what was going on with
25 Mr. Winfrey?

1 A. That he needed someone a little bit
2 higher level of medical care than I, so I called a
3 cardiologist. I called Dr. Dasgupta. I spoke
4 with him, and he said, "Well, send him over right
5 now."

6 Q. Did your evaluation of Mr. Winfrey or the
7 EKG you performed give you any indication as to
8 when it was that Mr. Winfrey may have suffered
9 this heart attack?

10 A. No. I mean, it was -- I would say yes in
11 the fact that it's -- it wasn't three years ago.
12 It wasn't three months ago. Three -- it could
13 have been five days ago, but if it was longer than
14 ten days, he probably would not have had the ST
15 elevation.

16 Q. Okay. It was, obviously, sometime before
17 he did the EKG.

18 A. Right.

19 Q. Is there --

20 A. But not months before.

21 Q. Correct.

22 A. Yeah.

23 Q. Correct. And so we're kind of looking at
24 an upper limit of between five and ten days
25 maybe?

1 A. Probably.

2 Q. Okay. Could it have been sooner than
3 that as well?

4 A. What do you mean by "sooner"?

5 Q. In other words, could it have been that
6 morning? It could have been the night before? Or
7 is it --

8 A. I imagine.

9 Q. Okay.

10 A. Yeah.

11 Q. Other than the treatment on May 28th when
12 he presented, have you seen Mr. Winfrey back for
13 any reason?

14 A. Not as a patient.

15 Q. Okay. Have you had a chance to see him
16 in any setting at all?

17 A. He came back after he got out of the
18 hospital and thanked me for saving his life which,
19 of course, I didn't do.

20 Q. I understand. And then just one more
21 time, again, on the written opinion that you
22 issued on September 17, 2013, when you refer to
23 480 volts, that is based on what Mr. Winfrey told
24 you; is that right?

25 A. Yes. Uh-huh.

1 Q. And all your opinions here today are to a
2 reasonable degree of medical certainty?

3 A. Yes.

4 MR. BAYNE: Okay. That's all I have,
5 Preston.

6 - - -
7 EXAMINATION
8 - - -

9 BY MR. MCDANIEL:

10 Q. Let me ask you just a couple questions,
11 Doctor, and, really, it refers to -- would you
12 mind reading in some of the handwritten language.
13 First, up in the part -- and I'm going to refer.
14 This is found at page 66 of our APA Submissions.
15 Up where you've given the information from
16 Mr. Winfrey, all that's typed in, and then there's
17 handwritten notes. I believe there's a "G," but
18 it looks like your -- your initials to the left of
19 Columbia, South Carolina. You see that, Doctor,
20 in that section?

21 A. No. Those aren't mine.

22 Q. Oh, they're not?

23 A. I do everything below the Vital Sign
24 line.

25 Q. Okay.

1 A. And the other thing, I guess I did write
2 "WKC" in there for workmen's comp.

3 Q. Okay.

4 A. So that's mine, but everything else is --

5 Q. All right. Would you mind just
6 publishing just so -- so we can read all this.
7 Starting with "shocked," can you just tell me what
8 that says, all that written hand --

9 A. "Shocked on hand by 480 volts. Jerked
10 neck down to left shoulder."

11 Q. Okay.

12 A. That would have been written by the nurse
13 that put him back, and I'm trying to think of who
14 that is. Whoever signed the bottom left there.

15 Q. Okay.

16 A. Bax. We don't have a -- I don't know who
17 that is. Sorry.

18 Q. That's okay. That's all right. Now,
19 let's go down. You said you would have filled in
20 all the Physical.

21 A. Right.

22 Q. Would you just read what that says into
23 the record for me.

24 A. Okay. Well, the Complaint is on the
25 right side. 480 volts rotisserie shock on

1 Thursday. Sweated Thursday night. Woke up
2 sweating this morning, which would have been
3 Tuesday. Complained of pain in his left neck and
4 no chest pressure.

5 Now, that was after I asked him if he'd
6 had any discomfort in his chest.

7 Q. Okay.

8 A. So he did not offer that, really, and I
9 didn't write down there, but I do remember he was
10 really -- he was rubbing his arm, and he was like,
11 "My arm hurts." Of course, you have electricity
12 go through it --

13 Q. And that's the left arm and --

14 A. Right. Left arm.

15 Q. Okay. And is that also a common
16 presentation for having sustained a heart attack?

17 A. Yes. Well, you will have pain in your
18 arm but not pain to touch.

19 Q. Okay. And -- but he had actual pain --
20 to your recollection, he had pain to touch.

21 A. Well, yeah. I didn't write anything
22 about the arm, but I did put "tenderness in his
23 left trapezius," and that's the upper -- the
24 muscle up here in the neck, so he was -- he was
25 sore there.

1 Q. Okay. All right. And then in reference
2 to the other side, to the left --

3 A. Oh, okay. Well, the -- "well-developed,
4 well-nourished white male. No acute distress.
5 Appears short of breath but denies." Appears to
6 be. That's a --

7 Q. Okay.

8 A. "Entry wound." He had a entry on the --
9 the back of his third left finger. I didn't say
10 whether it was proximally or distally, but I do
11 remember that there.

12 Q. Okay.

13 A. "Trapezius -- tenderness, left
14 trapezius." And then when I listened to his heart
15 he had a grading of three over six murmur, and
16 his -- his rate was -- was high.

17 Q. All right. Grade three --

18 A. Over six.

19 Q. -- over six.

20 A. Yeah.

21 Q. What does that mean?

22 A. We grade heart murmurs from one to six.
23 Six is if I was sitting next to you without a
24 stethoscope I could hear your heart --

25 Q. Okay.

1 A. -- murmur. One is like you got to think
2 real hard, is that a heart murmur or not. So a
3 three is like a medical student could figure that
4 one out real easy.

5 Q. Okay. And then so that's the --

6 A. That would actually go along with the
7 ventral -- the septal -- excuse me. VSD, the
8 ventricular septal.

9 Q. It would --

10 A. Because you don't get murmurs from heart
11 attacks. You get murmurs either through blood
12 going over the valves or blood going from one side
13 of the heart to the other.

14 Q. Okay. So that would be further support
15 in reference to the EKG of that he was having --

16 A. Well, not --

17 Q. -- blood not going where it was supposed
18 to.

19 A. No. This would say the blood was -- was
20 turbulent going through some place, so it would
21 either be a valve or the hole between the right
22 side and the left side.

23 Q. Okay.

24 A. But it doesn't say anything about blood
25 getting to all the area of the heart.

1 Q. Right. Exactly. But, in other words,
2 it -- it's further support that the VSD was there
3 at that time.

4 A. Right.

5 Q. Okay. And then those -- I guess those
6 numbers are just diagnostic codes?

7 A. Right.

8 Q. Okay.

9 A. Yeah. For tachycardia, electric shock
10 and muscle shock.

11 Q. Then --

12 A. Okay.

13 Q. -- you discuss --

14 A. So discuss with Dr. Dasgupta at South
15 Carolina Heart Lexington, and he said, "Oh, send
16 him over." Of course, then when he got over
17 there, he said, "I'm calling an ambulance. You're
18 going to the hospital."

19 It's like, "Whoops."

20 Q. Okay. And then -- and so that's in
21 reference to your follow-up now?

22 A. Yeah. That he was to go now. Yeah.

23 Q. Okay. All right.

24 A. And then, depending on what happened, I
25 gave him some muscle relaxers and some pain

1 reliever for -- for what he perceived that he came
2 in here for.

3 Q. You know, your testimony goes along
4 exactly with -- in reference to five, no more than
5 ten days. Tell me what the -- why you said that
6 about the EKG in reference to, I believe -- was it
7 the STV or the ST?

8 A. ST elevation.

9 Q. The ST elevation.

10 A. Right. Yeah.

11 Q. Correct.

12 A. During the -- a heart attack, the ST
13 level grade will go up higher, and then as the
14 heart attack resolves, it comes down.

15 Q. Okay.

16 A. So the cardiologist will be able better
17 to tell you at what point it goes from being up to
18 being down or to being low. I'm not sure about
19 the evolution of time on that one.

20 Q. Okay. But it -- based on your background
21 and training, I believe you said that
22 normally that --

23 A. It's an acute injury.

24 Q. -- it's an acute injury, meaning within
25 the last ten days.

1 A. Oh, at least. Yeah.

2 Q. Okay. All right. And the opinion that
3 you were kind enough to write to us, you -- that
4 still remains your opinion to a reasonable degree
5 of medical certainty?

6 A. Right.

7 MR. MCDANIEL: All right. Nothing
8 further.

9 THE WITNESS: Well, not having any
10 previous information on any of his medical
11 status.

12 MR. MCDANIEL: Uh-huh. Uh-huh.

13 THE WITNESS: I mean, you know, if he was
14 seeing a cardiologist for three years and had
15 documented heart disease, that would be
16 another story, but ...

17 BY MR. MCDANIEL:

18 Q. Right. But in other words --

19 A. Just based on the one time.

20 Q. You said you did some brief research?

21 A. Yeah. The -- really, I was looking for
22 the VSD, and I couldn't find anything anywhere
23 about VSDs, but apparently there's some attorney
24 in Florida or in California that loves to do
25 electrical stuff, but on this -- you know,

1 V-fib -- of course, abnormal heart rhythm is the
2 greatest risk for an acute electrical injury
3 because the electricity goes through your heart,
4 just fritzes out your own heart's electrical
5 activity.

6 So V-fib and A-fib are the biggest things
7 that happen on that one, but this goes ahead and
8 says that the shock can actually cause myocardial
9 damage, can cause bundle branch blocks.

10 Q. And where is that from?

11 A. Medscape. Actually, there's another one
12 here. Electrical Injuries and Lightning Strikes
13 under -- this is a UK site. "Cardiac system," it
14 says "Ventricular fibrillation is the usual cause
15 of immediate death. Other arrhythmias have been
16 reported: right bundle branch block, nonspecific
17 ST and T-wave changes" which is that ST thing we
18 were talking about.

19 "Supraventricular tachycardia, atrial
20 fib. Acute myocardial infarction has been
21 reported. It's worth noting cardiac markers will
22 be raised." That's the blood work. To diagnose a
23 heart attack you need either the symptoms, changes
24 in EKG and the blood work to go along with that
25 or, if you don't have the symptoms, those other

1 two things would be adequate. And "delayed
2 arrhythmias are extremely rare, tend to be found
3 in patients with a previous history of EKG
4 abnormality."

5 So, you know, acutely, that's when they
6 need to go to the emergency room, and five days
7 later, I was, frankly, surprised that he would
8 come in, but I was really concerned about his
9 heart findings.

10 Q. Let me -- you know, just one question.
11 Of course, he was obviously reporting these
12 problems that would be associated with --

13 A. Muscle injury.

14 Q. -- muscle from -- from the electrical
15 shock.

16 A. Right. Right.

17 Q. And that would be -- but also that's in
18 the same exact area that many people report pain
19 and --

20 A. When they're having a heart attack.

21 Q. -- discomfort and have -- well, would it
22 be your opinion that there's a substantial
23 likelihood that the electrical shock and where it
24 occurred and the path it took would have masked
25 him -- like -- in other words, saying like, "Well,

1 I've just got to get over this electrical shock,"
2 versus, "I've had a heart attack."

3 A. Well, I don't know about certainty issues
4 because without any pressure in his chest or a
5 heaviness in his chest, by itself, pain in the
6 left arm, I would be concerned about if he came in
7 and said, "I have left arm pain, but I'm fine
8 here."

9 Q. Uh-huh.

10 A. Especially with a EKG. But you're saying
11 with electrical shock pain, he may have confused
12 any pain that might have come from a heart attack
13 in his left arm with that.

14 Q. Correct.

15 A. Yeah. I mean, you can't separate those
16 two out.

17 Q. Okay. All right. Let me ask you -- and
18 you said this came -- and, of course, it says it
19 came off of Medscape. What is Medscape?

20 A. It's just a Web site with usually medical
21 information on it.

22 Q. Okay. Is that something y'all regularly
23 use when you've got --

24 A. No. I did that at home yesterday.

25 Q. Oh, okay.

1 A. No. I didn't do it at the time. I was
2 just doing it to be prepared for today.

3 Q. Okay. All right.

4 A. If you want this, too, you can have
5 that. We can make copies for both of you.

6 MR. MCDANIEL: Would you mind if we make
7 a copy of that?

8 MR. BAYNE: No.

9 MR. MCDANIEL: Okay.

10 THE WITNESS: This one -- I mean, I just
11 summarize it on the side there, but under
12 "Cardiac system" down there it has it.

13 I mean, this says, "This PatientPlus
14 article is written for healthcare
15 professionals so the language may be more
16 technical than the condition leaflets."

17 MR. MCDANIEL: Let me ask. Brett, do you
18 want to take a look at those?

19 MR. BAYNE: Yeah. Just --

20 THE WITNESS: And they were like eight
21 pages long, but I just --

22 MR. MCDANIEL: We can just make those an
23 exhibit to the deposition. Do you have any
24 objection to that?

25 THE WITNESS: And then this one was just

1 a summary of radiation on electrical injury in
2 terms of circulation, which is cardiac
3 disease. It says, "Cardiac complications of
4 electrocution (apropos of a case of myocardial
5 infarction after lightning electrocution.)"

6 Now, I don't know how lightening and 480
7 volts compare, so -- and it's just a
8 bibliography. It doesn't have any information
9 on there. Yeah. Physics wasn't my greatest
10 thing, so volts and amperes and all those
11 things.

12 MR. MCDANIEL: Okay. I don't have any
13 further questions, just subject to us
14 attaching those to -- as --

15 MR. BAYNE: Yeah. Just --

16 MR. MCDANIEL: We can attach them as one
17 of three or however many pages if you want to,
18 Brett.

19 THE WITNESS: Yeah. I was kind of
20 looking for the VSD because that's amazing,
21 but then when you read what Travis said, you
22 know, it looked like burn marks or something.
23 Now, I -- like I said, I wasn't sure whether
24 that was burn marks on the septum or burn
25 marks on the heart, but ...

1 MR. MCDANIEL: Okay. All right. Thank
2 you, Doctor. I don't have any further
3 questions. Let's just see if -- I don't know
4 if Mr. Bayne has any.

5 MR. BAYNE: Can we go off the record real
6 quick?

7 MR. MCDANIEL: Yeah.

8 (A discussion was held off the record.)

9 - - -

10 REEXAMINATION

11 - - -

12 BY MR. BAYNE:

13 Q. Doctor, I just wanted to ask a couple
14 follow-up questions. You said that Mr. Winfrey's
15 pain in his left arm was pain to touch; is that
16 right?

17 A. It was tender to touch.

18 Q. Tender to touch.

19 A. Yeah.

20 Q. You indicated that pain in the left arm
21 that is typically associated with a heart attack
22 is not tender to the touch.

23 A. Yeah.

24 Q. Is that right?

25 So at least based on your observation of

1 him on that day it would not have led you to
2 believe that that pain was related to a heart
3 attack; is that correct?

4 A. Yes.

5 Q. Okay. On the electrical articles that
6 you've referenced that are going to be put into
7 the record in just a second, you indicated that it
8 talked about an electrical shock, lightening; is
9 that right?

10 A. I would have to look at that.

11 MR. MCDANIEL: I think she was referring
12 to --

13 THE WITNESS: Well, the title says both.

14 MR. MCDANIEL: And I have no objection to
15 that page, Brett, if you wanted to put it in.

16 THE WITNESS: Yes. This one says
17 lightening.

18 BY MR. BAYNE:

19 Q. My quick question was, on the second page
20 which is labeled page 2 of 8 on the top right, it
21 does talk about lightening right there. About a
22 third of the way down it indicates lightening is
23 about 10 million volts; is that correct?

24 A. That's what it says.

25 Q. Okay.

1 A. I don't know.

2 Q. And you'd agree that 10 million is more
3 than 480; is that right?

4 A. Right. Uh-huh.

5 Q. And in the other -- the Medscape article
6 that you -- you printed off -- and I'll hand it
7 back to you real quick. It doesn't indicate on
8 there when it's talking about -- I believe you
9 circled a part about heart damage relating --

10 A. Right.

11 Q. -- from electrocution. It doesn't --

12 A. Right.

13 Q. It doesn't refer to the number of volts
14 that would be required or --

15 A. It doesn't say --

16 Q. -- would be typical?

17 A. -- what was causing it. Not of the
18 source. Yeah.

19 Q. Okay. In your notes on 10/28, one thing
20 I wanted to touch on I forgot about, you noted
21 that he had an entry wound --

22 A. Right.

23 Q. -- on his left hand. Is that a term of
24 art, so to speak, or was there an actual wound?

25 A. No. He actually had a wound there.

1 Yeah.

2 Q. Do you recall what it looked like?

3 A. I think it was a little brownish. It
4 was -- I mean, since it was five days old, I think
5 it was just like a resolving burn.

6 Q. Okay. So it looked -- at the time it
7 looked like a resolving burn?

8 A. Uh-huh.

9 Q. And then you said something about --
10 Mr. McDaniel asked you about the opinion that you
11 had filled out, the questionnaire you'd filled
12 out, and asked if that had changed at all, and I
13 think you said something about depending on his
14 history.

15 A. Oh. No. I mean, it -- my opinion from
16 then until now hasn't changed because I don't have
17 any other history.

18 Q. Okay.

19 A. Yeah.

20 Q. Would the fact that Mr. Winfrey had, for
21 example, a family history of this type of heart
22 condition, would that in any way change your
23 opinion as to what caused --

24 A. No.

25 Q. -- his symptoms?

1 A. Huh-uh.

2 Q. And, in fact, I believe when he did
3 arrive at the hospital finally and Dr. Travis saw
4 him, he did diagnose him with severe three vessel
5 disease. Does that at all change any of your
6 opinions in this case?

7 A. Not as far as what precipitated it, no.

8 MR. BAYNE: Okay. That's all I have.

9 MR. MCDANIEL: Nothing further.

10 - - -

11 (Medical Web Site Documents marked
12 Greenfield Exhibit Number 1, for
13 identification.)

14 - - -

15 (Witness excused.)

16 - - -

17 (Deposition concluded at 2:30 p.m.)

18 - - -

19 - - -

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Deidre Osborne, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the proceedings and evidence are
contained fully and accurately in the notes taken
by me in the above cause and that it is a correct
transcript of the same.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my
official seal this 9th day of January, 2014, at
Lexington County, South Carolina.

Deidre Osborne

Deidre Osborne,
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 12, 2019

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Reporter's Note: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.

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More Cognitive Deficits, Depression in Former NFL Players

Does Static Stretching Reduce Maximal Muscle Performance?

Aging Football Players at Higher Risk for Depression

DRUG & REFERENCE INFORMATION

Primary CNS Lymphoma

Initial Evaluation and Management of CNS Injury

Central Nervous System Lymphoma in HIV

duration of exposure, the resistance of the tissues, contact surface, the extent of multisystem involvement, and the circumstances surrounding the incident.

Initial Evaluation

The high voltage direct current (DC) electrocution tends to cause a single muscle contraction, throwing its victim from the source. These patients tend to have more blunt trauma. Direct current electrocution can also cause cardiac dysrhythmias, depending on the phase of the cardiac cycle affected. This action is similar to the effect of a cardiac defibrillator.

Low voltage alternating current (AC) electrocution is three times more dangerous than DC current at the same voltage. The lowest frequency for electrical current in the United States is 60 Hertz (Hz) because this is the lowest frequency at which an incandescent light functions. With AC electrocution, continuous muscle contractions (tetany) may occur, since the muscle fibers are stimulated at between 40 to 110 times per second. With tetany, the victim tends to hold on to the source of current output, thereby increasing the duration of contact and worsening the injury.^[1]

Generally, the longer the duration of contact with high voltage current, the greater the degree of tissue destruction. This is true until the tissue becomes carbonized and resistance develops to the current flow. Current is often concentrated at the contact and ground points of the body, where the greatest amount of tissue damage occurs. However, extensive damage may occur between the contact and ground point.

Electrical injuries occur from direct contact or as an indirect contact with a power source. Indirect contacts can be separated into arc, flash, thermal, and blunt trauma injuries. An arc injury is the most destructive of all of the indirect mechanisms. It can generate approximately 2,500°C. An electrical arc is a current spark that develops between two objects that are not in contact with each other. An arc injury occurs when the victim becomes part of the arc itself. Electrical arcs can ignite clothing and cause thermal burns. Flash burns from the electrical source usually result in superficial partial thickness burns. High voltage shocks may cause blunt trauma, usually when the electrical energy causes the victim's muscles to contract violently. This intense and diffuse muscle contraction can cause the victim to fall or fracture bones, especially in AC electrocution.^[1]

Central nervous system injury is common with electrocution, as is blunt head trauma, which results from falls or from being thrown from a high voltage contact. Change in mental status is also common. Cataracts, which may occur immediately after electrocution or months later, develop in 5% of patients who have sustained electrical injury near the head or high voltage electrocution.^[1] Corneal burns, intraocular hemorrhage or thrombosis, uveitis, retinal detachment, and orbital fractures may also result.

Electrical injury to pediatric patients often involves the oral cavity because children typically bite or suck on the electrical cord. Injury to the labial artery with delayed bleeding occurs in 10% of these patients.

Cardiac arrest, either from asystole or ventricular fibrillation, is common in electrocution. However, patients may present with sinus tachycardia, transient ST segment elevation, QT segment prolongation, PVCs, atrial fibrillation, or bundle branch block.^[1] Acute myocardial infarction is rare but has been reported.^[1] Vascular damage is greatest in the medial layer of the vessel. Intimal damage may result from immediate or delayed thrombosis as edema and thrombi form on the damaged endothelial surface. This commonly occurs in small muscle branches, where blood flow is slower. The damage to the small arterioles, along with marginal muscle viability as a direct result of the electrical energy, can lead to progressive tissue necrosis.^[1] Coagulation necrosis, intravascular hemolysis, and delayed vessel rupture may also occur.

Damage to the lungs is rare because the air in the lungs is a poor conductor of electricity. More commonly, blunt pulmonary trauma occurs from falls or other associated events. Respiratory arrest may result from tetanic contraction of the diaphragm. Aspiration pneumonia and pulmonary edema are not the direct result of electrocution.

Injuries to solid abdominal organs directly from electrical current have not been reported. Solid organ damage is usually the consequence of blunt trauma. Hepatic and pancreatic necrosis, paralytic ileus, bowel perforation, esophageal hemorrhage, Curling's ulcers, and gastrointestinal bleeding have been reported. Acute renal failure usually results from rhabdomyolysis or hypovolemia.

Long bone fractures, vertebral compression fractures, and scapular fractures may result from electrical shock, either from the violent and intense muscle contraction or from secondary blunt trauma. Shoulder dislocations may result from tetanic spasms of rotator cuff muscles. Periosteal burns, bony matrix destruction, aseptic necrosis, and osteomyelitis have been reported as delayed complications. Severe muscle necrosis may require fasciectomy.

Altered mental status is usually transient unless associated with significant head injury. The victim may have confusion, agitation, emotional lability, amnesia (with loss of both short-term and long-term memory), cognitive impairment, aphasia, headache, seizures, and prolonged coma. Cerebral edema, hypoxic encephalopathy, and peripheral neuropathy have been reported. Central and peripheral nervous system symptoms may improve, but long-term disability is common.

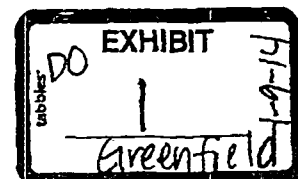
In high voltage electrocution, the spinal cord may be injured as a result of fractures or ligamentous injury to the spinal column caused by muscle contraction or blunt trauma. In addition, the electrical current may cause direct injury to the spinal cord. This spinal cord injury may be acute or delayed. Acute insult to the spinal cord may cause weakness and paresthesia within hours of the initial injury. Neurologic deficits are more common in lower extremities than in upper extremities. These patients have a good prognosis for partial or complete recovery. On the other hand, delayed injury may be manifested days to years after

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Electrical Injuries and Lightning Strikes

This PatientPlus article is written for healthcare professionals so the language may be more technical than the condition leaflets. You may find the abbreviations list helpful.

Patients presenting with electrical injuries have problems that can range from the very trivial to the fatal (in which case, they are said to have been electrocuted). If patients survive the initial exposure, the outlook is generally very good with few permanent injuries as a result.

Epidemiology^[1]

- Electrical burn injuries account for about 3-4% of burns unit admissions.^[2]
- Electricians and linesmen are at highest risk but those working with electrical tools also form a significant proportion of this patient group.
- Approximately 20% of all electrical injuries occur in children (with a bimodal peak incidence in toddlers and adolescents), usually involving cable extensions or wall outlets.^[3]
- For every death, there are two serious injuries and 36 reported electric shocks.
- Death most often occurs in young males (male:female = 9:1).
- Most deaths occur in the spring and summer months.
- Water greatly increases the risk of fatality.

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Pathophysiology of electrical injury^[1]

Electrical current causes damage through:^[2]

- Direct process of physiological changes (altering cell resting membrane potential).
- Conversion of electrical energy into thermal energy, resulting in massive tissue destruction and coagulative necrosis.
- Secondary damage associated with falls and violent muscle contractions.

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There are several factors that affect the degree of damage:

Current

Type of current: this may be direct or alternating. The latter is significantly more dangerous in a number of respects:

- It may result in tetanic muscular contraction, so preventing the casualty from letting go of the source.
- An alternating current of any more than 10 mA induces sweating. Skin moisture decreases its resistance (see below).
- Human tissue is most sensitive to frequencies between 40 and 150 Hz. The frequency best suited for household use is about 50 Hz, so making household current particularly dangerous. This is all the more salient, as this is the frequency that is capable of producing ventricular fibrillation (VF).

Amount of current:

- 1 mA = threshold of perception resulting in tingling sensation.
- >7-9 mA = muscular tetany preventing release of grip from current source (this is lower for children and women).
- 20-50 mA = pain and severe breathing difficulties leading to respiratory arrest.
- 50-100 mA = VF.
- >2 A = asystole.

Current path: the key issue affecting mortality is whether the current passes through the heart. For example, contact of the electrical source with both hands effectively results in a transthoracic pathway which is thought to account for about 60% of mortalities, whereas there is very low mortality related to a pathway passing through one leg and out of the other.

Voltage^[2]

Generally, the greater the voltage, the greater the damage (the exception being with high-tension voltage: above this level, greater voltage doesn't necessarily influence the degree of injury).^[4] This is accentuated or limited by the resistance of the tissue that the electricity passes through (see below):

- **Low voltage:**
 - <50 V: no danger.
 - 240 V: UK household supply ($\pm 10\%$). This creates small, deep entrance and exit wounds.
- **High voltage:**
 - $\geq 1,000$ V: there is often extensive tissue damage and limb loss. Contact with $>70,000$ V is invariably fatal
 - 100 million V: lightning - this is quite different from a high-voltage electric shock and is treated separately below.

Resistance

As the current travels through the body, it follows the path of least resistance.^[5] Resistance varies in different tissues and will have a great influence on the extent of any injuries.

- At a cellular level, the injury resembles a crush injury more than it does a burn.
- The electrical current will pass through low-resistance tissues in preference, causing necrosis along the way.
- Since the skin resistance can be affected by moisture, electric current can be transmitted to deeper structures before it causes significant skin damage (there may be serious deep injury with spared skin).^[6]
- A current passing along the surface of the body to earth can cause very deep burns over a large area.^[6]
- There will be a range of clinical manifestations with different effects on different organs.
- Be aware of potential secondary injuries from falling or being thrown to the ground.^[6]

Burns^[2]

- These range from first-degree to third-degree: there is typically a depressed charred central area with surrounding oedema. There may be several entry and exit wounds (the latter characteristically have an explosive appearance - round or oval grey craters with no inflammatory changes).^[7]
- Arc burns are produced by the passage of a current of electricity from the source to the ground and may be associated with extensive skin damage.
- So-called 'kissing burns' are produced in flexor creases when muscle tetany causes the joint to flex and the current flows through opposing skin.^[8]
- Flame burns occur when the current ignites clothing.

Cardiac system

- Ventricular fibrillation (VF) is the usual cause of immediate death from electrocution;^[9] this occurs immediately.
- Other arrhythmias have been reported: right bundle branch block and nonspecific ST and T-wave changes occur most commonly;^[9] there may be supraventricular tachycardia and, occasionally, atrial fibrillation.
- Acute myocardial infarction has been reported.
- It is worth noting that cardiac markers will be raised, regardless of cardiac damage, so don't use these as an indication of cardiac damage.^[9]
- Delayed arrhythmias are extremely rare and tend to be found in patients who have a previous history of ECG abnormalities (known or subclinical).^[6]

Nervous system

- **Acute complications:** these include respiratory arrest, seizures, altered mental state, amnesia, coma and expressive dysphasia. Motor deficits have also been reported.
- **Delayed complications:** these include spinal cord injury (common) and complex regional pain syndrome (CRPS).^[10]
- Acute ischaemic stroke has also been reported.^[7]

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

 COPY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 13TH DAY OF
JANUARY, 2014, COMMENCING AT THE HOUR OF 9:27 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE, SUSAN S. BARDEN
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

PRESTON F. MCDANIEL, ESQUIRE, OF THE FIRM
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1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

BRETT HARRIS BAYNE, ESQUIRE, OF THE FIRM
MCANGUS GOUDELOCK & COURIE, L.L.C.
1320 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/INSURER

ALSO ATTENDING:
SUSAN KISER
STEVE SHULMEISTER
MARK WARREN
CLARENCE WINFREY

I N D E X

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MARK WARREN:

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS JANUARY 13TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1306305. THIS IS THE CASE OF THE CLAIMANT
10 MR. CLARENCE WINFREY WHO IS PRESENT TODAY. LET'S GO
11 OFF THE RECORD ONE SECOND.

12 (OFF THE RECORD)

13 BY COMMISSIONER BARDEN:

14 MR. WINFREY IS REPRESENTED BY ATTORNEY PRESTON
15 MCDANIEL. THE EMPLOYER IS ARCHWAY SERVICES AND ITS
16 CARRIER AMERICAN FIRE, BOTH OF WHICH ARE REPRESENTED
17 BY ATTORNEY BRETT BAYNE. THE PURPOSE OF TODAY'S
18 HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50
19 AND 51. CURRENTLY THE CLAIMANT IS BEING PAID A
20 COMPENSATION RATE OF \$442.40. MR. MCDANIEL, YOU
21 MENTIONED THAT AND WE DID NOT, WITH ALL OF THE OTHER
22 THINGS WE TALKED ABOUT IN SPITE OF AN HOUR THAT WE
23 EXPENDED USING OR TALKING ABOUT EVERYTHING, WE
24 REALLY DIDN'T GET INTO THE COMP RATE, ARE YOU --
25 WOULD YOU LIKE THAT HELD IN ABEYANCE? YOU SAID IN

1 YOUR ---

2 BY MR. MCDANIEL:

3 YES.

4 BY COMMISSIONER BARDEN:

5 --- FIFTY-EIGHT, YOU WANTED IT HELD IN
6 ABEYANCE.

7 BY MR. MCDANIEL:

8 YES, COMMISSIONER. WE ARE -- FOR PURPOSES OF
9 HOPEFULLY TRYING TO GET BENEFITS RESTARTED, WE ARE
10 AGREEABLE TO THAT COMP RATE WITH THE ---

11 BY COMMISSIONER BARDEN:

12 STIPULATION THAT YOU WOULD LIKE TO ---

13 BY MR. MCDANIEL:

14 --- THAT WE -- WE HAVEN'T EVER ASKED FOR THE
15 INFORMATION, YOU KNOW, TO CONFIRM THE COMP RATE SO
16 WE -- TO -- THAT WE CAN TRY THAT ISSUE AT A LATER
17 DATE.

18 BY COMMISSIONER BARDEN:

19 OKAY. AND DO Y'ALL HAVE AN OBJECTION TO ---

20 BY MR. BAYNE:

21 HOLDING THAT IN ABEYANCE? NO.

22 BY COMMISSIONER BARDEN:

23 OKAY. THE DATE OF THE INCIDENT, WHICH OCCURRED
24 WHICH WAS ELECTRICAL SHOCK OCCURRED ON MAY 22ND,
25 2013. ALL RIGHT. BUT I'M GOING TO PREEMPT MR.

1 BAYNE BEFORE I ASK IF THERE ARE ANY OBJECTIONS,
2 BECAUSE HE DOES HAVE AN OBJECTION TO GOING FORWARD
3 TODAY. HE SITES FOR HIS OBJECTION THE FACT THAT
4 COMMISSIONER BECK HAD -- HELD A FORM 15 HEARING
5 WHEREIN THE DEFENDANTS WERE FOUND TO HAVE NOT
6 UNLAWFULLY STOPPED MR. WINFREY'S BENEFITS AFTER
7 THEIR INVESTIGATION OF THE CLAIM. IN THAT ORDER,
8 COMMISSIONER BECK MADE A FINDING THAT THE CLAIMANT
9 SUFFERED A MYOCARDIAL INFARCTION ON MAY 28TH, 2013.
10 THE DEFENDANTS BELIEVE AND CONTEND THAT IF I FIND A
11 DIFFERENT ACCIDENT DAY OR IF I FIND A DIFFERENT DATE
12 OTHER THAN THE MAY 28TH, 2013, THAT THAT IS
13 PROCEDURALLY PROBLEMATIC, THAT I SHOULD NOT HOLD
14 THIS HEARING TODAY IN THAT IF THAT -- IF THE APPEAL
15 WERE DROPPED, THE LAW OF THE CASE IS THE MAY 28TH,
16 2013, AND THE DEFENDANTS BELIEVE THAT THAT SHOWS
17 THAT THERE IS NO CAUSAL RELATIONSHIP BETWEEN THE
18 HEART ATTACK AND THE ACCIDENT OF OR THE INJURY OF
19 MAY 22ND, 2013, BECAUSE OF THE TIME GAP. THAT THAT
20 WOULD BE THE LAW OF THE CASE AND, THEREFORE, I WOULD
21 BE SITTING IN A PSEUDO APPELLATE CAPACITY AND THAT
22 IF I FOUND A DIFFERENT DATE OF A HEART ATTACK OR
23 SOME OTHER OCCURRENCE OF AN EVENT THAT I WOULD BE
24 SETTING ASIDE OR REPUDIATING THE ORDER OF ANOTHER
25 COMMISSIONER, WHICH CERTAINLY I DO NOT WANT TO DO.

1 COMMISSIONER BECK DOES MENTION THE DATE, MAY 22ND,
2 2013. I HAVE LISTENED TO THE ARGUMENTS OF COUNSEL,
3 AND MR. BAYNE'S VERY ELOQUENT IN HIS STATEMENT OF
4 WHY I SHOULD NOT GO FORWARD TODAY. BUT CONSIDERING
5 THE FACT THAT THOSE TWO DATES ARE MENTIONED IN THE
6 ORDER, I DO BELIEVE THAT I MAY AND I'M CERTAINLY
7 HOPEFUL THAT I HAVE ENOUGH PROCEDURAL WIGGLE ROOM
8 TODAY TO GO FORWARD. IT MAY BE THAT -- AND I GUESS
9 IT'S THAT ALL THIS WILL HAVE TO COME OUT THROUGH THE
10 APPELLATE PROCESS, AND OF COURSE THINGS ARE WHAT
11 THEY ARE AND THAT -- AND ONCE I SIGN AN ORDER, IT
12 CERTAINLY WON'T BE WITHIN MY PROVENCE TO DETERMINE
13 WHETHER OR NOT I HAVE HELD A HEARING APPROPRIATELY
14 AND LAWFULLY, BUT THAT WILL ALL HAVE TO BE
15 DETERMINED. SO I CERTAINLY HAVE CONSIDERED YOUR
16 ARGUMENTS. THEY WERE CERTAINLY WELL SPOKEN, BUT I
17 AM GOING TO GO FORWARD TODAY AND TO ADJUDICATE THIS
18 CLAIM THAT HAS BEEN ASSIGNED TO ME. MR. BAYNE, ALSO
19 ON BEHALF OF HIS CLIENTS, REQUESTED THAT I LEAVE THE
20 RECORD OPEN, WHICH I ORDINARILY DO NOT DO, BUT
21 THROUGH NO FAULT OF HIS OWN, MR. BAYNE HAD SCHEDULED
22 THE DEPOSITION OF DR. LIDE, WHO -- WELL, NOT THROUGH
23 NO FAULT OF HIS OWN. HE SCHEDULED THE DEPOSITION OF
24 DR. LIDE, AND THEN DR. LIDE THROUGH NO FAULT OF MR.
25 BAYNE'S NOR HIS CLIENTS, DR. LIDE CANCELLED THAT

1 DEPOSITION. SO AT THE REQUEST OF MR. BAYNE, I HAVE
2 AGREED TO LEAVE THE RECORD OPEN. THAT DEPOSITION IS
3 GOING TO BE HELD LATER IN THE MONTH, SO I CANNOT
4 MAKE A DECISION UNTIL I GET THAT DEPOSITION, BUT I
5 CERTAINLY TRUST THAT DEPOSITION TRANSCRIPT WILL BE
6 EXPEDITED, AND I WILL MAKE A DECISION AS SOON AS I
7 FINISH REVIEWING THAT DEPOSITION.

8 ARE THERE ANY FURTHER OBJECTIONS TO APAs,
9 JURISDICTION, VENUE, OR ANY OTHER ITEMS?

10 BY MR. MCDANIEL:

11 NONE FROM THE CLAIMANT, COMMISSIONER.

12 BY MR. BAYNE:

13 NONE FROM THE DEFENDANT.

14 BY COMMISSIONER BARDEN:

15 THANK YOU. WITHOUT FURTHER OBJECTION AND, MR.
16 BAYNE, YOU OBVIOUSLY HAVE A RUNNING OBJECT TO THIS
17 HEARING STRICTLY, YOU KNOW, SIMPLY EVEN BEING HELD,
18 BUT YOU HAVE A -- OBVIOUSLY YOUR OBJECTION IS
19 PRESERVED FOR THE RECORD. WITHOUT FURTHER OBJECTION
20 THE COMMISSION FILE BECOMES A PART OF THE RECORD
21 WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
22 UNSTIPULATED MEDICAL REPORTS.

23 PRIOR TO GOING ON THE RECORD, WE HELD A PRE-
24 HEARING CONFERENCE. IT IS THE POSITION OF THE
25 CLAIMANT THAT NOT ONLY DID HE INJURE HIS NECK AND

1 HIS LEFT SHOULDER AND ARM, WHICH ARE ADMITTED BODY
2 PARTS, THAT HE ALSO SUSTAINED A MYOCARDIAL
3 INFARCTION FROM THE SHOCK, WHICH ULTIMATELY RESULTED
4 IN V.S.D. OR A HOLE IN HIS HEART. HE ALSO CONTENDS
5 THAT HE SUFFERED A HEAD AND POSSIBLY A BRAIN INJURY,
6 BUT BECAUSE THE FOCUS OF HIS TREATMENT HAS BEEN JUST
7 ABOUT EXCLUSIVELY ON THE HEART, HIS HEAD AND HIS --
8 AND POSSIBLE BRAIN INJURY HAVE NOT BEEN EXPLORED OR
9 PROPERLY AND THOROUGHLY EVALUATED. SO HE SEEKS A
10 FINDING OF COMPENSABILITY OF NOT ONLY THE NECK AND
11 THE LEFT SHOULDER, WHICH THE DEFENDANTS ADMIT, AND
12 THOSE ARE THE ONLY ADMITTED BODY PARTS, I WANT TO
13 EMPHASIZE THAT, THE NECK AND THE SHOULDER. BUT HE
14 ALSO BELIEVES AND CONTENDS AND WOULD CONTEND THAT
15 THE MEDICAL EVIDENCE SUPPORTS HIS FINDING BY MORE
16 THAN A GREATER WEIGHT OF THE EVIDENCE STANDARD, BUT
17 HE BUT AT LEAST MEETS THAT STANDARD, AND HE ALSO
18 INJURED HIS HEART AND HIS HEAD. HE SEEKS TEMPORARY
19 TOTAL DISABILITY BENEFITS FROM SEPTEMBER 15TH, 2013,
20 TO THE PRESENT AND CONTINUING. HE SEEKS
21 REIMBURSEMENT FOR THOSE EXPENSES HE'S INCURRED THUS
22 FAR WITH REGARD TO THE EVALUATION AND TREATMENT OF
23 HIS INJURED BODY PARTS. HE SEEKS AN ORDER REQUIRING
24 THE DEFENDANTS TO PROVIDE TREATMENT WITH DR. TRAVIS,
25 WHO IS HIS TREATING CARDIOVASCULAR SURGEON, AS WELL

1 AS DR. LIDE, HIS CARDIOLOGIST. DOCTORS TRAVIS AND
2 LIDE WERE INITIALLY AUTHORIZED BEFORE BENEFITS WERE
3 DENIED. AND IF THIS CLAIM IS COMPENSABLE, THE
4 DEFENDANTS DO NOT -- AND OBVIOUSLY THE DEFENDANTS
5 BELIEVE THIS CLAIM IS NOT COMPENSABLE WITH REGARD TO
6 THE HEART AND BRAIN, BUT IF IT IS FOUND TO BE
7 COMPENSABLE, THE DEFENDANTS WOULD AGREE THAT DR.
8 TRAVIS AND DR. LIDE WOULD BE APPROPRIATE PROVIDERS
9 AND THAT THAT THEY ARE FAMILIAR WITH THE CLAIMANT'S
10 CONDITION AND THEY HAVE TREATED HIM AND THEY
11 INITIALLY WERE SELECTED BY THE DEFENDANTS. AS THE
12 CLAIMANT HAS NOT REACHED MAXIMUM MEDICAL
13 IMPROVEMENT, ANY DETERMINATION OF PERMANENCY WOULD
14 BE PREMATURE. THE CLAIMANT WOULD CONTEND THAT EVEN
15 IF HE HAD PRE-EXISTING HEART PROBLEMS THAT THEY WERE
16 AGGRAVATED SIGNIFICANTLY BY THE ELECTRICAL SHOCK,
17 WHICH CAUSED THE MYOCARDIAL INFARCTION, AND THEN THE
18 BURN CAUSED THE V.S.D. TOWARD HIS CONTENTION THAT
19 THIS IS A COMPENSABLE CLAIM, THE CLAIMANT WOULD
20 POINT TO MY ATTENTION THE FACT THAT THREE TREATING
21 PHYSICIANS HAVE ALL OPINED TO A REASONABLE DEGREE OF
22 MEDICAL CERTAINTY THAT THE CLAIMANT'S CONDITION IS
23 RELATED TO THE SHOCK OF MAY 22ND, 2013. AS FAR AS
24 THE DEFENDANTS' EXPERT, DR. FELDMAN, THE CLAIMANT
25 CONTENDS THAT THAT OPINION SHOULD NOT BE ACCORDED AS

1 MUCH WEIGHT IN THAT DR. FELDMAN NEVER SAW OR
2 EXAMINED THE CLAIMANT. THAT THE -- THAT DR. FELDMAN
3 IS A CARDIOLOGIST, AND THE ONLY CARDIOVASCULAR
4 SURGEON IN THIS CASE, DR. TRAVIS, DOES FIND THAT THE
5 CONDITION IS RELATED TO THE EMPLOYMENT. DR. FELDMAN
6 BY CONTRAST IS A CARDIOLOGIST. AND FINALLY THE
7 CLAIMANT WOULD POINT TO MY ATTENTION THE FACT THAT
8 DR. FELDMAN WAS ONLY ASKED IF THE V.S.D. WAS CAUSED
9 BY THE SHOCK AND NOT THE MYOCARDIAL INFARCTION. SO
10 THE CLAIMANT BELIEVES THAT DR. FELDMAN'S OPINION
11 SHOULD BE VIEWED WITH THOSE DEFICIENCIES. AND EVEN
12 IF DR. FELDMAN'S OPINION IS NOT VIEWED WITH ANY --
13 AS FLAWED OR FAULTY OR WITH ANY DEFICIENCIES, THE
14 CLAIMANT WOULD CONTEND THE FACT THAT DR. FELDMAN,
15 ACCORDING TO THE CLAIMANT'S INTERPRETATION, SAYS HE
16 DOES ADMIT THAT THE SHOCK COULD HAVE CAUSED THE
17 CLAIMANT'S CONDITION.

18 CONVERSELY, IT IS THE POSITION OF THE
19 DEFENDANTS THAT EXCEPT FOR THE NECK AND THE
20 SHOULDER, BENEFITS UNDER THE ACT SHOULD BE DENIED.
21 THE DEFENDANTS DISPUTE THAT THERE IS ANY CREDIBLE
22 MEDICAL EVIDENCE WHICH ESTABLISHES A RELATIONSHIP
23 BETWEEN THE SHOCK OF MAY 22ND, 2013, AND ANY HEART
24 OR BRAIN INJURY. THE DEFENDANTS POINT TO MY
25 ATTENTION THE OPINION OF DR. FELDMAN WHO THE

1 DEFENDANTS BELIEVE OUGHT TO BE GIVEN THE GREATEST
2 WEIGHT OF ALL THE OPINIONS IN THAT -- THAT THERE WAS
3 A SIGNIFICANT TIME GAP BETWEEN THE MAY 22ND, 2003,
4 INJURY AND THE HEART ATTACK. AND AGAIN THE
5 DEFENDANTS WOULD POINT TO MY ATTENTION THAT
6 COMMISSIONER BECK MADE A SPECIFIC FINDING THAT THERE
7 WAS A MYOCARDIAL INFARCTION ON THE 28TH, BUT EVEN
8 NOT WITHSTANDING THAT FINDING THAT COMMISSIONER BECK
9 MADE, JUST THE MEDICAL EVIDENCE ALONE DOES NOT
10 ESTABLISH A SUFFICIENT LINK OR CAUSAL NEXUS BETWEEN
11 THE SHOCK AND THE MYOCARDIAL INFARCTION. THE
12 DEFENDANTS BELIEVE THAT THERE WAS NO CHEST PAIN
13 UNTIL THE CLAIMANT WENT TO THE HOSPITAL ON THE 28TH.
14 AND OF COURSE THE DEFENDANTS CONTEND THAT THE MAIN
15 ISSUE IS WHAT CAUSED THE PLAQUE RUPTURE, WHICH
16 ULTIMATELY CAUSED THE HEART ATTACK. THE DEFENDANTS
17 BELIEVE THAT IT WAS NOT A SHOCK THAT JUST CAUSED A
18 HEART ATTACK. IT WAS THE CLAIMANT'S PLAQUE, HIS
19 DISEASED ARTERIES, WHICH THE DEFENDANTS BELIEVE
20 BECAUSE OF THE TIME GAP THERE CANNOT -- IT CANNOT BE
21 SHOWN THAT THERE WAS AN AGGRAVATION OF THE
22 CLAIMANT'S PRE-EXISTING CONDITION. THAT THE
23 CLAIMANT HAS SEVERE VESSEL DISEASE IN I BELIEVE
24 THREE OF HIS CORONARY VESSELS. SO THE DEFENDANTS
25 BELIEVE THAT THERE WAS A PLAQUE BUILD UP WHICH

1 ULTIMATELY RUPTURED, WHICH IS JUST COINCIDENTAL WITH
2 THE TIME -- WITH THE FACT THAT THERE WAS A SHOCK
3 INCIDENT OR INJURY SIX DAYS PRIOR, AND SO THAT THERE
4 -- THE TIME GAP ALONE AND PER THE OPINION OF DR.
5 FELDMAN IS REASON ENOUGH AND CLEAR AND CONVINCING TO
6 THEM THAT BENEFITS UNDER THE ACT SHOULD BE DENIED,
7 BECAUSE IT CANNOT BE STATED WITH A REASONABLE DEGREE
8 OF MEDICAL CERTAINTY WHEN THE PLAQUE DISRUPTION
9 OCCURRED, AND IT IS THE PLAQUE DISRUPTION WHICH
10 CAUSED THE MYOCARDIAL INFARCTION, WHICH IN TURN
11 CAUSED THE V.S.D.

12 ALL RIGHT. Y'ALL SAID IT FOR AN HOUR, AND YOU
13 SAID IT A LOT BETTER THAN I JUST DID, BUT IF YOU'RE
14 SATISFIED WITH THAT SUMMARY, UNLESS I'VE
15 MISCHARACTERIZED OR MISSTATED ANYTHING, AGAIN, I
16 HAVE NOT -- Y'ALL, I DON'T GET THESE DOCUMENTS UNTIL
17 THE VERY TIME OF THE HEARING. SO I AM -- I HAVEN'T
18 READ THEM. SO IF I'VE MISSTATED SOMETHING, I WANT
19 TO KNOW AND WILL CORRECT IT ON THE RECORD RIGHT NOW.
20 I STARTED WITH YOU AS YOU'RE THE MOVING PARTY,
21 UNLESS YOU'RE SATISFIED WITH THAT SUMMARY, SIR.

22 BY MR. MCDANIEL:

23 COMMISSIONER, I NEVER WAS -- CAN I JUST BRIEFLY
24 PUT ---

25 BY COMMISSIONER BARDEN:

1 YES.

2 BY MR. MCDANIEL:

3 --- MY POSITION ON THE RECORD IN REFERENCE TO
4 THE -- THAT YOU CANNOT GO FORWARD POSITION THAT
5 THEY'RE TAKING?

6 BY COMMISSIONER BARDEN:

7 I GUESS I DID NOT DO THAT ON YOUR BEHALF SO I -
8 - YOU CERTAINLY MAY.

9 BY MR. MCDANIEL:

10 RIGHT. AND I JUST WANT TO JUST FOR -- FOR THE
11 RECORD, NUMBER ONE, THAT WAS NOT AN ISSUE THAT WAS
12 BEFORE COMMISSIONER BECK. NUMBER TWO, THAT ---

13 BY COMMISSIONER BARDEN:

14 WHEN YOU SAY "THAT," YOU MEAN THE DATE?

15 BY MR. MCDANIEL:

16 THE -- THE DATE ---

17 BY COMMISSIONER BARDEN:

18 OKAY.

19 BY MR. MCDANIEL:

20 --- THAT HE REFERRED TO ON THE 28TH, NUMBER
21 ONE. NUMBER TWO, THAT IS NOT THE LAW OF THE CASE.
22 THEIR POSITION IS THAT IT'S THE LAW OF THE CASE.
23 THAT IS ON APPEAL. THAT ISSUE HAS NOT BEEN FOUND TO
24 BE A FINAL FINDING BY THE -- THE ALL THE -- ALL THE
25 APPELLATE PANEL THAT MAY LOOK AT THAT, THE APPELLATE

1 PANEL OF THE COMMISSION, COURT OF APPEALS, SUPREME
2 COURT. THIRD, AND -- AND MORE IMPORTANTLY IS ~~THAT~~
3 COMMISSIONER BECK MADE A SPECIFIC FINDING, A FACT
4 AND CONCLUSION OF LAW. ANY CONCLUSION OF LAW --
5 NUMBER FIVE, HE SPECIFICALLY STATED, "SPECIFICALLY,"
6 COMMA, "THE CLAIMANT HAS REQUESTED A HEARING ON THE
7 MERITS OF WHETHER CLAIMANT SUSTAINED A COMPENSABLE
8 INJURY BY ACCIDENT AS IN -- AND IS ENTITLED TO
9 BENEFITS BY OPERATION OF FORM 50 EMPLOYEES REQUEST
10 FOR HEARING FILED ON OCTOBER 21ST, 2013. THEREFORE,
11 THE QUESTION OF WHETHER THE CLAIMANT SUSTAINED A
12 COMPENSABLE INJURY BY ACCIDENT IS ENTITLED TO -- AND
13 IS ENTITLED TO BENEFITS UNDER THE ACT WILL BE
14 DECIDED BY THE COMMISSION AT THE HEARING SET
15 PURSUANT TO THE CLAIMANT'S FORM 50 REQUEST FOR
16 HEARING." THEN IN HIS ORDER HE FURTHER FOUND, "IT
17 IS FURTHER ORDERED THAT ALL OTHER ISSUES AND
18 CONTENTIONS SPECIFICALLY INCLUDING THE QUESTION OF
19 WHETHER CLAIMANT SUSTAINED AN INJURY BY ACCIDENT
20 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT
21 WITH DEFENDANTS RESULTING ON COMPENSABLE DISABILITY
22 IS PRESERVED FOR ADJUDICATION AT THE HEARING SET
23 PURSUANT TO THE CLAIMANT'S OCTOBER 21ST, 2013, FORM
24 50 EMPLOYEE'S REQUEST FOR HEARING." I THINK IT'S
25 VERY CLEAR FROM COMMISSIONER BECK'S ORDER THAT HE

1 WAS IN NO WAY TRYING TO MAKE A DETERMINATION AT THAT
2 HEARING AS TO WHETHER OR NOT BASED ON THE FACTS AS
3 TO WHETHER OR NOT THOSE FACTS WOULD SUBSTANTIATE
4 AFTER THEY WERE DEVELOPED AS TO WHETHER OR NOT
5 CLARENCE SUSTAINED A COMPENSABLE INJURY BY ACCIDENT.
6 I THINK HE MAKES IT VERY CLEAR. I WOULD JUST ADD
7 THAT. THE OTHER THING IS IN REFERENCE TO DR. HARRY
8 FELDMAN, THERE ARE TWO WAYS THAT AN EXPERT'S OPINION
9 MAY BE SUBMITTED INTO EVIDENCE. ONE IS BASED ON
10 THEIR PERSONAL KNOWLEDGE. AS -- AS YOU
11 APPROPRIATELY STATED, COMMISSIONER, DR. FELDMAN HAS
12 NOT REVIEWED, HAS NOT EVALUATED, HAS NOT ANY WAY
13 SEEN NOR ACTUALLY SEEN THE NOT ONLY THE PICTURES BUT
14 HE HAS NOT EVALUATED OR HAD ANY PHYSICAL CONTACT OR
15 EVALUATION OF -- OF MR. WINFREY. HIS -- HE HAS
16 ABSOLUTELY NO PERSONAL KNOWLEDGE. HE DID A RECORDS
17 REVIEW. THE SECOND WAY AN EXPERT OPINIONS MAY BE
18 SUBMITTED INTO EVIDENCE IS BASED ON A PROPERLY
19 PHRASED HYPOTHETICAL QUESTION. THERE IS NO EVIDENCE
20 WHEN YOU REVIEW THIS TRANSCRIPT THAT OF ANY PROPERLY
21 PHASED HYPOTHETICAL QUESTION BEING PRESENTED TO HIM
22 AND, THEREFORE, I BELIEVE THAT HIS EVIDENCE --
23 HOWEVER, FIRST TIME FOR SIMPLICITY SAKE I'M GOING TO
24 PLACE THAT ON THE RECORD, BUT AS I STATED BEFORE, WE
25 WANT TO MOVE FORWARD, AND SO I WOULD ASK YOU TO GIVE

1 IT SUCH WEIGHT AS YOU -- YOU'VE ALREADY PREVIOUSLY
2 STATED TO GIVE IT. HOWEVER, I BELIEVE IT'S ENTITLED
3 TO NO WEIGHT BECAUSE THERE'S NO EVIDENCE THAT ~~HE~~ HAS
4 ANY PERSONAL KNOWLEDGE OF MR. WINFREY AND HIS
5 CONDITION, NOR IS THERE ANY EVIDENCE OF A PROPERLY
6 PHRASED HYPOTHETICAL QUESTION, HOWEVER, I JUST --
7 THAT'S IT. AND WE'RE READY TO MOVE FORWARD.

8 BY COMMISSIONER BARDEN:

9 ALL RIGHT. MR. BAYNE, I'M GOING TO ALLOW YOU
10 TO RESPOND, SIR, IF WANT TO.

11 BY MR. BAYNE:

12 THANK YOU, COMMISSIONER. AS FAR AS THE -- THE
13 PROCEDURAL ASPECT OF THE CASE HERE, WE DON'T
14 DISAGREE THAT COMMISSIONER BECK IN HIS DECISION AND
15 ORDER INDICATED THAT COMPENSABILITY WILL BE
16 DETERMINED AT A LATER DATE AND INDICATED THAT THERE
17 WOULD BE A HEARING PURSUANT TO THE FORM 50 FILED BY
18 MR. WINFREY AND MR. MCDANIEL. ALL WE'RE POINTING
19 OUT IN RELATION TO COMMISSIONER BECK'S ORDER AND THE
20 PROCEDURAL ASPECT HERE TODAY IS THAT HE HAS MADE A
21 FINDING OF FACT THAT THE HEART ATTACK, THE
22 MYOCARDIAL INFARCTION, DID NOT OCCUR UNTIL MAY 28TH,
23 2013. THAT SPECIFIC FACT DOES NOT NECESSARILY
24 INDICATE CAUSATION OR DISPROVE CAUSATION, BUT IT IS
25 SOMETHING THAT IS THE LAW OF THE CASE AND THAT IS ON

1 APPEAL AT THIS MOMENT. OUR POSITION IN THE PRE-
2 HEARING AND CONTINUING IS THAT THAT DATE CANNOT BE
3 MODIFIED BY A SUBSEQUENT HEARING ONLY BY THE
4 APPELLATE PANEL ON APPEAL THAT MR. MCDANIEL HAS
5 FILED. SO THAT IS OUR PROCEDURAL APPEAL TO IT. WE
6 DON'T DISAGREE THAT HE INDICATED THAT THAT A
7 COMMISSIONER AT A LATER DATE WOULD DETERMINE
8 COMPENSABILITY AND THAT WE WOULD HAVE THIS HEARING.
9 THAT'S NOT AT -- AT ISSUE. RELATED TO DR.
10 FELDMAN, HE IS A CARDIOLOGIST. HE'S QUALIFIED TO
11 GIVE AN EXPERT OPINION. IN HIS DEPOSITION, HE WAS
12 ASKED HYPOTHETICAL QUESTIONS RELATED TO MR.
13 WINFREY'S CONDITION. FURTHER, COMMISSIONER, WHILE
14 HE WAS ASKED SPECIFICALLY TO SPEAK ON THE V.S.D.,
15 HIS OPINION AS WELL AS DR. TRAVIS'S AND I BELIEVE
16 DR. LIDE'S WILL INDICATE THAT THE V.S.D. WAS CAUSED
17 BY A MYOCARDIAL INFARCTION THAT WAS CAUSED BY A
18 PLAQUE RUPTURE. SO INDIRECTLY DR. FELDMAN WAS ASKED
19 TO SPEAK AS TO WHETHER OR NOT THE PLAQUE RUPTURE WAS
20 CAUSED BY AN ELECTRICAL SHOCK, WHICH THEN TRIGGERED
21 THE CHAIN OF EVENTS THAT LED US HERE TODAY AND LED
22 MR. WINFREY UNFORTUNATELY TO HAVE TO HAVE AN OPEN
23 HEART SURGERY. SO WHILE MR. -- AND WHAT DR.
24 FELDMAN'S OPINION OR IN HIS DEPOSITION, HE STATED,
25 "I WAS ASKED TO SPEAK ON THE V.S.D.," IMPLICITLY HE

1 IS REFERRING TO THE FACT THAT HE WAS ASKED TO **SPEAK**
2 ABOUT WHAT CAUSED THE V.S.D., AND WHAT CAUSED **THE**
3 V.S.D. WAS A MYOCARDIAL INFARCTION, AND WHAT **CAUSED**
4 THE MYOCARDIAL INFARCTION WAS THE PLAQUE RUPTURE,
5 AND WHAT CAUSED THE PLAQUE RUPTURE IS WHY WE'RE HERE
6 TODAY. WETHER OR NOT IT WAS CAUSED BY ELECTRICAL
7 SHOCK OR NOT IS SOMETHING THAT YOU'RE GOING TO HAVE
8 TO DETERMINE, AND IF IT WAS IT'S COMPENSABLE, IF IT
9 WAS NOT THEN IT IS NOT COMPENSABLE, AND THAT IS OUR
10 POSITION AT THIS HEARING.

11 BY COMMISSIONER BARDEN:

12 OKAY. THANK YOU, GENTLEMEN. ANYTHING ELSE
13 BEFORE WE HEAR FROM MR. WINFREY?

14 BY MR. BAYNE:

15 NOTHING FROM ME, YOUR HONOR.

16 BY COMMISSIONER BARDEN:

17 ALL RIGHT, SIR. DO YOU NEED ANY WATER OR
18 ANYTHING?

19 BY MR. WINFREY:

20 I'M FINE. THANK YOU.

21 BY COMMISSIONER BARDEN:

22 YOU SURE? ALL RIGHT. WILL YOU RAISE YOUR
23 RIGHT HAND, PLEASE. DO YOU SWEAR OR AFFIRM THE
24 TESTIMONY YOU'RE ABOUT GIVE IN THIS PROCEEDING IS
25 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE

1 TRUTH?

2 BY MR. WINFREY:

3 I DO.

4 CLARENCE WINFREY

5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 CLARENCE P. WINFREY, JUNIOR.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. THANK YOU. AND I KNOW IT'S

12 DIFFICULT TO SPEAK UP, BUT YOUR VOICE HAS TO REACH

13 OVER TO THOSE GENTLEMEN OVER THERE AND THE PEOPLE IN

14 THE BACK AS WELL, AS WELL AS OUR COURT REPORTER AND

15 ME, SO JUST DO THE BEST YOU CAN.

16 BY THE WITNESS:

17 OKAY.

18 BY COMMISSIONER BARDEN:

19 AND IF WE NEED TO BREAK; YOU JUST LET ME KNOW.

20 OKAY?

21 BY THE WITNESS:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 MR. MCDANIEL.

25 DIRECT EXAMINATION BY MR. MCDANIEL:

1 Q. CLARENCE, IS -- IF YOU CAN -- IF -- IF IT'S ALL
2 RIGHT, CAN YOU DIRECT YOUR COMMENTS TO COMMISSIONER
3 BARDEN IF I SIT OVER HERE AND JUST LIKE WHISPER IN
4 YOUR LEFT EAR?

5 A. YEAH.

6 Q. ALL RIGHT. SO I'M GOING TO GO OVER HERE AND JUST
7 LET YOU -- YOU AND COMMISSIONER BARDEN ---

8 BY COMMISSIONER BARDEN:

9 OR IF YOU WANT TO SIT HERE, MR. MCDANIEL,
10 (INDICATING) AND PUT YOUR STUFF THERE AND YOU CAN
11 SIT DOWN. I ---

12 BY MR. MCDANIEL:

13 THAT'S ---

14 BY COMMISSIONER BARDEN:

15 --- THAT'S WHAT ATTORNEYS DO, EITHER STAND OR
16 SIT THERE.

17 BY MR. MCDANIEL:

18 THANK YOU.

19 BY COMMISSIONER BARDEN:

20 AND I'M FINE WITH THAT.

21 BY MR. MCDANIEL:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 JUST SO THAT HE ISN'T GOING TO BE HEARING YOU
25 OVER THERE AND THEN LOOKING AT ME, THAT MIGHT BE A

1 LITTLE HARD. ALL RIGHT.

2 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

3 Q. CLARENCE, I'M GOING TO DO JUST A LITTLE BIT OF
4 BACKGROUND AND -- AND HOW OLD ARE YOU?

5 A. FIFTY-ONE.

6 Q. FIFTY-ONE. AND I BELIEVE YOU'RE DIVORCED AND ~~HAVE~~
7 ONE CHILD WHO'S OVER THE AGE OF 18; IS THAT CORRECT?

8 A. YEAH.

9 Q. ALL RIGHT. AND YOU'VE BASICALLY -- YOUR BACKGROUND
10 EXPERIENCE IS IN MECHANICAL AND IN MAINTENANCE WORK
11 AND IN ELECTRICAL?

12 A. YEAH. YEAH.

13 Q. FOR THE LAST 15 YEARS LEADING UP TO THE TIME THAT
14 YOU WENT TO WORK FOR ARCHWAY SERVICES, WHAT -- WHAT
15 TYPES OF JOBS DID YOU DO; WHAT -- WHAT AREA DID YOU
16 WORK IN?

17 A. I WAS THE MAINTENANCE MAN AT F.P. JOHNSON, A PLANT
18 IN CHAPIN; ROOF ELECTRIC; CAROLINA WINGS, I WAS
19 THEIR MAINTENANCE MAN BASICALLY DOING THE SAME THING
20 AS ARCHWAY. AND ---

21 BY COMMISSIONER BARDEN:

22 CAN YOU GENTLEMEN HEAR OKAY?

23 BY MR. BAYNE:

24 OKAY.

25 BY COMMISSIONER BARDEN:

1 YOU CAN? ALL RIGHT.

2 THE WITNESS RESUMES ANSWER:

3 A. AND I WORKED WITH STEVE SCHULMEISTER; HE WAS A
4 MASTER ELECTRICIAN.

5 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

6 Q. OKAY. ALL RIGHT. AND SO BASICALLY YOU DID
7 MAINTENANCE WORK BUT DID A LOT OF WORK IN THE
8 ELECTRICAL FIELD?

9 A. ELECTRICAL AND MAINTENANCE. YES, SIR.

10 Q. ALL RIGHT. AND ARCHWAY SERVICES, HOW LONG HAD YOU
11 BEEN WITH THEM BEFORE THIS ACCIDENT?

12 A. I'VE BEEN WITH THEM EIGHT, NINE MONTHS; I MIGHT BE
13 WRONG.

14 Q. ALL RIGHT. AND THEN -- AND SO WHAT -- WHAT WERE YOU
15 DOING, WHAT WAS YOUR JOB AT ARCHWAY SERVICES?

16 A. WE TOOK CARE OF ALL THE WAL-MART DELIS. WE JUST
17 TOOK OVER PUBLIX'S ABOUT TWO MONTHS PRIOR AND WORKED
18 ON ALL OF THEIR EQUIPMENT FOR LIKE THE ROTISSERIES
19 AND FRYERS AND THINGS LIKE THAT.

20 Q. LET ME ASK YOU THIS ON A GENERAL BASIS, WHAT LEVEL
21 OF CURRENT IS IT -- YOU WORKED ON COMMERCIAL
22 EQUIPMENT, ELECTRICAL EQUIPMENT AND -- AND ALL THAT
23 TYPE OF -- AND THAT ARE FOUND IN THE KITCHEN. TELL
24 ME WHAT THE GENERAL VOLTAGE IS OF THAT KIND OF
25 EQUIPMENT?

1 A. LIKE THE ROTISSERIE I WAS WORKING ON WAS HIGH
2 VOLTAGE. I DIDN'T LOOK TO SEE HOW MUCH EXACTLY IT
3 WAS, BUT IT HAD TO BE 240 OR HIGHER.

4 Q. AND BASICALLY, I KNOW IT'S -- IT'S ALWAYS HELPFUL TO
5 ME TO GET THIS EXPLAINED TO ME. HOW DOES -- YOU --
6 YOU HAVE TRUNK LINE FOR A BETTER TERM THAT COMES IN
7 TO -- TO A BUSINESS, AND THEN HOW DOES THAT FILTER
8 DOWN TO LIKE YOUR 220 OR YOUR 240 CURRENT OR YOUR
9 480?

10 A. YOU HAVE BARS ON THE BACK WHERE YOUR MAIN POWER
11 COMES IN, AND THAT'S WHERE YOU PUT YOUR BREAKERS,
12 AND IT DEPENDS ON THE AMP DRAW OF THE EQUIPMENT.
13 'CAUSE LIKE THAT ROTISSERIE THAT HURT ME, IT HAD
14 THREE BREAKERS FOR THAT ONE ROTISSERIE. I MEAN
15 THERE WAS ONE ON TOP, ONE ON BOTTOM. SO THERE ARE
16 THREE MORE FOR THE BOTTOM.

17 Q. AND SO BASICALLY, FOR EXAMPLE, THERE'S VOLTAGE EVEN
18 880 OR HIGHER THAT COMES INTO THE MAIN LINE?

19 A. OH, YES.

20 Q. AND THEN IT'S DISTRIBUTED OUT?

21 A. THAT'S CORRECT. THERE'S GREATER COMING IN.

22 Q. AND THEN -- THEN THAT -- THAT'S DISTRIBUTED ON OUT,
23 SO THIS -- THIS ROTISSERIE HAD AT LEAST THREE
24 BREAKERS. SO IT WAS AT LEAST 220 OR 240?

25 A. IT WAS AT 240. I MEAN, IT'S 240 OR ABOVE, YES.

1 Q. OH. OKAY. NOW, JUST TELL COMMISSIONER BARDEN WHAT
2 HAPPENED, YOU KNOW, WHAT TIME OF DAY AND YOU WERE
3 AND -- AND WHAT -- WHERE YOU WERE AND WHERE THE
4 ACCIDENT OCCURRED?

5 A. I WAS AT A PUBLIX, STORE 67 ON ROSEWOOD DRIVE. THEY
6 HAVE A ROTISSERIE STACKED ON TOP OF ROTISSERIE AND
7 SO I MADE -- I WENT THERE AND MADE ARRANGEMENTS
8 WHERE I COULD GET THERE AT 6:30 IN THE MORNING,
9 BECAUSE YOU ONLY GOT A LITTLE WALKWAY SO I COULD
10 PULL THE ROTISSERIES OUT. SO THE NEXT DAY I WENT,
11 AND I WAS THERE ABOUT 6:15. THE LADY MANAGER LET ME
12 IN, AND THERE WAS ONE GIRL BACK AT THE DELI. AND I
13 PULLED THE ROTISSERIES OUT. THE FRYERS ARE BEHIND
14 ME. I TOOK THE PANEL OFF AND SET IT ON THE BOTTOM
15 ROTISSERIE ON THE -- THE BOTTOM OF THE TOP
16 ROTISSERIE ON THE LITTLE LEDGE, AND I HAD MY HAND
17 LIKE THIS (INDICATING). I WAS TRACING WIRES OUT.

18 BY COMMISSIONER BARDEN:

19 SO YOU WERE HOLDING AND USING WIRES WITH YOUR
20 RIGHT, LEFT HAND?

21 BY THE WITNESS:

22 YEAH, TRACING WIRES WITH MY RIGHT.

23 BY COMMISSIONER BARDEN:

24 RIGHT HAND. OKAY.

25 BY THE WITNESS:

1 AND THEN ONE OF THE WIRE PRONGS WERE BROKE OFF
2 THE SWITCH, WHICH IS DOWN BY MY HAND.

3 BY COMMISSIONER BARDEN:

4 BY YOUR RIGHT HAND?

5 BY THE WITNESS:

6 WHICH I DID NOT SEE, AND I JUST LOOKED TO MAKE
7 SURE ALL THE WIRES WERE ATTACHED, BUT IT WAS JUST
8 FLOATING. AND WHEN I WAS MOVING THE WIRES, THAT
9 WIRE MOVED, AND I MEAN IT BLEW UP. I MEAN NOT NO
10 POW, IT WENT KABAM. AND THAT'S WHEN I SNATCHED BACK
11 REAL HARD, BUT I COULD FEEL IT FROM HERE
12 (INDICATING), MY NECK.

13 BY COMMISSIONER BARDEN:

14 SO YOU'RE USE -- YOU'RE INDICATING YOUR LEFT
15 ARM ALL THE WAY UP?

16 BY THE WITNESS:

17 YEAH, I GOT A SCAR RIGHT THERE.

18 BY MR. MCDANIEL:

19 COMMISSIONER, YOU -- YOU CAN STILL SEE THE SCAR
20 WHERE THE ---

21 BY COMMISSIONER BARDEN:

22 YOU CAN SIT DOWN. I'LL COME OVER TO YOU.
23 GENTLEMEN, IF Y'ALL WANT TO COME OVER AND LOOK AT
24 THE SCAR YOU'RE WELCOME TO. (COMMISSIONER VIEWS
25 SCAR) OKAY. ALL RIGHT. THANK YOU.

1 BY THE WITNESS:

2 AND THAT'S WHERE THE POWER WENT IT.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY THE WITNESS:

6 AND IT WENT UP MY ARM AND FROM MY EARS DOWN
7 THROUGH MY SHOULDER.

8 BY COMMISSIONER BARDEN:

9 IS THAT YOUR MIDDLE FINGER THE SCAR WAS ON?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 OKAY. SO IT WENT UP YOUR ARM INTO YOUR NECK?

14 BY THE WITNESS:

15 RIGHT THROUGH HERE AND RUN DOWN THROUGH HERE
16 (INDICATING).

17 BY COMMISSIONER BARDEN:

18 OKAY. AND YOU'RE INDICATING YOUR CHEST AND UP
19 INTO YOUR HEAD A LITTLE BIT?

20 BY THE WITNESS:

21 YEAH.

22 BY COMMISSIONER BARDEN:

23 ALL RIGHT.

24 BY THE WITNESS:

25 AND THAT'S HOW -- WHEN I CALLED BOBBY RUPPE AND

1 EXPLAINED TO HIM THEY GOT MORE PROBLEMS THAN A --
2 THE LIGHT THAT I WAS WORKING ON. THEY GOT WIRES
3 BUSTING OFF THE SWITCH. AND THAT'S WHAT HAPPENED AT
4 THAT PUBLIX. AND I PUT EVERYTHING BACK TOGETHER AND
5 -- WELL, FIRST I HAD TO GO OUTSIDE TO GET MY
6 COMPOSURE BACK. THEN I CALLED BOBBY RUPPE. THEN I
7 TOOK PICTURES OF THE WIRES AND THE SWITCHES AND ALL
8 OF THAT, AND I SENT THEM TO BOBBY.

9 BY MR. MCDANIEL:

10 COMMISSIONER, IF I -- I CAN STOP CLARENCE RIGHT
11 THERE JUST A MINUTE. LOOK AT THAT, IF YOU WILL LOOK
12 AT PAGE 78, BOTH OF US ---

13 BY COMMISSIONER BARDEN:

14 YOURS?

15 BY MR. MCDANIEL:

16 --- BOTH THE DEFENDANTS AND WE HAVE PUT IN MR.
17 RUPPE'S STATEMENT CONFIRMING MR. WINFREY'S TESTIMONY
18 ABOUT THAT -- THAT HE CALLED MR. RUPPE.

19 BY COMMISSIONER BARDEN:

20 OKAY.

21 BY MR. MCDANIEL:

22 PAGE 78.

23 BY COMMISSIONER BARDEN:

24 AND THAT'S R-U-P-P-E.

25 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

1 Q. AND THEN SO YOU CALLED?

2 A. I CALLED BOBBY AND TOLD HIM WE'RE HAVING MORE
3 PROBLEMS THAN THE LIGHT WITH THE WIRES WERE BROKEN
4 OFF THE SWITCH. I SENT HIM ALL THE PICTURES OF THE
5 WIRES AND THE WIRE BROKEN OFF. AND HE TOLD ME IF
6 THERE WAS NOTHING ELSE I COULD DO WITH THAT STORE TO
7 GO TO MY NEXT JOB, AND I WENT TO ---

8 Q. DID YOU TELL HIM ABOUT THE SHOCK?

9 A. OH, YEAH. I TOLD HIM I WAS HURT.

10 Q. OKAY.

11 A. I TOLD HIM I WAS HURT. I SAID, "I'VE NEVER BEEN HIT
12 THIS HARD BEFORE IN MY LIFE."

13 Q. OKAY.

14 A. AND THAT'S WHEN I WENT TO MY NEXT JOB, AND THAT WAS
15 I HAD TO DRIVE TO AIKEN, AND IT WAS GETTING WORSE,
16 AND WORSE, AND WORSE DURING THE DAY.

17 BY MR. MCDANIEL:

18 COMMISSIONER, IF YOU WILL LOOK AT PAGE 80.
19 THEY ACTUALLY HAVE GIVEN US A COPY, AND THEY HAD --
20 THEY SUBMITTED AND WHEN -- WHEN THEY SUBMITTED IT,
21 WE WERE ABLE TO OBTAIN A COPY, AND IT'S THE ACTUAL
22 DRIVER'S LOG SHOWING THAT HE WAS -- THE TIME HE WAS
23 AT PUBLIX AND WHAT HE'D LIKE ---

24 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

25 Q. WERE YOU ABLE -- CLARENCE, WERE YOU ABLE TO FINISH --

1 - AFTER THE ELECTRICAL SHOCK, YOU WENT OUTSIDE AND
2 CLEARED YOUR HEAD AND GOT -- GOT YOUR COMPOSURE AND
3 ALL THAT; HOW WERE YOU FEELING? WHERE WERE YOU HURT
4 AND ALL?

5 A. MY ARM AND NECK AND DOWN THROUGH HERE WAS
6 (INDICATING).

7 BY COMMISSIONER BARDEN:

8 YOUR CHEST?

9 BY THE WITNESS:

10 YES, AND IT WAS ---

11 BY COMMISSIONER BARDEN:

12 YOUR LEFT SIDE OF YOUR CHEST?

13 BY THE WITNESS:

14 YES, MA'AM.

15 BY COMMISSIONER BARDEN:

16 OKAY.

17 BY THE WITNESS:

18 AND THEN I'M SAYING THE NEXT DAY WHEN I GOT UP,
19 I WAS GOING TO GO TO WORK.

20 BY COMMISSIONER BARDEN:

21 YOUR SHOULDER AREA?

22 BY THE WITNESS:

23 YES.

24 BY COMMISSIONER BARDEN:

25 WHEN YOU ARE EXTENDING THAT -- WHEN YOU SAY

1 THAT IT'S DOWN ---

2 BY THE WITNESS:

3 MY -- RIGHT THROUGH HERE (INDICATING).

4 BY COMMISSIONER BARDEN:

5 HOW FAR DID IT EXTEND?

6 BY THE WITNESS:

7 RIGHT -- LEFT THROUGH HERE.

8 BY COMMISSIONER BARDEN:

9 THROUGH YOUR SHOULDER OR YOUR SHOULDER AREA?

10 BY THE WITNESS:

11 YEAH. AND THE NEXT MORNING WHEN I GOT UP, I

12 WAS JUST DRIPPING SWEAT. AND I TRIED TO WORK. I

13 WENT TO THE WAL-MART ON ---

14 BY COMMISSIONER BARDEN:

15 WHEN DID THE SWEATING OCCUR, THE NEXT MORNING?

16 BY THE WITNESS:

17 I MEAN, I WAS DRIPPING.

18 BY COMMISSIONER BARDEN:

19 OKAY.

20 BY THE WITNESS:

21 AND I WENT TO THREE SEVENTY-EIGHT, THE WAL-

22 MART, AND I CAN'T -- I THINK IT WAS EIGHT EIGHTY-ONE

23 OR SOMETHING LIKE THAT, EIGHT -- EIGHT ONE EIGHT. I

24 CAN'T REMEMBER THE NAME OF THE -- THE NUMBER.

25 BY COMMISSIONER BARDEN:

1 THAT'S OKAY.

2 BY THE WITNESS:

3 AND I WAS LAYING ON MY BACK 'CAUSE THAT'S ~~THE~~ -
4 - YOU KNOW WHAT I MEAN? IT HURT IF I STOOD UP ~~AND~~
5 THEN ON MY HEAD, SO I LAID DOWN. I HAD TO GO ~~TO~~
6 WHALEY'S TO GET SOME FUSES. I DROVE TO WHALEY'S ~~IS~~
7 DOWN THE ROAD, CAME BACK, PUT THE FUSES IN. ~~THE~~'S
8 WHEN I CALLED BOBBY RUPPE, AND I SAID, "MAN, I ~~CAN~~'T
9 DO IT. I'M SORRY." I EVEN APOLOGIZED TO PEOPLE ~~IN~~
10 THE DELI, BUT I WAS IN TOO MUCH PAIN. AND WHEN I
11 LEFT THAT WAL-MART, BOBBY HAD PEGGY DUNCAN CALL ~~ME~~.
12 SHE WORKS FOR THE COMPANY AND SAID THAT THEY ~~JUST~~
13 CALLED -- WAL-MART JUST CALLED AND SAID ALL THE
14 FRYERS ARE DOWN. AND I SAID, "WELL, PEGGY, I'M
15 SEVERELY HURT, BUT I WILL GO BACK 'CAUSE I JUST ~~LEFT~~
16 THERE." SO I WENT BACK AND THEY LOST POWER TO ~~ALL~~
17 THE FRYERS. THAT'S WHEN I CALLED BOBBY BACK AND
18 SAID "THEY LOST POWER, AND THEY NEED AN
19 ELECTRICIAN." AND I TOLD HIM "I CAN'T DO ~~NOTHING~~
20 ELSE. I'VE GOT TO GO HOME," AND THAT'S WHAT I ~~DID~~.

21 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

22 Q. AND THEN WHAT DID YOU DO BETWEEN THEN AND -- WE'RE
23 GOING TO TALK ABOUT THE 27TH IN JUST A MINUTE, ~~BUT~~
24 BETWEEN THAT -- THE DAY THAT YOU CALLED BOBBY AND
25 SAID "I CAN'T DO IT ANY MORE; I'M GOING HOME," DID

1 YOU -- WHAT DID YOU DO BETWEEN THEN AND WHEN YOU
2 FINALLY WENT TO I BELIEVE WE'RE GOING TO TALK ~~ABOUT~~
3 THE MINUTE CLINIC IN A SECOND?

4 A. YEAH, THAT WAS A MONDAY; THAT WAS A HOLIDAY.

5 Q. SO WHAT DID YOU DO -- SO OVER THE WEEKEND?

6 A. OH, I HAD -- I WENT BY WALGREENS AND BOUGHT MOTRIN
7 AND TYLENOL, YOU KNOW, ANYTHING TO WHAT I THOUGHT
8 WOULD HELP.

9 BY COMMISSIONER BARDEN:

10 SO YOU WERE EXPERIENCING PAIN ---

11 BY THE WITNESS:

12 BAD, SEVERE.

13 BY COMMISSIONER BARDEN:

14 OKAY.

15 BY THE WITNESS:

16 YEAH.

17 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

18 Q. AND IT WAS -- IT -- IT WAS IN THE SAME PLACE AS IT
19 WAS FROM THE -- FROM THE MINUTE OF THE SHOCK?

20 A. YES.

21 Q. IS THAT CORRECT?

22 A. YES, IT WAS MY ARM. IT WENT UP TO MY EAR, AND IT
23 DROPPED LIKE THAT (INDICATING). BUT I JUST ATE
24 MOTRIN AND TYLENOL AND THINGS LIKE THAT, IBUPROFEN.
25 I WAS TRYING TO GET THE PAIN TO GO AWAY, AND I JUST

1 -- I LAID IN BED. THEN MONDAY WAS A HOLIDAY, ~~AND~~ I
2 WENT TO THE MINI CLINIC AT THE C.V.S. ON LAKE ~~MURRAY~~
3 BOULEVARD, AND I SAT THERE FOR AN HOUR AND TWENTY
4 MINUTES. THE NURSE FINALLY CALLED ME IN, AND ~~SEE~~
5 GOES, "I CAN'T DO NOTHING FOR YOU. YOU'RE IN ~~TOO~~
6 MUCH PAIN." I MEAN, SHE COULD TELL BY JUST LOOKING
7 AT ME. AND I SAID, "WHY DID YOU LET ME SIT OUT
8 THERE FOR A HOUR AND TWENTY MINUTES?" SHE SAID SHE
9 CAN'T TALK AROUND OTHER PEOPLE, YOU KNOW WHAT I
10 MEAN, SO SHE HAD TO WAIT 'TIL IT WAS MY TURN TO CALL
11 ME IN. I CALLED BOB SMITH. HE'S PARTIAL OWNER OF
12 THIS COMPANY. I SAID, "BOB, Y'ALL GOT TO -- BOB
13 SMITH IS THE ONE WHO CAME HERE TO INTERVIEW ME;
14 HE'S IN GEORGIA. AND I SAID, "WE GOT TO DO
15 SOMETHING." I SAID, "I'M -- I'M -- I'M IN A LOT OF
16 PAIN. I'VE GOT TO GO TO THE DOCTOR." AND AT THE
17 C.V.S. CLINIC, THE LADY TOLD ME, THE NURSE, SAID
18 "YOU HAVE TO HAVE A DOCTOR. YOU NEED A DOCTOR,"
19 AND THAT'S WHEN I CALLED BOB SMITH WHEN I LEFT
20 THERE, AND I TOLD HIM, I SAID, "I MEAN, WHAT -- I
21 DON'T KNOW IF Y'ALL ARE GOING TO PAY THIS OUT OF
22 POCKET OR WHAT ARE Y'ALL GOING TO DO, BUT I GOT TO
23 GO TO THE DOCTOR." AND THEN THAT FOLLOWING MONDAY -
24 - I MEAN THAT TUESDAY, I WENT TO DR. GREENFIELD AT
25 URGENT CARE, AND SHE'S BASICALLY THE ONE THAT SAVED

1 MY LIFE.

2 Q. NOW, ALSO ON MONDAY THE 27TH, DID YOU -- WHAT KIND
3 OF A -- OF -- OF EQUIPMENT DID YOU HAVE TO
4 COMMUNICATE WITH BOBBY RUPPE? WHAT DID YOU USE TO
5 COMMUNICATE?

6 A. I HAD A COMPANY CELL PHONE, AND THEY FAX -- THEY
7 SENT ALL OF MY WORK ORDERS ON THE IPAD AND WENT BACK
8 AND FORTH.

9 Q. SO YOU HAD A COMPANY PHONE AND A COMPANY IPAD?

10 A. YES.

11 Q. SO THE COMMUNICATIONS YOU'RE TALKING ABOUT WITH MR.
12 RUPPE AND EVERYBODY ELSE WAS EITHER ON THAT COMPANY
13 PHONE OR THAT COMPANY IPAD?

14 A. RIGHT.

15 Q. OKAY. NOW, WHERE -- DO YOU STILL HAVE THOSE?

16 A. NO. THEY CAME AND GOT THE VAN I THINK THE FIRST
17 WEEK I WAS IN THE HOSPITAL.

18 Q. NOW, SO THE -- THE COMPANY PHONE ANE THE COMPANY
19 IPAD, THAT ---

20 A. THEY COME AND GOT IT, YEAH.

21 Q. OKAY. THAT'S FINE. AND BUT THE REASON I SAY THAT
22 IS THAT WE DO HAVE THE BENEFIT ON PAGE 79, YOU
23 ACTUALLY HAD COMMUNICATED VIA THE IPAD WITH MR.
24 RUPPE?

25 A. YEAH.

1 Q. ON THE 27TH?

2 A. YES. HE WANTED ME TO WRITE SOMETHING ABOUT WHAT
3 HAPPENED. AND I TOLD HIM BASICALLY I WAS TRACING
4 THE WIRE DOWN FROM THE LIGHTS, AND THE THING BLEW
5 UP. THE WIRE WAS BROKEN OFF THE SWITCH.

6 Q. OKAY.

7 A. AND ---

8 Q. OKAY. AND -- AND SO -- AND SO THE SERIES OF --
9 WE'VE LOOKED AT THESE BEFORE, CLARENCE, ON PAGE 79,
10 THIS SERIES OF COMMUNICATION BETWEEN YOU AND MR.
11 RUPPE. THAT'S -- THAT'S THE COMMUNICATIONS YOU HAD
12 THAT DAY ON THE 27TH?

13 A. I BELIEVE SO. YES.

14 Q. ALL RIGHT. NOW, THEN ON THE 20 -- SO TELL ME BASED
15 ON YOUR CONVERSATIONS WITH THE -- WHO WAS THE
16 GENTLEMAN FROM THE COMPANY THAT YOU TALKED TO?

17 A. FOR?

18 Q. OTHER -- NO -- THAN MR. RUPPE?

19 A. OH. BOB SMITH.

20 Q. ALL RIGHT. AND THEN YOU TALKED TO MR. RUPPE, AND
21 THEN WHAT DID THEY TELL YOU TO DO?

22 A. THE REASON I TALKED TO BOB SMITH WAS BECAUSE HE'S
23 THE ONE THAT GOT THE PUBLIX ACCOUNT. THAT WAS HIS
24 ACCOUNT, PUBLIX. AND HE'S A VERY NICE MAN, AND I
25 JUST TOLD HIM "WE GOT TO DO SOMETHING FOR ME. YOU

1 KNOW, WE GOT TO PUT THIS UNDER WORKMAN'S COMP, OR
2 Y'ALL GOING TO PAY FOR IT OUT OF CASH. LET ME ~~KNOW~~
3 SOMETHING, PLEASE, YOU KNOW WHAT I MEAN?" AND ~~SO~~
4 THE NEXT DAY THAT'S WHEN I WENT TO GREENFIELD. I --
5 I PAID HER FOR MY VISIT, CASH. SHE, DR. GREENFIELD,
6 I THINK TALKED TO PEGGY, AND THAT'S -- SHE GOT ~~THE~~
7 WORKMAN'S COMP INSTATED 'CAUSE THIS HAPPENED AT WORK
8 AND ---

9 BY MR. MCDANIEL:

10 COMMISSIONER, DR. GREENFIELD'S INITIAL REPORT
11 IS FOUND ON PAGE 66.

12 BY COMMISSIONER BARDEN:

13 THANK YOU.

14 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

15 Q. ALL RIGHT. TELL ME -- BASICALLY BETWEEN THE DATE OF
16 THE ELECTRICAL SHOCK AND -- AND WHEN YOU FINALLY
17 WENT TO THE MINUTE CLINIC AND THEN THE NEXT DAY,
18 WHAT WERE YOU HOPING WAS GOING TO HAPPEN WITH THIS
19- PAIN THAT YOU WERE HAVING IN THE LEFT HAND, ARM, AND
20 ALL THAT?

21 A. I THOUGHT THE IBUPROFEN, MOTRIN WAS GOING TO MAKE IT
22 GO AWAY, BUT LIKE I SAY EVERY DAY IT JUST GOT WORSE
23 AND WORSE, I MEAN, EXCRUCIATING.

24 Q. AND IT WAS ALL UP IN THROUGH YOUR HAND, ARM, LEFT --
25 -

1 A. ALL THE WAY UP.

2 Q. --- LEFT SHOULDER?

3 A. TO MY EAR.

4 Q. AND UP IN WHAT YOU'VE DESCRIBED IT ---

5 A. --- AND DOWN THROUGH HERE (INDICATING).

6 Q. OKAY. AND REFERRING TO THE FRONT PART OF YOUR
7 SHOULDER?

8 A. YEAH.

9 Q. OKAY. ALL RIGHT. NOW, TELL ME WHAT DR. GREENFIELD
10 DID FOR YOU, AND TELL ME ABOUT WHAT HAPPENED AFTER
11 THAT?

12 A. I WENT TO HER. I JUST WANTED SOME MUSCLE RELAXER,
13 AND I WAS GOING TO GO BACK TO WORK. AND A MATTER OF
14 FACT, I THINK SHE WROTE OUT A PRESCRIPTION FOR
15 MUSCLE RELAXER, FLEXERIL I THINK IT WAS. AND THEN
16 SHE PUT THIS LITTLE THING ON MY FINGER. IT MONITORS
17 I GUESS YOUR HEART BEAT. AND SHE SAID, "WHOA,
18 THERE'S SOMETHING WRONG." SHE SAID, "I THINK" - I
19 -- I CAN'T REMEMBER EXACTLY. IT WAS LIKE 112 OVER
20 SOMETHING, I CAN'T REMEMBER, BEATS PER MINUTE. IT'S
21 SUPPOSED TO BE 70 BEATS OR SOMETHING LIKE THAT, AND
22 IT WAS 112. AND THAT'S WHEN SHE DID THE WHERE YOU
23 LOOK WITH THE -- THEY PUT THIS GEL ON YOU, AND YOU
24 CAN LOOK, YOU KNOW, AND AT THE HEART. SHE SAID I
25 DONE BLEW A HOLE IN MY HEART, AND THAT'S WHEN SHE

1 STARTED FREAKING OUT, AND SHE SENT ME TO DASGUPTA AT
2 LEXINGTON. AND DASGUPTA, I MEAN I WAS RIGHT ACROSS
3 THE STREET FROM THE LEXINGTON HOSPITAL. HE GOT IN
4 AMBULANCE TO DRIVE ME FROM ACROSS -- THAT'S WHERE
5 DR. LIDE WAS WAITING ON ME. AND THAT'S WHEN I MET
6 DR. TRAVIS, WHICH IS A -- A -- A -- PREVENTATIVE --
7 GOOD PEOPLE.

8 Q. AND THEN YOU -- THEY IMMEDIATELY TOOK YOU INTO
9 SURGERY RIGHT AFTER THAT, AFTER THEY DID SOME
10 TESTING?

11 A. MY MEMORY'S NOT SO GREAT, BUT I REMEMBER MEETING DR.
12 LIDE. HE STUCK SOME STUFF INTO MY VEIN AND LOOK --
13 LOOKED AT MY HEART, AND THEN THEY SHAVED ME. AND I
14 THINK IT WAS THE NEXT MORNING I BELIEVE, I MIGHT BE
15 WRONG, THAT'S WHEN TRAVIS -- DR. TRAVIS, AND HE TOLD
16 ME THAT IT WAS A GOOD CHANCE I WOULDN'T BE COMING
17 BACK OUT OF SURGERY. SO THAT'S HOW ALL THAT WENT.

18 BY MR. MCDANIEL:

19 COMMISSIONER, YOU'LL FIND IT IN DR. TRAVIS'S
20 DEPOSITION, DR. TRAVIS SAID THAT WITH THE
21 VENTRICULAR SEPTAL DEFECT, THE HOLE IN HIS HEART,
22 BETWEEN -- THAT IT'S -- MANY TIMES PEOPLE DON'T LIVE
23 THROUGH THAT SURGERY, AND THAT CLARENCE WAS VERY
24 FORTUNATE TO HAVE LIVED THROUGH IT, AND THAT'S --
25 THAT'S IN HIS DEPOSITION SO...

1 BY COMMISSIONER BARDEN:

2 I'LL READ IT ALL.

3 BY MR. MCDANIEL:

4 I KNOW.

5 BY COMMISSIONER BARDEN:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

8 Q. AND SINCE THAT TIME, YOU'VE BEEN UNDER THE TREATMENT
9 OF DR. LIDE AND DR. TRAVIS?

10 A. TRAVIS WANTED ME TO COME BACK IN TEN MONTHS SO HE
11 CAN CHECK THE PATCH. AND I'VE BEEN SEEING DR. LIDE
12 UNTIL THIS -- ALL THIS HAPPENED, AND I DON'T HAVE NO
13 MONEY.

14 Q. HOW ARE YOU -- HOW -- HOW ARE ABLE TO PAY FOR YOUR
15 MEDICATIONS NOW THAT YOU ---

16 A. I WENT TO DR. LIDE THE LAST TIME AND I SAID, "WHAT
17 PILLS DO I -- IF I DON'T GET THESE PILLS, WILL I
18 DIE?" AND HE SAID, "MOST LIKELY." AND THAT'S WHEN I
19 SAID, "PLEASE GIVE ME WHAT I NEED TO EAT," AND HE
20 CUT IT DOWN TO FIVE PILLS. SO -- BUT I FOUND A
21 CHEAPER PLACE, WHICH WAS BI-LO GROCERY STORE, TO
22 HAVE THEM FILLED. AND IF IT WASN'T FOR FRIENDS
23 HELPING ME, I WOULDN'T BE ABLE TO AFFORD THEM.

24 Q. AND YOU'VE BEEN OUT OF WORK SINCE THEN?

25 A. YEAH.

1 Q. AND SO SINCE THEY'VE STOPPED BENEFITS YOU'VE HAD NO
2 MONEY COMING IN. DO YOU HAVE ANY OTHER SOURCE OF
3 INCOME?

4 A. FRIENDS HAVE BEEN HELPING ME; THAT'S IT.

5 Q. I BELIEVE ONE FRIEND UNDER THE DEALERSHIP EXTENDED A
6 LOAN; IS THAT RIGHT?

7 A. OH, YEAH. MR. WAYNER HELPED ME.

8 Q. AND THEN ALSO WE'VE NOW GOT YOU A -- A -- A LOAN?

9 A. YEAH. THE LOAN FOR THE -- AT HICKORY WHATEVER IT
10 WAS. AND MY LANDLORD, SHE BRINGS ME FOOD EVERY
11 NIGHT, JUST ABOUT EVERY NIGHT, TO MAKE SURE I'M
12 EATING.

13 Q. OKAY. LET'S TALK BRIEFLY ABOUT ONE OTHER THING. IT
14 -- IT'S -- IT'S IN HIS RECORD, BUT BASICALLY DR.
15 LIDE -- I MEAN EXCUSE ME -- DR. TRAVIS, WHO'S THE
16 CARDIOVASCULAR SURGEON, WHAT DID HE TELL YOU ABOUT
17 THAT HE FOUND IN -- IN YOUR HEART?

18 A. HE SAID HE HAS PICTURES AND VIDEO OF WHERE THE POWER
19 WENT IN ---

20 BY MR. BAYNE:

21 WE'LL OBJECT, YOUR HONOR. TO ANY ---

22 BY COMMISSIONER BARDEN:

23 SUSTAINED AS TO HEARSAY.

24 BY MR. BAYNE:

25 --- ANY REFERENCE OF PICTURES OR VIDEOS.

1 BY MR. MCDANIEL:

2 WELL, YOU KNOW.

3 BY COMMISSIONER BARDEN:

4 I'LL READ THE RECORDS, AND THEY'LL SPEAK FOR
5 THEMSELVES.

6 BY MR. MCDANIEL:

7 I KNOW YOU WILL. IT'S ---

8 BY MR. BAYNE:

9 THOSE HAVE NEVER BEEN PRODUCED, SO WE DON'T
10 HAVE ---

11 BY COMMISSIONER BARDEN:

12 OH, OKAY. WELL, I THOUGHT YOU WERE OBJECTING
13 TO HEARSAY, BUT YOU DON'T HAVE THOSE.

14 BY MR. BAYNE:

15 AND -- AND TO HEAR -- I MEAN IT'S HEARSAY AS
16 WELL.

17 BY COMMISSIONER BARDEN:

18 OKAY. ALL RIGHT.

19 BY MR. MCDANIEL:

20 WELL, THAT'S FINE, YOU KNOW.

21 BY COMMISSIONER BARDEN:

22 ALL RIGHT. GO AHEAD, MR. MCDANIEL.

23 BY MR. MCDANIEL:

24 THAT'S ALL RIGHT, COMMISSIONER. IT -- IT --
25 THE FACT THAT HE FOUND A CLEAR ENTRANCE AND EXIT

1 WOUND, HIS TESTIMONY, HIS BACKGROUND EXPERIENCE IS
2 ALL THE ---

3 BY COMMISSIONER BARDEN:

4 I WILL READ IT, SIR.

5 BY MR. MCDANIEL:

6 I KNOW YOU WILL, AND I -- I'M NOT GOING TO
7 BELABOR IT ANY LONGER. I -- AT THIS ---

8 BY COMMISSIONER BARDEN:

9 OKAY.

10 BY MR. MCDANIEL:

11 I HAVE NO FURTHER QUESTIONS.

12 BY COMMISSIONER BARDEN:

13 YES, SIR. THANK YOU. ALL RIGHT. MR. BAYNE.

14 BY MR. BAYNE:

15 THANK YOU, COMMISSIONER.

16 BY COMMISSIONER BARDEN:

17 AND YOU ARE FREE TO USE THE CHAIR OR STAND OVER
18 HERE AS WELL.

19 BY MR. BAYNE:

20 CERTAINLY.

21 BY COMMISSIONER BARDEN:

22 I THINK IT'D BE EASIER FOR HIM AS FAR AS
23 PROJECTING HIS VOICE TOO.

24 BY MR. BAYNE:

25 SURE.

1 BY THE WITNESS:

2 THANK YOU.

3 BY COMMISSIONER BARDEN:

4 YES, SIR. IF YOU WANT TO SIT YOU CAN. YOU
5 MIGHT WANT TO SPREAD YOUR STUFF OUT SO...

6 BY MR. BAYNE:

7 SURE. IT'LL MAKE IT EASIER. THANK YOU.

8 CROSS EXAMINATION BY MR. BAYNE:

9 Q. MR. WINFREY, HOW ARE YOU TODAY?

10 A. ALL RIGHT.

11 Q. I JUST WANT TO TALK A LITTLE BIT ABOUT SOME OF THE
12 STUFF YOU JUST TESTIFIED TO. YOU -- YOU TALKED
13 ABOUT THE WIRE, THE LOOSE WIRE HIT YOU ON THE LEFT
14 HAND; IS THAT CORRECT?

15 A. YEAH.

16 Q. AND THAT IS -- THAT'S WHAT YOU CONSIDER TO BE THE
17 ENTRANCE WOUND FOR ---

18 A. THAT'S WHAT ---

19 Q. --- THE ELECTRICAL SHOCK?

20 A. THAT'S WHAT DR. GREENFIELD TOLD ME. IT WENT IN HERE
21 (INDICATING). IT CAME THROUGH MY TOES, AND I WAS
22 TOLD THAT'S WHERE THE POWER TRIED TO GET OUT.

23 Q. OKAY. YOU DON'T HAVE AN EXIT WOUND ON YOUR TOES, DO
24 YOU?

25 A. NO. THEY'RE JUST NUMB.

1 Q. TO -- TO YOUR KNOWLEDGE, ARE THERE ANY EXIT WOUNDS
2 ANYWHERE IN YOUR BODY FROM THIS ELECTRICITY?

3 A. NOT THAT I KNOW OF.

4 Q. OKAY. YOU ALSO TALKED ABOUT AFTER THE ELECTRICAL
5 SHOCK, YOU WERE POINTING TO YOUR LEFT ARM, YOUR
6 SHOULDER, UP INTO YOUR NECK, AND I BELIEVE THE
7 COMMISSIONER WAS TRYING TO CLARIFY. YOU WEREN'T
8 EXPERIENCING ANY CHEST PAIN AT THAT TIME, WERE YOU?

9 A. WELL, THIS IS CHEST TO ME (INDICATING).

10 Q. OKAY. SO YOU WERE HAVING CHEST PAIN?

11 A. WELL, I MEAN, WHEN IT ORIGINALLY HAPPENED, AT THIS -
12 - ALL THIS HURT (INDICATING) HERE AND DOWN THROUGH
13 HERE.

14 Q. OKAY.

15 BY COMMISSIONER BARDEN:

16 SO WOULD YOU SAY, JUST SO THAT THE RECORD IS
17 CLEAR, WHEN YOU SAY SHOULDER I KNOW -- WELL, YOU'RE
18 POINTING BELOW ---

19 BY THE WITNESS:

20 YEAH. RIGHT -- RIGHT THROUGH IT -- AND THEN
21 DROPPED DOWN (INDICATING).

22 BY COMMISSIONER BARDEN:

23 SO YOU MEAN THE FRONT OF YOUR SHOULDER AND YOUR
24 ---

25 BY THE WITNESS:

1 YES.

2 BY COMMISSIONER BARDEN:

3 --- TOP OF YOUR SHOULDER?

4 BY THE WITNESS:

5 YES, MA'AM.

6 BY COMMISSIONER BARDEN:

7 ALL THE WAY UP TO YOUR NECK?

8 BY THE WITNESS:

9 YES, MA'AM.

10 BY COMMISSIONER BARDEN:

11 AND INTO YOUR HEAD?

12 BY THE WITNESS:

13 YES, MA'AM.

14 BY COMMISSIONER BARDEN:

15 OKAY.

16 CROSS EXAMINATION RESUMED BY MR. BAYNE:

17 Q. SO YOU WERE HAVING PAIN IMMEDIATELY AFTER THE SHOCK
18 IN YOUR CHEST; IS THAT RIGHT?

19 A. COMING DOWN, YEAH.

20 Q. OKAY. IN YOUR EMAIL, AND IT'S DEFENDANT'S 99, I
21 BELIEVE WE'VE ALREADY TALKED ABOUT IT. IT WAS A
22 CALL BETWEEN BOBBY RUPPE AND YOURSELF THAT YOU SENT
23 FROM THE IPAD. YOU STATED THAT ---

24 BY COMMISSIONER BARDEN:

25 THIS IS MAY 22ND?

1 BY MR. BAYNE:

2 MAY ---

3 BY COMMISSIONER BARDEN:

4 I MEAN 27TH?

5 BY MR. BAYNE:

6 MAY 27, 2013.

7 BY COMMISSIONER BARDEN:

8 THANK YOU. I GOT IT. THANK YOU.

9 CROSS EXAMINATION RESUMED BY MR. BAYNE:

10 Q. YOU STATED THAT YOU GOT HIT BY POWER, JERKED MY NECK
11 TO GET AWAY FROM THE ROTISserie; DO YOU REMEMBER
12 SAYING THAT?

13 A. OH, YEAH. UH-HUH. IF IT WASN'T FOR THE FRYER, I'D
14 A BEEN ON MY BACK.

15 Q. DID YOU MAKE ANY MENTION AT THAT TIME OF PAIN IN
16 YOUR LEFT ARM OR IN YOUR CHEST?

17 A. I TOLD BOBBY "I'VE NEVER BEEN HIT THIS HARD BEFORE
18 IN MY LIFE."

19 Q. OKAY. DID YOU ASK -- DID YOU TELL HIM THAT YOU WERE
20 HAVING PAIN IN YOUR LEFT ARM OR IN YOUR CHEST AT
21 THAT TIME?

22 A. I SENT HIM PICTURES.

23 Q. OKAY. AGAIN MY -- MY QUESTION WAS DID YOU TELL
24 BOBBY THAT YOU WERE HAVING PAIN? DID YOU TELL BOBBY
25 YOU WERE HAVING PAIN IN EITHER YOUR LEFT ARM OR YOUR

1 CHEST AT THAT TIME?

2 A. I CAN'T SAY EXACTLY 'CAUSE I DON'T REALLY REMEMBER.

3 Q. OKAY.

4 A. BUT I THINK I DID TELL HIM IT HIT ME IN THE FINGER,
5 AND I BELIEVE I DID, BUT I MIGHT BE WRONG.

6 BY MR. BAYNE:

7 COMMISSIONER, I WOULD POINT YOU ALSO TO
8 DEFENDANTS' NUMBER 98, WHICH IS THE LETTER FROM
9 BOBBY RUPPE, THAT INDICATES ONLY PAIN IN HIS NECK AT
10 THE TIME.

11 CROSS EXAMINATION RESUMED BY MR. BAYNE:

12 Q. I WANT TO TALK ABOUT ALSO AFTER THIS -- THIS SHOCK,
13 WHICH OCCURRED I BELIEVE IN LOOKING AT YOUR DAILY
14 DRIVER'S LOG AT DEFENDANTS' 100, YOU ARRIVED AT
15 PUBLIX AT ABOUT 5:30 IN THE MORNING; IS THAT RIGHT?

16 A. I THINK IT WAS MORE LIKE 6:00.

17 Q. OKAY. WOULD IT HELP YOU TO LOOK AT THE DRIVER'S LOG
18 REAL QUICK JUST TO GET THE TIMES?

19 A. I CAN'T; I AIN'T GOT MY READING GLASSES.

20 Q. OKAY. IF IT SAYS START TIME 5:30, END TIME 6:00.
21 START TIME 6:00, END TIME 7:45, WOULD THAT BE ABOUT
22 RIGHT?

23 A. IT SOUNDS -- IT'S CLOSE.

24 Q. OKAY. SO THE SHOCK THAT -- THAT YOU HAD ON YOUR
25 LEFT HAND OCCURRED SOME TIME BETWEEN 5:30 AND 7:45

1 WHEN YOU LEFT PUBLIX?

2 A. IT HAPPENED ABOUT 7:15, 7:20, 'CAUSE I CALLED ~~BOBBY~~.
3 BOBBY WAS STILL AT HOME.

4 Q. SO IT WAS SOME TIME BETWEEN 7:15 AND 7:20 IN ~~THE~~
5 MORNING ---

6 A. YES.

7 Q. --- AT PUBLIX. OKAY. AFTER THE PUBLIX, YOU ~~WENT~~ TO
8 A WAL-MART FROM IT LOOKS LIKE ABOUT 7:45 UNTIL
9 10:15; IS THAT ABOUT RIGHT?

10 A. DOWN IN AIKEN.

11 Q. OKAY. THAT WAS THE AIKEN WAL-MART?

12 A. AND I WORKED ON TWO ROTISSERIES THERE, AND I PUT
13 COTTER PINS IN THEM, GOT THEM RUNNING. AND TOLD
14 BOBBY "I CAN'T -- I'M DONE." I COULDN'T DO NOTHING
15 ELSE, AND IT WAS GETTING WORSE AND WORSE.

16 Q. AND THAT WAS ABOUT 12:15 WHEN YOU ENDED THE DAY?

17 A. LIKE THREE-AND-A-HALF HOURS, SO I GOT BACK PROBABLY
18 AT 1:30 I THINK IT WAS -- 1:00. -

19 Q. OKAY. AND YOU STATED YOU WENT HOME AFTER THAT?

20 A. YEAH.

21 Q. AFTER THAT LAST APPOINTMENT. ALL RIGHT. BUT YOU
22 DIDN'T START EXPERIENCING ANY SWEATING UNTIL THE
23 NEXT MORNING?

24 A. NEXT MORNING 'CAUSE I MEAN I JUST WANTED TO WORK. I
25 LOVE MY JOB. AND WHEN I WAS PUTTING MY BOOTS ON, IT

1 LOOKED LIKE RAIN.

2 Q. AND THE -- WHAT TIME DID YOU WAKE UP THAT MORNING?

3 A. I USUALLY WAKE UP AROUND 6:00 EVERY MORNING.

4 Q. SO IT WAS ABOUT 24 HOURS, 23 HOURS AFTER THE SHOCK
5 THAT YOU STARTED EXPERIENCING ALL THAT SWEATING?

6 A. YEAH. WELL, I MEAN, I -- I WOKE UP SWEATING, YOU
7 KNOW.

8 Q. YOU WOKE UP SWEATING. ALL RIGHT. AND YOU WENT TO
9 WORK THAT DAY AT A WAL-MART, WHERE WAS THAT WAL-MART
10 AGAIN?

11 A. THREE SEVENTY-EIGHT, I THINK IT WAS EIGHT EIGHT ONE
12 OR EIGHT ONE EIGHT.

13 Q. OKAY. AND THE -- THE DRIVER'S LOG, WHICH IS AT PAGE
14 101 OF THE DEFENDANTS' APAs SAYS START TIME OF 8:00
15 A.M. AND END TIME OF 3:30; IS THAT CORRECT?

16 A. WELL, LIKE I SAID I -- I WENT TO WHALEY'S. I GOT
17 SOME FUSES, CAME BACK, PUT THE FUSES IN, AND I
18 COULDN'T DO IT NO MORE. I EVEN APOLOGIZED TO THE
19 PEOPLE IN THE DELI. THEY ALL SAID SORRY. I MEAN I
20 WAS IN TOO MUCH PAIN. I LEFT AND THEN THEY -- PEGGY
21 DUNCAN CALLED ME, AND SHE'S NOT THE NORMAL -- BOBBY
22 RUPPE OR, YOU KNOW, THE GUY NAMED DREW THAT WOULD
23 CALL, BUT SOMEWHERE IN THERE PEGGY CALLED ME AND
24 SAID ALL THE FRYERS WERE DOWN. AND I SAID, "WELL,
25 PEGGY, I'M SEVERELY HURT," AND I SAID, "I'M BAD." I

1 SAID, "BOBBY KNOWS THIS." AND I SAID, "BUT I JUST
2 LEFT THERE, AND I'LL TURN AROUND AND GO BACK." AND
3 THAT'S -- I CHECKED THE POWER, AND THEY LOST ALL THE
4 POWER TO ALL THE FRYERS SO THEY HAVE TO -- WAL-MART,
5 IF IT'S A POWER ISSUE THEY HAVE TO HAVE AN
6 ELECTRICIAN. I CAN'T DO IT. DO YOU SEE WHAT I'M
7 SAYING? WORKING ON EQUIPMENT I CAN DO, CERTAIN
8 EQUIPMENT. SO I TOLD THEM THEY HAD LOST THE POWER
9 AND THEY GOT TO GET A ELECTRICIAN. THAT'S THE THIRD
10 TIME THAT I'VE BEEN AT THE SAME WAL-MART WHERE THEY
11 LOST POWER TO THEM FRYERS.

12 Q. SO MY QUESTION WAS YOUR TIME SHEET SAYS 8:00 A.M.
13 'TIL 3:30, WAS -- WERE YOU THERE UNTIL 3:30, OR DO
14 YOU THINK YOU LEFT BEFORE THEN?

15 A. I -- I CAN'T REMEMBER.

16 Q. OKAY. WHO -- WHO FILLS OUT THESE TIME SHEETS?

17 A. I THINK I JUST -- THIS IS IN THEM, RIGHT?

18 BY COMMISSIONER BARDEN:

19 JUST -- YOU CAN'T GIVE ME ---

20 BY THE WITNESS:

21 I CAN'T LOOK ---

22 BY COMMISSIONER BARDEN:

23 --- JUST BEST YOU CAN. IT'S ALL RIGHT.

24 BY THE WITNESS:

25 AGAIN, I MEAN, IT'S HARD.

1 BY COMMISSIONER BARDEN:

2 IF YOU DON'T KNOW THE ANSWER, YOU DON'T ~~KNOW~~
3 THE ANSWER.

4 BY THE WITNESS:

5 I DID -- ON THE IPAD, I WRITE DOWN WHERE I
6 WENT, AND THERE'S TIME AND THEN IF I WENT TO ~~FOUR~~ OR
7 FIVE PLACES THAT DAY, THAT'S HOW YOU DETERMINE ~~THE~~
8 TIME AND EVERYTHING, TIME THAT YOU LEAVE, TIME YOU
9 GET HOME.

10 CROSS EXAMINATION RESUMED BY MR. BAYNE:

11 Q. SO YOU WOULD OF ---

12 A. SO I THINK ---

13 Q. --- YOU WOULD HAVE SUBMITTED THOSE TIMES?

14 A. I THINK SO. OKAY.

15 Q. OKAY.

16 A. I'M NOT SURE.

17 Q. THAT'S FINE. SO YOU -- YOU ARRIVED HOME SOMEWHERE
18 AROUND 3:30 THEN?

19 A. I'M -- I'M SAYING I'M NOT SURE.

20 Q. OKAY. BUT IF THAT'S WHAT YOU SUBMITTED THAT WOULD
21 PROBABLY BE CORRECT?

22 A. YES.

23 Q. OKAY. IN YOUR DEPOSITION THAT WE TOOK, DO YOU
24 RECALL ---

25 A. YOU AND ME?

1 Q. --- GIVING YOUR DEPOSITION?

2 A. YEAH.

3 Q. YES, SIR. I HAD ASKED YOU SEVERAL TIMES IN VARIOUS
4 COURSES OF YOUR TREATMENT BOTH THE DAY OF, THE DAY
5 AFTER, THE TIMES THAT YOU TALKED TO BOBBY RUPPE, IF
6 YOU HAD TALKED ABOUT ANY CHEST PAIN AT ALL; DO YOU
7 REMEMBER THE ANSWERS YOU GAVE AT THAT TIME?

8 A. I BELIEVE I SAID ALL THIS PAIN UP HERE (INDICATING)
9 WAS SO EXCRUCIATING I COULDN'T FEEL NOTHING ELSE. I
10 BELIEVE THAT'S WHAT I SAID, I MEAN ---

11 Q. CORRECT. AND ---

12 BY COMMISSIONER BARDEN:

13 AND YOU'RE POINTING TO YOUR SHOULDER AND TO
14 YOUR ---

15 BY THE WITNESS:

16 MY ARM. THERE, YEAH. MY -- WENT THROUGH HERE
17 AND DOWN MY BACK. YOU KNOW WHAT I MEAN?

18 CROSS EXAMINATION RESUMED BY MR. BAYNE: - -

19 Q. - AND MY -- MY QUESTION IS TODAY YOU'VE TALKED ABOUT
20 YOU TALKED TO BOBBY ABOUT SOME CHEST PAIN, AND I'D
21 LIKE TO -- TO READ YOU A -- A QUESTION AND YOUR
22 ANSWER, AND LET ME KNOW IF THAT HAS CHANGED OR IF --
23 IF YOUR ANSWER IS STILL THE SAME. YOU WERE ASKED,
24 AND THIS IS ON PAGE 19 OF MR. WINFREY'S DEPOSITION
25 AT LINE 24, "ON THE NEXT DAY THAT YOU WORKED, DID

1 YOU TALK TO BOBBY AT ALL ABOUT HAVING CHEST PAIN?"
2 AND YOUR ANSWER WAS, "I JUST TOLD HIM I HAD A LOT OF
3 PAIN IN MY NECK"; IS THAT CORRECT?

4 A. MY ARM AND NECK, YEAH.

5 Q. OKAY. SO YOU WEREN'T -- AT THE TIME, YOU DID NOT
6 TELL HIM YOU WERE HAVING ANY CHEST PAIN; IS THAT
7 RIGHT?

8 A. AND LIKE I SAID THEN TOO WAS THIS PAIN WAS SO GREAT
9 I COULDN'T FEEL NOTHING ELSE.

10 Q. OKAY. WHEN YOU WENT TO DR. GREENFIELD ON THE 28TH
11 OF MAY, YOU INDICATED YOU WEREN'T HAVING ANY CHEST
12 PRESSURE AT THAT TIME; IS THAT RIGHT?

13 A. JUST MY ARM AND NECK.

14 Q. AND YOU INDICATED TO HER THAT IT WAS DUE TO A SHOCK
15 OF 480 VOLTS; IS THAT RIGHT?

16 A. I TOLD HER HIGH VOLTAGE.

17 Q. DID YOU TELL HER 480 VOLTS?

18 A. I SAID 240, 480, YES. I MEAN, I'VE NEVER BEEN HIT
19 LIKE THIS BEFORE, NEVER.

20 Q. TODAY I THINK YOU WERE TALKING EARLIER ABOUT IT WAS
21 240 VOLTS, IS THAT ---

22 A. OR GREATER IS WHAT I SAID.

23 Q. OR GREATER, SO IS AT LEAST 240 VOLTS?

24 A. WELL, YEAH. IT SAYS HIGH VOLTAGE.

25 Q. OKAY. YOU ALSO INDICATED THAT DR. GREENFIELD TOLD

1 YOU THAT YOU HAD A HOLE IN YOUR HEART; IS THAT
2 RIGHT?

3 A. WHEN SHE DID THE -- I THINK THEY CALL IT ECHO, I'M
4 NOT SURE. YEAH, SHE SAID "YOU GOT MORE PROBLEMS
5 THAN JUST YOUR, YOU KNOW, YOUR NECK AND" -- SHE
6 SAID, "YOU DONE BLEW A HOLE IN YOUR HEART." AND
7 THEN SHE GOES, "WHERE DID THIS HAPPEN AT?" AND I
8 SAID -- SHE'S THE ONE THAT POINTED OUT THE HOLE IN
9 MY FINGER. AND SHE SAID, "THAT'S WHERE THE POWER
10 WENT IN," AND SHE SAID, "IT'S BEGIN WITH, BOOM, LIKE
11 THAT AND BLEW A HOLE IN HEART." THAT'S WHAT SHE
12 TOLD ME.

13 Q. DID -- DID DR. GREENFIELD TELL YOU AT ALL ABOUT THE
14 PAIN IN YOUR LEFT ARM OR SHOULDER AND -- AND WHAT
15 THAT INDICATED OR WHAT THAT CAME FROM?

16 A. SHE SAID THE POWER PROBABLY WENT UP, HIT THIS MAIN
17 MUSCLE HERE (INDICATING) AND THEN DROPPED DOWN.

18 BY MR. BAYNE:

19 OKAY. I HAVE NO FURTHER QUESTIONS.

20 BY COMMISSIONER BARDEN:

21 THANK YOU, MR. BAYNE. ANY QUESTIONS, OTHER
22 QUESTIONS, MR. MCDANIEL?

23 BY MR. MCDANIEL:

24 NONE, COMMISSIONER.

25 BY COMMISSIONER BARDEN:

1 OKAY. THAT'S THE CLAIMANT'S CASE.

2 BY MR. MCDANIEL:

3 CLAIMANT'S CASE, COMMISSIONER.

4 BY COMMISSIONER BARDEN:

5 ALL RIGHT. MR. BAYNE, YOU HAVE A WITNESS HERE?

6 BY MR. BAYNE:

7 COMMISSIONER, I HAVE AN EMPLOYER REPRESENTATIVE
8 THAT I'D LIKE TO PUT UP FOR JUST A MINUTE TO ---

9 BY COMMISSIONER BARDEN:

10 SURE. ALL RIGHT.

11 BY MR. BAYNE:

12 --- ASK A COUPLE OF QUESTIONS.

13 BY COMMISSIONER BARDEN:

14 SIR, I'M GOING TO LET YOU GO SIT NEXT TO MR.
15 MCDANIEL.

16 BY THE WITNESS:

17 THANK YOU.

18 BY COMMISSIONER BARDEN:

19 THANK YOU, SIR.

20 BY MR. BAYNE:

21 AND IF -- IF IT'S ALL RIGHT WITH YOUR HONOR,
22 ONCE WE'RE DONE WITH THAT I HAVE A COUPLE OF
23 SECTIONS IN THE DEPOSITIONS I'D JUST LIKE TO POINT
24 YOUR ATTENTION TO.

25 BY COMMISSIONER BARDEN:

1 YOU'RE WELCOME TO DO THAT. AND I'D LIKE TO
2 SPEAK TO Y'ALL ANYWAY ---

3 BY MR. BAYNE:

4 OKAY. ALL RIGHT.

5 BY COMMISSIONER BARDEN:

6 --- AFTERWARDS.

7 BY MR. BAYNE:

8 MR. WARREN.

9 BY COMMISSIONER BARDEN:

10 SIR, ONCE YOU GET SEATED AND SITUATED, IF
11 YOU'LL FACE ME. OKAY. THANK YOU.

12 BY MR. WARREN:

13 THANK YOU.

14 BY COMMISSIONER BARDEN:

15 DO YOU SWEAR OR AFFIRM --- RAISE YOUR HAND
16 PLEASE. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE
17 ABOUT TO GIVE IN THIS PROCEEDING IS THE TRUTH, THE
18 WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

19 BY THE WITNESS:

20 I DO.

21 MARK WARREN

22 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

23 BY COMMISSIONER BARDEN:

24 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

25 BY THE WITNESS:

1 WESLEY MARK WARREN.

2 BY COMMISSIONER BARDEN:

3 IS THAT M-A-R-K?

4 BY THE WITNESS:

5 YEP.

6 BY COMMISSIONER BARDEN:

7 THANK YOU. PLEASE ANSWER ANY QUESTIONS MR.

8 BAYNE HAS.

9 DIRECT EXAMINATION BY MR. BAYNE:

10 Q. MR. WARREN, WHAT DO YOU DO FOR A LIVING?

11 A. RIGHT NOW, I'M ASSISTANT SERVICE MANAGER FOR ARCHWAY
12 SERVICE.

13 Q. OKAY. AND ARE YOU FAMILIAR WITH MR. WINFREY?

14 A. YES.

15 Q. ARE YOU FAMILIAR WITH THE DEVICES THAT MR. WINFREY
16 WAS WORKING ON THE DAY THAT HE WAS INJURED?

17 A. AS FAR AS I CAN TELL YOU, IT WAS A ROTISSERIE AND
18 IT, YOU KNOW, IT'S THREE PHASE CURRENT.

- 19 Q. THOSE ROTISSERIE OVENS, WE -- WE'VE HEARD SOME
20 TESTIMONY THAT IT MIGHT HAVE BEEN BETWEEN 240 AND
21 480 VOLTS. ARE YOU FAMILIAR AT ALL WITH THE ACTUAL
22 VOLTAGE RUNNING THROUGH THOSE MACHINES?

23 A. WITHOUT CHECKING IT WITH A METER, I COULDN'T TELL
24 YOU THE ACTUAL VOLTAGE, BUT THE MACHINE IS RATED FOR
25 480 VOLT, BUT IT CAN ALSO RUN ON 208 VOLT, THREE

1 PHASE.

2 Q. OKAY. DO YOU HAVE ANY IDEA ON A GIVEN DAY WHAT KIND
3 OF VOLTAGE IS RUNNING THROUGH THAT MACHINE?

4 A. NORMALLY IT SHOULD BE 208 VOLT PER LEG.

5 Q. OKAY.

6 A. YEAH.

7 BY MR. BAYNE:

8 COMMISSIONER, I HAVE NO FURTHER QUESTIONS.

9 BY COMMISSIONER BARDEN:

10 MR. MCDANIEL, ANY QUESTIONS OF THIS WITNESS?

11 CROSS EXAMINATION BY MR. MCDANIEL:

12 Q. TELL ME ABOUT THE THREE LEGS AND THE...

13 A. WELL, YOU GOT -- YOU GOT THREE LEGS OF CURRENT.
14 YOU'VE GOT YOUR -- IF YOU CHECK BETWEEN EACH LEG,
15 YOU'LL HAVE 208 VOLT NORMALLY.

16 Q. RIGHT.

17 A. NOW, I -- I DON'T -- I DON'T KNOW ABOUT THIS UNIT,
18 IF IT'S A -- IF IT WAS -- IT COULD BE WIRED 480. I
19 DO NOT KNOW WITHOUT CHECKING WITH A METER.

20 Q. OKAY.

21 BY MR. MCDANIEL:

22 NOTHING -- NOTHING FURTHER, COMMISSIONER.

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 BY MR. MCDANIEL:

1 OH.

2 BY COMMISSIONER BARDEN:

3 GO AHEAD.

4 CROSS EXAMINATION RESUMED BY MR. MCDANIEL:

5 Q. NO. I WAS JUST GOING TO SAY, IS MR. RUPPE STILL
6 WITH THE COMPANY?

7 A. YES.

8 Q. OKAY. AND THE OTHER -- ARE ALL THE OTHER FOLKS
9 WE'VE REFERRED -- YOU'VE HEARD REFERRED TO TODAY,
10 ARE THEY STILL WITH Y'ALL?

11 A. YEAH, EVERYBODY'S STILL THERE. YEAH.

12 BY MR. MCDANIEL:

13 NOTHING FURTHER.

14 BY COMMISSIONER BARDEN:

15 ALL RIGHT.

16 BY MR. BAYNE:

17 NO REDIRECT.

18 BY COMMISSIONER BARDEN:

19 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.

20 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
21 CONCLUDED AT THE HOUR OF 10:19 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 60 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF CLARENCE WINFREY TAKEN ON THE 13TH DAY OF JANUARY, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 6TH DAY OF FEBRUARY, 2014.

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

South Carolina Workers' Compensation Commission

WCC File No.: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES,

Employer,

and

AMERICAN FIRE & CASUALTY
INSURANCE,

Carrier,

Defendants.

Thursday, January 23, 2014

ORAL DEPOSITION OF DR. LANNEAU D. LIDE,
JR., taken at South Carolina Heart Center, 2001
Laurel Street, Columbia, South Carolina,
commencing at 7:52 a.m., before Deidre Osborne, a
Court Reporter and Notary Public.

Job No. CS1795646

1 APPEARANCES:

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Representing the Defendants

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12
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14
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18 (INDEX AT REAR OF TRANSCRIPT.)
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25

1 (It is hereby stipulated and agreed by and
2 between counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Workers'
5 Compensation Commission and the Administrative
6 Procedures Act; and that the deponent waives
7 reading and signing of this deposition
8 transcript.)

9 - - -
10 DR. LANNEAU D. LIDE, JR., after having
11 been first duly sworn, was examined and
12 testified as follows:

13 - - -
14 EXAMINATION
15 - - -

16 BY MR. BAYNE:

17 Q. Dr. Lide, how are you doing today?

18 A. Fine. Thank you.

19 Q. My name's Brett Bayne. I'm an attorney
20 with McAngus Goudelock & Courie. We represent the
21 defendants in this workers' compensation claim,
22 and I'm here today just to ask you a few questions
23 about some opinions that you've -- you've issued
24 as well as the medical records related to
25 Mr. Clarence Winfrey's heart case.

1 Can we start with -- just give me a brief
2 background of your medical qualifications, that
3 type of stuff.

4 A. I'm a cardiologist. I've been in
5 practice here in Columbia since 1981. I've been
6 board-certified since 1981 in cardiology. I've
7 been in practice continually.

8 Q. All right. And how did you get involved
9 in this case?

10 A. Mr. Winfrey went to see his -- to see a
11 doctor and was referred to my partner,
12 Dr. Dasgupta, who saw him in the office, and
13 Dr. Dasgupta realized that Mr. Winfrey was sick
14 and admitted him to the hospital for a heart
15 catheterization and other treatment.

16 Q. And --

17 A. And I did the heart catheterization.

18 Q. And your records reflect that he
19 presented on May 28th, 2013?

20 A. If you say so.

21 Q. And --

22 A. I won't challenge it.

23 Q. That's fine.

24 A. I know that's the date of the heart
25 catheterization, May 28th.

1 Q. And the -- the process of Mr. Winfrey's
2 treatment, I think you -- you mentioned was that
3 he went to a doctor. He was referred to
4 Dr. Dasgupta, and then eventually he ended up with
5 you before moving on to Dr. Travis. Is that
6 correct?

7 A. Yes.

8 Q. Okay. And the visit with you as the
9 cardiologist was to, I guess, run some tests,
10 observe Mr. Winfrey and determine whether or not
11 additional treatment was needed. Is that right?

12 A. Well, Dr. Dasgupta admitted him to the
13 hospital.

14 Q. Okay.

15 A. And Dr. Dasgupta is my partner, and --
16 and I did the heart catheterization.

17 Q. And then after you did the
18 catheterization, did you refer him to Dr. Travis?

19 A. Yes. Yes.

20 Q. Okay. Let's step back for a second. You
21 have a patient history, I believe. There's a
22 catheterization report that we'll enter as Exhibit
23 1 for this deposition purposes.

24 MR. BAYNE: Do you want to tag it real
25 quick?

1 THE COURT REPORTER: Yes, please.

2 MR. BAYNE: And this is a document that
3 neither Mr. McDaniel or myself, we believe,
4 have seen before today, but we're going to
5 enter it into the record.

6 - - -
7 (Catheterization Report Dated 5/28/2013
8 marked Lide Exhibit Number 1, for
9 identification.)

10 - - -

11 BY MR. BAYNE:

12 Q. When Mr. Winfrey presented to
13 Dr. Dasgupta and then to you, what history did you
14 have at that time before you took a history from
15 him? In other words, were you provided with
16 any -- with any background on this case or did you
17 take an initial history when you first saw him?

18 A. Well, I -- of course, I spoke to the
19 patient before we did the -- the procedure. The
20 history that would have been given to me was the
21 history that Dr. Dasgupta had from the office.

22 Q. Okay.

23 A. And I should have a copy of that here on
24 this computer, but you should also have it.

25 Q. If you can just give me a brief rundown

1 of what the history that -- that Dr. Dasgupta gave
2 you was, I would appreciate it.

3 A. I'm going to pull up Dr. Dasgupta's
4 office note on the computer. You want me to read
5 this?

6 Q. If you can, just -- what I'm looking for
7 is what symptoms he complained of to
8 Dr. Dasgupta --

9 A. Okay.

10 Q. -- and then what your understanding of
11 the history was.

12 A. All right. Well, he says that
13 Mr. Winfrey was 50 years old and been found to
14 have an abnormal EKG and a heart murmur when he
15 went to see Dr. Greenfield, that he had an
16 electric shock five days before, complained of
17 pain in his shoulder going into the left scapula
18 region, left side of the neck, left upper
19 extremity, et cetera, been sweaty, been short of
20 breath with exertion and that he'd gotten some
21 relief with Tylenol and Motrin, had no -- no
22 previous heart history.

23 And Dr. Dasgupta did an echocardiogram in
24 the office, and he saw that the -- the inferior
25 segment of the left ventricle was not moving and

1 that there was a defect in the interventricular
2 septum with blood flowing abnormally from the left
3 ventricle to the right ventricle through that
4 defect'.

5 Q. Did Dr. Dasgupta make any notes about any
6 complaints of chest pain at that time?

7 A. I don't see anything in -- in this about
8 pain in the chest itself.

9 Q. Did he make any notes about any history
10 of chest pain leading up to his admission to the
11 hospital that day?

12 A. I don't see it in here, but --

13 Q. Have you -- in addition to Dr. Dasgupta's
14 notes, were you ever given the opportunity to
15 review Dr. Greenfield's notes who was the
16 referring physician to your office?

17 A. I probably did not see any notes from
18 Dr. Greenfield.

19 Q. And just referencing her notes, if her
20 notes indicated that he did not have any chest
21 pain on both presentation and leading up to coming
22 to the office, would you have any reason to
23 dispute that he was not having any chest pain?

24 A. I don't have any -- any reason to dispute
25 it based on what you say. Although, I do see my

1 little note here in which I reference chest pain.

2 Q. And that -- that was my next question,
3 Doctor. In Exhibit 1 you mentioned that he's
4 complained of chest pain, I believe, since the
5 accident. Do you know where that particular note
6 came from?

7 A. Well, this -- this note would have been
8 the note that I generated as part of the -- the
9 cardiac catheterization report.

10 Q. Right. Did that come -- if you recall,
11 was that something that Mr. Winfrey told you or
12 was that something that came from another doctor?

13 A. It would have been what he told me.

14 Q. Okay. If Mr. Winfrey had told
15 Dr. Dasgupta he was having chest pain, would that
16 have been in Dr. Dasgupta's notes to your
17 knowledge?

18 A. Probably. However, I can't speak for
19 what everybody else is going to think and put in
20 their notes.

21 Q. Certainly. Doctor, Mr. Winfrey was
22 ultimately diagnosed with -- I think you said a
23 ventricular septal defect. And that was caused by
24 a myocardial infarction; is that correct?

25 A. Well, we say it was caused -- cause by a

1 myocardial infarction. I mean, we do blood tests
2 and EKGs and all that, and I can't say it wasn't
3 caused by -- by an electrical shock. I don't know
4 how we would tell the difference.

5 Q. Well, you -- the VSD could have been
6 caused by an electrical shock or the --

7 A. Sure.

8 Q. -- heart attack could have been caused by
9 the electrical shock?

10 A. I mean, an electrical shock creates a
11 burn.

12 Q. And so in your opinion it's possible that
13 an electrical shock actually just punched a hole
14 in the heart?

15 A. Possibly.

16 Q. Okay. Is -- typically, a ventricular
17 septal defect is caused by a myocardial infarction;
18 is that correct?

19 A. Well, most ventricular septal defects are
20 congenital.

21 Q. Okay.

22 A. I mean, they're not caused by -- by
23 anything. They're just a developmental
24 abnormality. You can end up with a ventricular
25 septal defect by being shocked through the heart,

1 which you have other injuries, and -- but I guess
2 the most common cause for an acquired ventricular
3 septal defect would be a myocardial infarction.

4 Q. Okay. And a myocardial infarction, it's,
5 I believe, in this case and, according to
6 Dr. Travis, was caused by what's called a plaque
7 rupture. Are you aware of his opinion on that?

8 A. I -- I don't know that we could -- you
9 know, a myocardial infarction is damage to heart
10 muscle due to lack of blood flow, so I don't know
11 how you separate that out from damage due to a
12 burn in a case like this.

13 Q. Correct. My -- my question --

14 A. We don't have specific tests. We don't
15 have chemical tests that tell us that damage was
16 due to -- to a burn instead of -- instead of lack
17 of blood flow. You know, all our tests are
18 focused on the common disease of myocardial
19 infarction due to the lack of blood flow.

20 Q. So there's no way to know for sure
21 whether or not any of the injuries to his heart
22 were from electrical shock or were from just, I
23 guess, a congenital defect or from a poor heart
24 condition. Is that --

25 A. Oh, it's not a congenital defect.

1 Q. Okay.

2 A. A congenital defect causing a ventricular
3 septal defect would -- would have been known. I
4 mean, that -- he would have had a -- a murmur from
5 birth.

6 Q. Okay.

7 A. And that would have been diagnosed long
8 ago.

9 Q. But it would either -- so it would either
10 be something that would have been developed over
11 time such as coronary artery disease that would
12 have caused this or it would be the electrical
13 shock. Is that what your opinion is?

14 A. I guess so.

15 Q. In other words --

16 A. Yeah.

17 Q. -- your statement was --

18 A. Yeah.

19 Q. -- that we can't know whether it was
20 shock. He did have three vessel artery disease,
21 so it's possible it was that. It's possible it
22 was electrical shock. Is that a correct
23 statement?

24 A. He had -- he had heart muscle damage
25 which resulted in -- in -- in this rupture of the

1 septum which means -- which is the wall between
2 the left ventricle and the right ventricle.

3 Q. And what causes heart muscle damage?

4 A. Well, he had the electrical shock. We
5 know that. And it's also true that we saw that
6 the artery going into that area was blocked.

7 Q. And can you --

8 A. But it's hard to know which came first.

9 Q. Okay. So the artery block can cause
10 heart muscle damage. The electrical shock can
11 cause heart muscle damage. Is that right?

12 A. That's right.

13 Q. Okay. In your written opinion that you
14 issued, it was a questionnaire you filled out, you
15 indicated that it was your opinion that the
16 electrical shock caused the symptoms that
17 Mr. Wihfrey was suffering from, and you indicated
18 that it was when he was shocked with 480 volts of
19 electricity. Where did that information come
20 from?

21 A. I'm sure I had nothing in any note that I
22 generated about 400 volts.

23 Q. Okay. So when you --

24 A. That's not something I would have known.

25 Q. When you indicated that it was caused by

1 a 480-volt shock, that information would have come
2 from Mr. Winfrey, I guess?

3 A. I don't know what document you're
4 referring to.

5 Q. I apologize. I'll show you. There's a
6 questionnaire that you filled out, Dr. Lide, that
7 asked for your medical opinion, and you checked
8 the box that indicated this was caused by 480
9 volts of electricity.

10 A. I imagine that part was probably -- I
11 don't know whether that was generated by workers'
12 comp or whatever, but I -- I don't see any way
13 that we can say that that is not secondary to the
14 shock.

15 Q. Okay.

16 A. The details of the shock are beyond me.

17 Q. And I understand that. My -- my question
18 was -- was, getting to the amount of the shock
19 that your opinion indicates caused this -- the
20 symptoms Mr. Winfrey's suffering from, do you have
21 any evidence or do you have any research you've
22 done that indicates it was actually 480 volts that
23 he suffered electrical shock from?

24 A. I don't -- I don't -- I did not
25 investigate the scene. I don't know what

1 equipment he was working on. I'm taking everybody
2 else's word for it that he had an electrical
3 shock, and I certainly would have no data to
4 indicate to me whether 480 volts would be strong
5 enough to cause the problem that 120 volts
6 wouldn't cause.

7 Q. Okay. What about 10 volts?

8 A. I have no -- I have done no research on
9 this.

10 Q. Okay. And in your day-to-day practice as
11 a cardiologist, you use electrical current to
12 stimulate the heart or stop a heart murmur or
13 apply electrical shock to hearts; is that correct?

14 A. Occasionally, yes.

15 Q. How many volts are you using when you do
16 that?

17 A. It can be as much as 360 joules, but
18 physics at this point in my life is not my strong
19 suit. And I can't tell you exactly how that
20 translates into volts. I can tell you it's a very
21 brief shock. If someone has an electrical shock
22 for -- for a termination of a cardiac arrhythmia,
23 it's typically given over one millisecond or less.

24 Q. Okay. And those shocks, have you ever
25 caused a myocardial infarction by applying those

1 shocks?

2 A. Not that I know of.

3 Q. Have you ever caused a ventricular septal
4 defect by providing those shocks?

5 A. No.

6 Q. In your practice have you ever had the
7 chance to look at the heart -- actually look at
8 the heart after providing those electrical shocks?

9 A. I suspect I probably have seen some
10 autopsy hearts after patients have had cardiac
11 arrests.

12 Q. And in those cases have you ever
13 discovered what would be called entrance and exit
14 wounds on either side of the heart from that
15 electrical current that you've provided?

16 A. I have not. But I am quite sure I would
17 not be able to recognize them.

18 Q. Have you had a chance to review
19 Dr. Travis's medical records in the course of
20 providing care to Mr. Winfrey both of the surgery
21 and of the follow-up that he provided before he, I
22 believe, returned him back to you for care?

23 A. We have -- we probably have received
24 some -- some limited notes from Dr. Travis.

25 Q. And I'll -- my question is, Dr. Travis's

1 opinion, at least the mechanism of injury, is that
2 Mr. Winfrey suffered a plaque rupture in his
3 coronary artery that caused a myocardial
4 infarction that caused the ventricular septal
5 defect. And I think we talked a minute ago about
6 what can cause the damage in the heart. Would
7 that be a -- would that be a correct order of
8 events that would cause the damage in
9 Mr. Winfrey's heart?

10 A. I think it's one of the possibilities.

11 Q. Okay. And a plaque rupture occurs --
12 what causes a plaque rupture?

13 A. Would you like to win the Nobel Prize?

14 Q. I would love to win the Nobel Prize.

15 A. Well, explain that then.

16 Q. And that was -- that was, I believe,
17 Dr. Travis's opinion and Dr. Feldman's opinion.
18 Their statements were, "We don't really know what
19 causes plaque rupture. There's no way to test for
20 it."

21 Is that an accurate statement?

22 A. That's -- that's correct.

23 Q. And -- and their opinion was that the
24 electrical shock caused -- or Dr. Travis's opinion
25 was that the electrical shock caused the plaque

1 rupture. Dr. Feldman's opinion was that it was
2 not. And, again, we -- we don't know for sure
3 whether or not electrical shock caused the plaque
4 rupture or not. Is that right?

5 MR. MCDANIEL: I'm going to object on --
6 and I don't think that's an accurate statement
7 of Dr. Feldman's testimony. But with that ...

8 MR. BAYNE: That's fine.

9 BY MR. BAYNE:

10 Q. The question is, we don't know for sure
11 whether or not electrical shock can cause a plaque
12 rupture or did cause a plaque rupture in this
13 case. Is that right?

14 A. I don't know whether the electrical shock
15 caused the plaque rupture. I don't know which
16 came first, whether -- whether -- because it does
17 seem to me this could have all started off as a
18 burn injury, and I can tell you that for decades
19 after people began to have myocardial infarctions,
20 there was a -- a big debate about which came
21 first, blood clot in the coronary artery or the
22 injury of the -- of the tissue, and I think that
23 if you have -- it does seem to me if you had badly
24 damaged tissue, you're not going to have perfect
25 blood flow through there.

1 This doesn't apply only to the heart, and
2 you'll end up with the artery to the area being
3 blocked, so I don't know which came first.

4 Q. Okay. In your review of Mr. Winfrey, I
5 think it's not disputed that he touched a wire
6 with his left hand, and -- and the question is
7 what happened with the electricity; did it go into
8 his neck, heart.

9 Did you ever find an exit wound on
10 Mr. Winfrey's body where the electricity would
11 have exited?

12 A. I did not look for an exit wound.

13 Q. Okay. Has he ever reported that he has
14 an exit wound to you from the electricity leaving
15 his body?

16 A. I don't know why he would report that to
17 me.

18 Q. As far as the VSD or the heart attack,
19 the plaque rupture, whatever came first in this
20 case, when would -- following the electrical
21 shock, when would he have first started
22 experiencing symptoms of the actual heart
23 condition that he suffered from? In other words,
24 if -- if he -- if he suffers this shock that goes
25 into his heart, is there going to be an immediate

1 "I've got a problem with my heart" or is it
2 something that may develop over several days where
3 he later starts realizing he's got a problem with
4 his heart?

5 A. Well, he probably felt worse when he
6 developed the VSD. And VSDs, after myocardial
7 infarction, they can occur in the first 24 hours.
8 They can occur any time up to a week later.

9 Q. Would he have felt any or noticed any
10 symptoms of the myocardial infarction following
11 electrical shock or would it have been the VSD
12 that triggered him to know something was wrong?

13 A. I think after he developed VSD and after
14 it became large enough for him to have significant
15 flow, he would have become more short of breath.

16 Q. Okay.

17 A. Now, that may not have occurred in a few
18 seconds. It may have been hours before that --
19 before that occurred.

20 Q. In Dr. Dasgupta's notes, on the day he
21 was admitted he talks about -- I believe it was
22 diaphoresis. And that is intense sweating; is
23 that right?

24 A. It's sweating.

25 Q. And that is a symptom of suffering from a

1 myocardial infarction; is that right?

2 A. That is a symptom of suffering from
3 illness, period.

4 Q. Okay.

5 A. That is so non-specific a symptom that it
6 doesn't tell you. It doesn't lead you in any --
7 any specific direction.

8 Q. If the sweating was a -- was a symptom of
9 the myocardial infarction he experienced, when
10 would you expect that sweating to start as a
11 result of the myocardial infarction?

12 A. Well, it could start right away.

13 Q. Would it start before he suffered the
14 myocardial infarction?

15 A. He could have been sweating because he
16 had an electric shock. He could have been
17 sweating because he had an electric shock and he
18 was frightened.

19 Q. If the sweating didn't start until 24
20 hours after the electrical shock, would that be
21 indicative of when the myocardial infarction
22 occurred?

23 A. I don't think that -- I don't think you
24 can time anything by the onset of sweating.

25 Q. Can --

1 A. Maybe his temperature went up a little
2 bit a day after he had the shock.

3 Q. Are you able to time when the myocardial
4 infarction occurred based on any of the tests you
5 were able to run?

6 A. No. Some time after the shock.

7 Q. Is there -- is there any -- any window
8 that we're looking at or it's just sometime
9 between when he suffered the shock and when he was
10 entered -- admitted into the hospital?

11 A. I think we'd be on safer ground
12 considering that to be the window.

13 Q. Okay. Are you -- in your work as a
14 cardiologist and any research you've done, do you
15 have any -- any information about electrical
16 shocks causing a myocardial infarction or causing
17 a VSD and the time period related to that as far
18 as how soon after the shock do these things
19 occur? Can they occur a week later? A month
20 later? What are we looking at as far as timeline
21 with an electrical shock?

22 A. I have not done any research on this, and
23 I'm not -- I don't know of -- of specific
24 research. Somebody's probably done some. The --
25 so, no, I don't have any specific information on

1 that.

2 Q. Would it be safe to say that the farther
3 we get away from the event, the less likely it is
4 that the -- the heart condition is related to that
5 event?

6 A. Yes. I think that's right. I think
7 that -- that it would be unlikely for him to pop
8 up with a VSD a month after having the -- the
9 original injury or a myocardial infarction.

10 Q. In other words, it's more likely that he
11 would suffer a heart attack an hour later than it
12 is a day later, than it is a week later, than it
13 is a month later. The farther we get removed from
14 it, the less likely the odds become that that was
15 the precipitating event.

16 A. I -- I think to the extent that the heart
17 muscle was damaged by the electric shock, that
18 would have occurred immediately.

19 Q. Okay.

20 A. Now, at what point later the
21 interventricular septum gave way and he actually
22 had the defect allowing blood to flow from the
23 left ventricle to the right ventricle, that could
24 have been any time.

25 Q. And related to -- you mentioned, and you

1 said it previously as well, that the -- the shock
2 caused the heart muscle damage. You did say --

3 A. It could have.

4 Q. Could have caused it.

5 A. It could have, yeah.

6 Q. But there's no way to know for sure
7 whether or not his -- the condition his heart was
8 in caused that damage or whether the shock caused
9 that damage; is that right?

10 A. I don't have any way that I can say that
11 the shock was not related to the injury.

12 Q. Okay.

13 A. There's no way I can say that.

14 Q. You don't have any way to say it was not
15 related or that it was related?

16 A. I don't have any way to say that it was
17 not related to it.

18 Q. Do you have any way to say that it was
19 related other than the proximity in time?

20 A. No. The proximity in time is -- is -- is
21 overwhelming evidence as far as I'm concerned.

22 Q. And that's the sole evidence that -- that
23 shock caused the heart damage; is that right?

24 A. Well, that and Dr. Travis's description.

25 Q. And which description are you referring

1 to from Dr. Travis?

2 A. That what he saw in the operating room
3 was, and I think he's given this to you in a
4 deposition, something to the effect that -- that
5 he saw tissue that looked like it had been burned.

6 Q. Okay. And are you referring to the white
7 patches that I think he called plaques on either
8 side of the heart?

9 A. I'm just referring to -- to -- no. I --
10 I can't -- I can't relate that back to anything
11 specific, just that I think he's given you that
12 opinion in a -- in a deposition.

13 Q. So it's -- your opinion's based on the
14 timing and then Dr. Travis's -- what you
15 understand Dr. Travis's opinions to be.

16 A. Right. That's right.

17 Q. Okay. As far as providing Mr. Winfrey
18 care after the surgery, what -- what ongoing care
19 are you providing him at this time?

20 A. I have seen him a few times in the
21 office, and he's on some medications. He's -- I
22 think he's been through -- he's been involved in
23 the cardiac rehab program.

24 Q. What is the cardiac rehab program?

25 A. Basically it's supervised exercise.

1 Q. And is that part of a standard program to
2 be able to return him to, hopefully, the life he
3 was living before --

4 A. Yes.

5 Q. -- he suffered this event?

6 In your experience is that a -- does that
7 program usually work as far as getting people back
8 to what they were doing beforehand?

9 A. It usually results in improvement in
10 functional status. Now, whether it's enough
11 improvement to get somebody back to work depends
12 on the individual case.

13 Q. Have you -- at this point do you have
14 any -- any idea or any opinion about where
15 Mr. Winfrey's going to end up once he completes
16 all of his cardiac rehab or is it too early to
17 tell?

18 A. It may be too early to tell, but I -- I
19 don't know that he's going to be able to get back
20 to work.

21 Q. In general or work as an electrician?

22 A. In general.

23 Q. Okay. And other than here today at this
24 deposition, have you had any -- any contact with
25 Mr. McDaniel or Mr. Winfrey outside of the

1 appointments that -- that Mr. Winfrey comes to?

2 A. Had no contact with Mr. Winfrey except
3 here in the office, and I've not had any contact
4 with Mr. McDaniel.

5 Q. Other than the -- the questionnaire
6 that --

7 A. Yes.

8 Q. That you filled out.

9 A. Yes.

10 MR. BAYNE: Okay. I have no further
11 questions.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. MCDANIEL:

16 Q. Doctor, let me ask you a few questions.
17 Let's just -- I believe that I sent you a copy of
18 a report that Dr. Travis -- it was briefly after
19 the report that you were kind enough to fill out
20 whenever --

21 A. Uh-huh.

22 Q. -- causation became a question in
23 September, and, first, I'm going to -- this has
24 been put into evidence, and I'm going to ask you
25 if you can look at that --

1 A. If I can look at this? Uh-huh.

2 Q. -- of Dr. Travis and if you -- if that
3 is, in fact, a copy of a report that you have in
4 your records that I sent to you after we received
5 it.

6 A. I think this is, yes.

7 Q. And just in reference to -- Counsel asked
8 you some questions about what Dr. Travis had found
9 and the information. If you would -- does it not
10 refer to the -- his observations during surgery in
11 reference to the entrance and exit wounds in
12 paragraph -- I believe it's paragraph two. You
13 can look at that.

14 A. Uh-huh.

15 Q. Does this concur with what your
16 understanding is in either your discussion with
17 Dr. Travis and/or review of the records and this
18 information?

19 A. I think that Dr. Travis's opinion is
20 probably correct, and I certainly don't have any
21 reason to challenge him.

22 Q. And what I was referring to is, Counsel
23 asked you some questions. In other words, he
24 refers in there that he's never seen anything like
25 this in his 15 years of cardiovascular surgery and

1 that he identified what he -- in his opinion was a
2 clear entrance and exit wound to the heart and
3 damage caused by the electrical shock.

4 Now, I want to look -- ask you a few
5 questions. Counsel back -- bounced back and forth
6 between using the term "VSD" and a "heart attack"
7 in asking his questions in timing. And I want to
8 ask you just a couple questions. We -- you've
9 kindly provided us a report that we should have
10 received from Lexington Medical Center. For some
11 reason we didn't.

12 And if you would, that history -- I know
13 that Counsel asked you about the history that was
14 taken by Dr. Dasgupta, and he specifically asked
15 you about reference to chest pain, and then you've
16 recorded a history there. I know you've stated
17 earlier in your testimony that you reviewed
18 Dr. Dasgupta's history, and you also talked to the
19 patient.

20 A. Yes.

21 Q. Now, is this -- the history that's
22 recorded in this report, is that the history that
23 your -- that you dictated based on both your
24 conversation with Mr. Winfrey and Dr. Dasgupta's
25 report?

1 A. I'm sure this is the only history that I
2 recorded at the time.

3 Q. Right.

4 A. It's -- it was not my role to do a
5 detailed history and physical examination at the
6 time I saw him. I needed no focus on -- on those
7 aspects of the history and the exam that would be
8 relevant for the testing that we were doing.

9 Q. Okay.

10 A. And so, you know, I don't have anything
11 in this little note about how long he had chest
12 pain, where it was, et cetera. It's just a little
13 summary, and as such, I certainly stand by what
14 I've got in this brief paragraph.

15 Q. Okay. And -- and -- and you record in
16 there that he was having left arm, shoulder and
17 chest pain.

18 A. I just have here he had left shoulder and
19 chest pain.

20 Q. Now -- and Counsel asked you about
21 whether Dr. Dasgupta had recorded anything in his
22 history about chest pain. And I'm going to ask
23 you to look at Dr. -- do you have Dr. Dasgupta's
24 on your --

25 A. I should. I do have it here.

1 Q. I've got it right here. I'll just --

2 A. Yeah.

3 Q. -- ask you.

4 MR. BAYNE: It's the May -- the office
5 consultation?

6 MR. MCDANIEL: May 28th.

7 THE WITNESS: May 28th, 2013?

8 BY MR. MCDANIEL:

9 Q. Office consultation. That's would be the
10 report we're referring to.

11 A. Yeah. Uh-huh.

12 Q. Look at the second sentence that begins,
13 "A review of his records today shows."

14 A. Uh-huh.

15 Q. All right. And then after that he goes
16 on. He says, "Since -- since -- he had electrical
17 shock five days ago and since then." So in
18 reference to the symptoms that Dr. Dasgupta -- and
19 him being your partner, records that. And since
20 then he has complained of pain.

21 Would it be your understanding and is it
22 consistent with the history that you took from
23 Mr. Winfrey that everything started after this
24 electrical shock?

25 A. That's my understanding.

1 Q. Okay. All right. Now, let's look at,
2 then, what Dr. Dasgupta recorded. He said, "He
3 has complained of pain in his left shoulder
4 radiating to his left scapula region, the left
5 side of his neck, left infraclavicular region."

6 Am I right that when you refer to the
7 scapula and clavicular region we're talking about
8 the shoulder and front part of the shoulder?

9 A. Well, infraclavicular means below the
10 collarbone.

11 Q. Okay.

12 A. Yeah.

13 Q. So, in other words, if Mr. Winfrey was
14 reporting that his pain was -- after the shock he
15 had pain in his hand, arm, up into his shoulder
16 and when he -- when he uses his hand and would
17 place it in -- with my fingers on top of the
18 shoulder and then my hand extending into the front
19 of the chest, would that be consistent with the
20 description that he's given Dr. Dasgupta there?

21 A. Yes.

22 Q. All right. And then so is that basically
23 the same thing that he's recording here as saying
24 that he's having pain in the upper part of his
25 chest or on the left side?

1 A. It's all consistent.

2 Q. Okay. I just wanted to clarify that
3 because -- because of just the word -- the very
4 detailed description Dr. Dasgupta gave versus just
5 simply saying "chest pain." Now ...

6 A. I will also tell you that the next person
7 to take a history gets a different history.

8 Q. Right. Actually, as a matter of fact,
9 Doctor, I use that. I tell my clients all the
10 time if they -- if I ask them the same thing five
11 different days in a row, they're going to tell me
12 five different things, not because they're trying
13 to lie to me, but because it's just -- it'll be a
14 little different consistency.

15 Let me ask you this. There's been some
16 discussion about 480 volts, and I'm going to show
17 you Dr. Greenfield's note who referred him to
18 Dr. Dasgupta, and I'll just ask you to look at the
19 right side of that note under the history that she
20 took. Do could you see "480 V rotisserie shock"?

21 A. I see that.

22 Q. And it shows that it occurred on
23 Thursday, and I believe it refers to sweating
24 that -- that evening. Is that -- do you see that?

25 A. Well, it may be referring to woke up

1 sweating this a.m.

2 Q. Well, it's also sweating and -- okay.

3 A. It's a little hard to tell --

4 Q. Okay.

5 A. -- what -- what that --

6 Q. Well, she testified that -- that she --
7 what she recorded, the shock on Thursday, sweating
8 Thursday p.m., woke up sweating this a.m.

9 A. Uh-huh.

10 Q. That he had had sweating following the --
11 the evening after the shock. Let me ask you. I
12 don't want to make this -- I'm trying to make this
13 not too long. You referred that when you did the
14 heart catheterization that you took some
15 pictures.

16 A. Yes.

17 Q. Is there anything -- and you say would we
18 like to see them. And my question to you, really,
19 though, is, Dr. Travis has testified that he held
20 this man's heart in his hands. He looked at it.
21 You actually did a heart catheterization and you
22 have pictures. Dr. Feldman said the only thing
23 he's reviewed is records.

24 The -- would -- would those picture that
25 you took lend anything in reference to your

1 opinion in this case as far as, you know -- I
2 mean, is it your opinion that -- that his problems
3 with his heart, based on the history and
4 everything you saw, is it still your opinion that
5 it was caused by this electrical shock?

6 A. It is. We did find -- you know, we did
7 find that he had atherosclerosis as well.

8 Q. Okay. I mean, so Dr. Feldman actually
9 testified that many times a plaque rupture is
10 caused by some type of stress, either physical or
11 emotional stress, there's many, many studies that
12 show that, and that -- that the shock was a
13 possible cause to the stress that caused the
14 sheering force causing the plaque rupture.

15 My question to you is -- here again, I
16 want to go back to the pictures. Are there any --
17 do you think there's anything you could tell that
18 would help us one way or the other in reference to
19 what you saw and what those pictures reveal as far
20 as damage that would, you know, either strengthen
21 or add to your opinion in -- in reference to
22 the -- the electrical shock?

23 A. There's nothing on the pictures that's
24 not reflected in the written report.

25 Q. Okay. And so there's -- is there any

1 question that a plaque rupture can lead to --
2 well, lead to a myocardial infarction which can
3 lead to a VSD? Is that a --

4 A. That -- there's no question that that
5 sequence of events can occur.

6 Q. Okay. All right. And -- and so either
7 the shock in your opinion could have caused the
8 damage that resulted in the myocardial infarction
9 and the VSD or it could have caused the rupture
10 that lead to the blockage, the myocardial
11 infarction which lead to the VSD. Is that a fair
12 statement of --

13 A. I think there's no question that the
14 shock can cause the burn injury that -- that
15 damages the heart muscle and -- and then leads to
16 the VSD. I don't know of any -- I don't know the
17 mechanism --

18 Q. Right.

19 A. -- by which the shock would -- would --
20 would exactly lead to blockage in the coronary
21 artery causing the -- the myocardial infarction in
22 the conventional sense. Certainly there's lots of
23 data indicating that in stressful times they're
24 more myocardial infarctions and more cardiac
25 deaths, and there have been population studies of

1 people after earthquakes and fires and whatever
2 that usually show a slight increase in -- in
3 occurrence.

4 You know, how many people died in South
5 Carolina after Hurricane Hugo. You know, it
6 looked like there was a little blip in the death
7 rate in the next few days, maybe ten extra deaths,
8 something like that.

9 Q. Right.

10 A. But -- but I don't know exactly what the
11 mechanism is -- is for that.

12 Q. Okay. But there's a clear correlation
13 between stress as being a -- a cause of myocardial
14 infarction or, you know, in other words, the
15 plaque rupture and that type of thing.

16 A. There -- there is a temporal association
17 between stressful events and increased risk of
18 myocardial infarction.

19 Q. And the reason I asked you originally
20 about the -- the -- the domino effect, either that
21 the heart attack -- it -- it -- by the way, let me
22 ask you this. Is it unusual that somebody has a
23 heart attack and then they don't show up for like
24 five days later?

25 A. Most people show up before five days but

1 population studies would suggest that perhaps as
2 many as 25 percent of -- of heart attacks that
3 people survive are not recognized immediately. A
4 person who has it doesn't have enough symptoms to
5 recognize that it's a heart attack, doesn't go to
6 the hospital, and it's discovered later and --
7 when they have an EKG or some other test.

8 Q. Of course, in this case we have -- and
9 one of the normal -- a very usual presentation is
10 left hand and arm and shoulder pain for a heart
11 attack, correct?

12 A. (Witness nodding head.)

13 Q. And so -- and we all agree that this
14 man's electrical shock came to his left hand and
15 he immediately and since then up until the time he
16 went to Dr. Greenfield was experiencing hand, arm
17 and shoulder pain.

18 A. Right. Right.

19 Q. Would it -- there -- would there be any
20 way for the patient to distinguish between those
21 two, just an average layperson?

22 A. Probably not.

23 Q. Okay. Now -- now I want to go back to
24 what I was asking you about, the -- the one series
25 of plaque rupture leading to the myocardial

1 infarction leading to the VSD or the heart muscle,
2 as you said, being damaged immediately from the
3 electrical shock. Let's just refer to one of
4 those as being absolutely direct and the other one
5 being indirect cause.

6 But in your opinion, based on this
7 history and everything you observed and your
8 conversations with Mr. Winfrey and this history
9 and development of his problems, is it your
10 opinion that -- that this electrical shock, is it
11 still your opinion that this electrical shock
12 caused all the problems that lead to him coming to
13 see you?

14 A. That is my opinion --

15 Q. Okay.

16 A. -- that -- that the electrical shock was
17 the proximate cause of -- of all this illness.

18 Q. Okay. And that's stated to a reasonable
19 degree of medical certainty?

20 A. As certain as I can be.

21 MR. MCDANIEL: Okay. All right. Doctor,
22 I'm not going to belate anything any further.
23 Thank you very much.

24 - - -

25 REEXAMINATION

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BY MR. BAYNE:

Q. Doctor, I just have a few follow-up questions.

A. Uh-huh.

Q. The left arm and shoulder pain that -- that Mr. Winfrey(sic) just asked you about, in a heart attack case when you're experiencing the left arm and shoulder pain, it is not pain that is tender to the touch or it's not typically pain associated with, for example, running into a door and bashing your shoulder into it, is it?

A. It's typically not pain relieved by changes in position, but people are different. Some people have, you know, as I say, no pain that they recognize as being something serious, and other people have excruciating pain, and it's very variable.

Q. Okay. And Dr. Greenfield, when she observed Mr. Winfrey and when she gave her deposition, she talked about the fact that the left arm pain and shoulder pain that Mr. Winfrey was having was tender to the touch. It was more indicative of an injury to the arm than it was of a heart attack. Would you agree that -- that --

1 would you agree with her assessment, I guess, that
2 when you have pain that's more indicative of an
3 actual injury to the arm that it is not the same
4 type of pain you're going to suffer with a heart
5 attack injury?

6 A. Well, I don't have any opinion about
7 Dr. Greenfield and her assessment of it that was,
8 you know, before me, and I didn't have any
9 specific contact with -- with Dr. Greenfield. I
10 can just say the -- you know, we would probably
11 have expected this patient to have pain related to
12 the shock, and if the shock was in the left upper
13 extremity, it wouldn't surprise me if it involved
14 the arm and shoulder as well as the hand. I can't
15 say anything about any other pain that he had.

16 Q. I think you mentioned that -- that
17 every -- every person who takes a history may get
18 a different -- you know, there may be something
19 added, may be something removed depending on what
20 exactly is going on at that time when they
21 presented to you.

22 Again, going back to Dr. Greenfield
23 briefly, if her testimony and her records indicate
24 that the -- Mr. Winfrey had no chest pressure and
25 that he did not experience any chest pain or heart

1 attack symptoms from Thursday on the day of the
2 shock until he presented that morning, would --
3 would you have any reason to dispute her
4 understanding of his history at that time?

5 A. I don't have any reason to -- to dispute
6 it. Although, as I've said, he's got all this
7 pain in his upper extremity from -- from the
8 shock. If he has pain in the same area from his
9 myocardial infarction, he's not going to be able
10 to tell the difference.

11 Q. But that pain in the upper extremity, you
12 can't say for a certainty that it was caused
13 because of the heart attack versus simply jerking
14 away from the machine and landing against another
15 machine at the facility he was working at.

16 A. I think that's correct. Yeah.

17 Q. Mr. McDaniel had asked you about stress
18 causing the plaque rupture, if the -- if the
19 mechanism of injury was plaque rupture infarction,
20 VSD, that -- that, for example, the stress of the
21 electrical shock can cause that plaque rupture.
22 Is it correct or am I correct in saying that there
23 is no way to know, though, what stress would cause
24 a plaque rupture?

25 A. That is correct.

1 Q. In other words --

2 A. And it's also true -- you know, y'all
3 keep using the term "plaque rupture." That's not
4 the only mechanism by which blood clots in
5 arteries and blocks arteries.

6 Q. Well --

7 A. A lot of these plaques are not ruptured.
8 They're just -- when they have an eroded surface
9 and -- and platelets aggregate on them, and the
10 next thing you know, you have a clot there
11 without -- without plaque rupture. Plaque rupture
12 is not an essential component to -- to coronary
13 thrombosis.

14 Q. Well, for either the -- I guess the
15 plaque rupture or just where you said it erodes
16 away and stops blood flow. Is that right? To
17 the -- certain parts of the heart.

18 A. You may have an erosion of the
19 endothelium, the -- the thin layers of cells that
20 is the innermost lining of the artery such that
21 blood clots there.

22 Q. And would that also be caused by an
23 outside stressor of some sort?

24 A. Hard to know.

25 Q. It could be caused by -- by nothing at

1 all? It could just happen?

2 A. Most of the time when people have
3 myocardial infarctions, we don't -- we're not able
4 to identify any specific stressor most of the
5 time.

6 Q. And in this case there is no way other
7 than, again, the proximity in time to electrical
8 shock to identify any stressor that -- that could
9 have caused his heart condition; is that right?

10 A. I guess that's correct.

11 MR. BAYNE: That's all the questions I
12 have.

13 MR. MCDANIEL: I did forget to ask you a
14 couple of questions. I'm trying to be very
15 brief.

16 (Pause.)

17 Actually, no further questions. No more
18 questions.

19 MR. BAYNE: Thank you, Doctor.

20 - - -

21 (Witness excused.)

22 - - -

23 (Deposition concluded at 8:39 a.m.)

24 - - -

25

CERTIFICATE OF REPORTER

I, Deidre Osborne, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the proceedings and evidence are
contained fully and accurately in the notes taken
by me in the above cause and that it is a correct
transcript of the same.

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

Witness my hand, I have hereunto affixed my
official seal this 23rd day of January, 2014, at
Lexington County, South Carolina.

Deidre Osborne,
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 12, 2019

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E X H I B I T S

LIDE	DESCRIPTION	MARKED
1	Catheterization Report Dated 5/28/2013	6

Winfrey, Clarence B (MR # M002010261)

Patient Information		
Patient Name	Sex	DOB
Winfrey, Clarence B	Male	

Procedures signed by Lide, Lanneau D, MD at 05/29/13 1318					
Author:	Lide, Lanneau D, MD	Service:	(none)	Author	Physician
				Type:	
Filed:	05/29/13 1318	Note	05/28/13 1503	Trans ID:	3M926593
		Time:			
Trans	Available				
Status:					
Dictation	05/28/13 1503	Trans	05/28/13 1831	Trans	Cath Lab Report
Time:		Time:		Doc	
				Type:	

DATE: May 28, 2013

SUMMARY: Triple-vessel coronary artery disease. Recent acute inferior myocardial infarction with inferior left ventricular akinesis on left ventriculography. Ventriculoseptal defect.

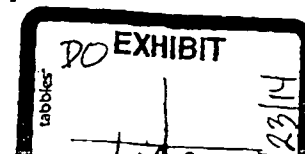
CLINICAL ABSTRACT: A 50-year-old man who has had left shoulder and chest pain since last Thursday when he experienced an electric shock through his left hand while at work. There is no previous history of heart disease, hypertension, diabetes or hyperlipidemia, although the patient smokes cigarettes. He will be considered for coronary bypass grafting and repair of ventriculoseptal defect.

RIGHT CORONARY ARTERY: The dominant right coronary artery was a large-caliber vessel. There was diffuse atherosclerosis including 50 - 60% stenosis in the proximal 1/3rd. The posterior descending branch was a medium-caliber vessel and was completely occluded in its middle 1/3rd. The left ventricular extension branch beyond the posterior descending artery was at least 70% stenotic over a short distance. The terminal posterolateral ventricular branch appeared free of severe focal stenosis, but appeared likely to be no more than 2 mm in diameter proximally and smaller distally. The left ventricular extension branch itself may be graftable. It is possible that the posterolateral ventricular branch is graftable proximally.

LEFT CORONARY ARTERY: The left main coronary artery was a medium length, medium-caliber segment, probably no more than 30% stenotic distally. The left anterior descending artery was a medium-caliber vessel with 75% stenosis distal to the 1st diagonal branch. The LAD beyond that point appeared diffusely atherosclerotic. Whether the LAD is graftable is not clear. The 1st diagonal had moderate plaque proximally and divided into 2 smaller caliber limbs distally. There was diffuse disease in these diagonal branches. The ramus intermedius branch of the left main coronary artery was a 2.5 mm diameter vessel proximally with 90% proximal stenosis. The ramus intermedius is probably graftable distally. The nondominant circumflex was a medium-caliber vessel with 90% proximal stenosis. The circumflex had only 1 branch which extended very far from the AV groove. This is the terminal posterolateral branch. It may not be graftable. The circumflex itself could probably be stented proximally.

LEFT VENTRICULOGRAM: Left ventriculograms were recorded in both 25-degree RAO and 45-degree

Winfrey, Clarence B (MR # M002010261) Printed by Soles, Cheryl M [4708] at 1/23/14
7:43 AM



Winfrey, Clarence B (MR # M002010261)

LAO

projections. The RAO view showed the left ventricular cavity to be at the upper limit of normal size. The diaphragmatic segment was akinetic, but the posterobasal segment appeared to contract well, as did the apex, anterobasal and anterolateral segment. No mitral regurgitation was evident. There was prompt flow into the right ventricle through an inferior ventriculoseptal defect. The pulmonary artery and aorta opacified about equally well after left ventricular injection. In the LAO projection, all left ventricular segments appeared to contract well. Again, there was prompt flow from the left ventricle through the VSD into the right ventricle, and only slightly less opacification of the right ventricular outflow tract, then of the aorta itself.

HEMODYNAMICS: Initial aortic pressures was approximately 130/75 mmHg. LV pressure was 140/32 when the aortic valve was crossed. Final left ventricular and aortic pressures following coronary arteriography and ventriculography were 140/25 and 140/75 mmHg, respectively.

PROCEDURE: The patient was transferred to the Cardiac Catheterization Laboratory from Dr. Dasgupta who saw this patient in the office. The echocardiogram done in the office showed a ventriculoseptal defect. In the Cardiac Catheterization Laboratory, the patient was found to have a normal right radial pulse and normal right Allen test. Skin and subcutaneous tissues were anesthetized with 2% Xylocaine before the right radial artery was cannulated percutaneously with a 6-French sheath. Heparin 5000 units was given IV. Initially a 6-French TIG guide catheter was used for measurement of left ventricular and aortic pressure, and for selective right coronary arteriography. This catheter appeared too stiff at the secondary curve to cannulate the left coronary artery. A 5-French diagnostic TIG catheter cannulated the left coronary artery; however, and was used for selective left coronary arteriography. A pigtail catheter was then used for a power injected 25-degree RAO left ventriculogram, followed by a 45-degree LAO power injected left ventriculogram. The patient tolerated the procedure well. We have consulted Dr. Travis to consider this patient for coronary bypass grafting and surgical repair of his ventriculoseptal defect. In the meantime, the patient has been transferred to Intensive Care for further treatment. Following cardiac catheterization, the catheter and sheath were removed, and a TR band was applied. Patient received several doses of intraarterial verapamil during this procedure. There were no apparent immediate complications.

cc: Karen Greenfield, MD
Lanneau Lide, MD
Jeffrey A. Travis, MD

T: 05/28/2013 06:31 P/saw

Winfrey, Clarence B (MR # M002010261) Printed by Soles, Cheryl M [4/7/08] at 1/23/14 7:43 AM

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION FULL COMMISSION
WCC No. 1306305

Clarence Winfrey,)
)
Claimant/Appellant,)
)
v.)
)
Archway Services, Inc.,)
)
Employer/Respondent,)
)
and)
)
American Fire & Casualty,)
)
Carrier/Respondent.)
-----)

COPY

FULL COMMISSION HEARING

Monday, May 19, 2014
1:38 p.m. - 2:03 p.m.

The Full Commission Hearing before Commissioner Aisha Taylor, Commissioner Melody L. James, and Commissioner Avery B. Wilkerson, Jr., Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 19th day of May, 2014 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

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1 THE COURT REPORTER: Today is Monday, May 19, 2014.

2 This is South Carolina Workers' Compensation
3 Case Number 1306305. This is the case of
4 Clarence Winfrey, Claimant, versus Archway
5 Services, Incorporated, Employer, and American
6 Fire and Casualty, Carrier.

7 The Appellant is the Claimant represented by
8 Preston McDaniel. The Respondent is
9 represented by Brett Bayne.

10 Each side is allowed ten minutes for oral
11 argument and the Appellant three minutes in
12 reply. You are requested to argue the grounds
13 of exception and stay within the record.

14 COMMISSIONER WILKERSON: Mr. McDaniel.

15 ARGUMENT BY MR. MCDANIEL:

16 MR. MCDANIEL: May it please the Commission. We're
17 here on -- this is from the decision of
18 Commissioner Beck on the Form 15 hearing.

19 The Commission -- the decision should be
20 reversed and the benefits reinstated with
21 penalty because the Defendants did not comply
22 with the mandatory provisions of 42-9-260(A)
23 and (B); number two, the Defendants are the
24 moving party and the Commissioner made a legal
25 error by shifting the burden of proof from the

1 Defendants to us. And the Defendants did not
2 meet -- even if you look at it from the
3 standpoint of the burden of proof as far as the
4 evidence goes, the Commission -- the Defendants
5 did not prove their -- did not meet their
6 burden of proof.

7 Now, let's talk about the first issue and that
8 is the mandatory provisions of 42-9-260(A) and
9 (B). First off, the first -- the first
10 provision of that section (A) provides
11 specifically: Upon making the first payment,
12 the Employer immediately shall notify the
13 Commission in accordance with the form
14 prescribed by the Commission that payment of
15 compensation has begun.

16 In this case, they did not file that form.
17 They did not send us a form. The Commission,
18 as you will find in the record, fine them.
19 They agreed that they did not properly file.

20 So number one, they have violated the
21 provisions of the Act, the section which allows
22 them to stop payment at any point in time,
23 particularly during the first 150 days. They
24 have to file that form and notify the Claimant
25 that benefits have been started. That's a

1 mandatory requirement of the -- it's a
2 mandatory requirement, number one.

3 Number two, section -- Regulation 67-503 says
4 under (B), the Employer's representative shall
5 file the Form 15 with the claims department
6 within ten days of the date of the first
7 payment of compensation. Two, the Employer's
8 representative shall serve the Form 15 on the
9 Claimant, according to the Rule 67-211, with
10 the Claimant's first -- with the Claimant's
11 first check. That has not been done. It was
12 never done.

13 (C), another provision provides that -- and
14 I've quoted this. In my brief at page two,
15 you'll find the first quotation of the statute.
16 The second provision provides -- in 67-504, it
17 provides that they have to serve us with two
18 copies of the Form 15, three, when they stop
19 benefits. They did not do that.

20 And, more importantly, they are also required
21 under that code section, under 504, to do the
22 following: The Employer's representative shall
23 file a Form 15 immediately with the claims
24 department and shall serve two copies of the
25 Form 15 immediately on the Claimant according

1 to Regulation 67-211.

2 COMMISSIONER JAMES: Mr. McDaniel, with regard -- I
3 see the inclusiveness of your argument, but as
4 far as the two copies, that's -- that is -- and
5 I know what you're pointing out. It's one
6 wrong upon one wrong. But if it was just that
7 one issue, that is -- we all know why the two
8 copies. I mean --

9 MR. MCDANIEL: Right, so we'll have one to send
10 y'all back.

11 COMMISSIONER JAMES: Right. And -- so that's
12 more -- that in itself is more of a ministerial
13 (sic) issue. Just like there's some case law
14 with regards to search warrants that require
15 them to be turned in within ten days of
16 execution, but that doesn't invalidate the
17 search warrant. So that --

18 MR. MCDANIEL: Right, Commissioner.

19 COMMISSIONER JAMES: Right. But I understand -- I
20 understand what you're saying.

21 MR. MCDANIEL: Right.

22 COMMISSIONER JAMES: But that's not the big --
23 that's not the big issue here.

24 MR. MCDANIEL: No, Commissioner, it's not. I
25 think -- I think in reference to the mandatory

1 requirements of the Act, if I don't file
2 a -- if I bring a third-party action and within
3 30 days I do not file that form with the
4 Commission, it voids my right to bring that
5 third-party action. I can get kicked out of
6 Court. I can lose my client's benefits.

7 That -- the Supreme Court's already said that's
8 a -- that's a mandatory requirement under 42 --
9 because the Act says you shall do this.

10 Now, what we have to look at first off is
11 42-9-260 creates what? An exception to what
12 the general rule has always been ever since the
13 inception of the Act and that is, once you
14 start benefits, you can no longer deny the
15 case. That statute carved out six specific
16 exceptions that would allow them to stop
17 benefits.

18 So, you're right, Commissioner. In my opinion,
19 they first did not comply with some mandatory
20 requirements; that's to notify -- it goes along
21 with 42-17-10 which provides that the
22 Commission shall approve the agreement of the
23 parties.

24 In other words, like when you file that
25 agreement with the parties, it has the same

1 force and effect as an order. That's the
2 same -- that statute there contemplates the
3 same thing as under 42-17-10.

4 Now -- so -- and the provisions of the Act are
5 mandatory in that when you don't do that, when
6 you don't comply with the Act, when you do not
7 comply with the Act, they're mandatory and
8 provide that you shall reinstate benefits and
9 the Commission shall penalize him 25 percent
10 for improper stop payment.

11 So, my first argument is, they failed to comply
12 with the Act. The second argument is, that the
13 Defendants are the moving parties.

14 Now, first off, the statute, which creates a --
15 and if you'll look at page seven, I've quoted
16 this, here again from the Act. And it provides
17 that once temporary disability benefits are
18 commenced, the payments may be terminated if --
19 and then it goes on to provide -- and one of
20 the reasons is "a good faith investigation is
21 conducted by the Employer reveals a grounds for
22 denial."

23 The word is "if" is in there because it sets a
24 condition precedent. You can stop benefits if
25 you have conducted a good faith investigation.

1 The statute clearly contemplates that the
2 Defendants are the moving party. If there's
3 any doubt in that, if there's any doubt in
4 anybody's mind that they're the moving party,
5 okay, the regulation that this Commission has
6 adopted provides -- 67, you know, 504 provides
7 that the Defendants are declared to be the
8 moving party.

9 This Commission has decided that in any action
10 brought under that section to stop benefits,
11 the Defendants are declared to be the moving
12 party.

13 Now, this Commission says that. General law,
14 I quote general law on page 8, CJS, Corpus
15 Juris Secundum, generalized Black Letter Law,
16 it says: The moving party has the burden of
17 proof going forward, as well as the burden of
18 persuasion in any administrative hearing.

19 To say that I was somewhat shocked whenever I
20 was told that we had to prove -- we had to
21 disprove -- we had to prove that they had not
22 conducted a good faith investigation ...

23 The -- now, let's go to the testimony and the
24 evidence. Did they put up anybody from the
25 insurance company? No. Did they put up

1 anybody from the Employer? No. What did they
2 rely on? Medical records. That's all they
3 relied on.

4 They had no testimony, no evidence put into the
5 record saying that we formed a good faith
6 belief that we had -- based on our good faith
7 investigation, we formed a belief that the
8 Claimant had failed to prove compensable injury
9 by accident. They had nothing in there. This
10 was -- the Commissioner's decision was based
11 clearly on his review -- his review of medical
12 records.

13 And as he found in his order, the Defendants
14 represented to the Commission they conducted a
15 good faith investigation. They didn't put any
16 proof of that. I move for a -- can't move for
17 a directed verdict, but I would basically --
18 asked them that I not even be required to put
19 up any evidence because they hadn't had anybody
20 testify.

21 Now -- so, next issue is the Commissioner erred
22 by shifting the burden of proof to the Claimant
23 in a Form 15 hearing. The Form 15 hearing is
24 a specific limited right given to the
25 Defendants within the first 150 days. It's an

1 exception to the entire concept of workers'
2 compensation, which is they can stop benefits
3 for certain specific reasons. And one of those
4 reasons is a good faith investigation.

5 Commissioner, another thing -- going to your
6 point about the two copies, another thing they
7 didn't do is it requires that you attach
8 documentation as to why you're stopping
9 benefits. They didn't attach any
10 documentation. There is nothing.

11 All right. So, the second thing -- the
12 first -- the next thing is the Commissioner
13 committed an error of law by shifting the
14 burden of proof to us, to prove that they had
15 not conducted a good faith investigation.

16 Needless to say, however, also I had filed a
17 Notice of Deposition, gave them ten days
18 notice. They filed a Motion to Quash that way
19 back when this first thing started; that was
20 not ruled on. We didn't get a ruling on that
21 until the hearing and the Commissioner said I
22 didn't have the right to take the --

23 COMMISSIONER WILKERSON: Finish your thought, then
24 you'll have three minutes in reply.

25 MR. MCDANIEL: And the other thing is --

1 COMMISSIONER WILKERSON: No, don't go to the next
2 thing. Finish your thought because we got --

3 MR. MCDANIEL: My thought is, is that I should have
4 been allowed to take the deposition. Thank
5 you.

6 COMMISSIONER WILKERSON: Okay. Thank you.

7 COMMISSIONER JAMES: Mr. McDaniel, let me ask one
8 question. In your brief, some of the issues
9 there is some question as to whether there was
10 a request for a postponement or not or whether
11 that was offered at the time to -- in other
12 words, to prepare for certain of these issues.

13 MR. MCDANIEL: They filed a Motion for Continuance
14 and -- I think what you're asking me is whether
15 or not, for example, I was given an opportunity
16 to ...

17 COMMISSIONER JAMES: At some point, Defendants
18 indicate in their brief of certain limited
19 number of the issues that you have raised in
20 your brief, that there was an opportunity that
21 there could have been a continuance in order
22 for preparation for those issues.

23 MR. MCDANIEL: Right. In other words -- yes, in
24 other words, they -- of course, here again, a
25 lot of this was an off-the-record conference.

1 But, in other words, they filed a Motion for a
2 Continuance and the Commissioner, I believe, in
3 that off-the-record conference said, you
4 know -- you know, of course, I've got a client
5 without benefits, been there without benefits
6 for three months. We were there on the
7 hearing. I didn't think the Motion for
8 Continuance was proper. The -- but, in other
9 words, I was given -- I think part of that was
10 that, well, you could take the deposition -- it
11 was not in reference to the adjuster. It was
12 in reference to further medical evidence, I
13 believe. I don't even remember specifically
14 what that was in that regard. Mr. Bayne may be
15 able to --

16 MR. BAYNE: Commissioner, I'll be happy to address
17 that --

18 COMMISSIONER JAMES: Thank you, sir.

19 COMMISSIONER WILKERSON: Go ahead.

20 MR. BAYNE: -- if you want me to. Just kind of, you
21 know, outside of my time, I'll just address
22 that one issue for you.

23 COMMISSIONER WILKERSON: Okay.

24 MR. BAYNE: The issue was that we had filed a Motion
25 to Continue based on the Circuit Court claim

1 that was ongoing and Mr. McDaniel had opposed
2 that; obviously, Commissioner Beck declined
3 that. There were a couple of other outstanding
4 motions related to discovery and Mr. McDaniel,
5 I think, had asked or had indicated he
6 didn't -- had either not received one or had
7 not had the chance to address when Commissioner
8 Beck gave him the option to continue the
9 hearing to file a written reply to those, which
10 was declined and we just addressed them off the
11 record in the pre-conference hearing.

12 So, it didn't have anything to do with the
13 deposition of the adjuster. That was something
14 that was just taken up and denied by
15 Commissioner Beck, as was our request related
16 to the deposition of the Claimant. So the
17 discussion about -- about delaying the hearing
18 for the motions didn't have anything to do with
19 the deposition of the adjuster that
20 Mr. McDaniel wished to take.

21 **COMMISSIONER WILKERSON:** Go ahead and start your
22 comments.

23 **MR. BAYNE:** Thank you, Commissioner.

24 **ARGUMENT BY MR. BAYNE:**

25 **MR. BAYNE:** Commissioner Beck's order at the outset

1 should be affirmed in its entirety. The
2 Claimant has raised a couple of issues that
3 he's talked to you about here today that the
4 Defendants did not comply with 42-9-260 and the
5 discussion about being the moving party and
6 shifting the burden and I want to discuss those
7 very briefly.

8 As -- Commissioner James, as you said, the
9 two-copy rule, we don't dispute that. We did
10 not submit two copies of the Form 15, therefore
11 we did not comply with that. But as
12 Commissioner Beck in his decision and order and
13 as you've spoken about today, that is more of
14 a ministerial rule in that it exists to provide
15 notice to the Claimant.

16 In this case, Commissioner Beck determined that
17 because the Claimant was represented by
18 counsel, that two-copy rule was not a
19 requirement but rather something that should
20 have been done but wasn't. But the fact that
21 it was not done is not a reason to invalidate
22 his decision and order.

23 As far as the attaching a reason to the 49 --
24 or to the Form 15, that was done in this case.
25 When you look at the Form 15, on the face of

1 that Form 15, there is documentation as to the
2 reason why this claim has been denied that
3 complies in all aspects with the South Carolina
4 Workers' Compensation Act.

5 There is no requirement in the Act that
6 documentation be stapled to the back of it, be
7 paper clipped to it. It simply has to be
8 attached to it sufficient to provide notice to
9 the Claimant as to the reason why his claim was
10 being denied. That was done in this case.

11 As far as the deposition issue related to the
12 adjuster -- and this is something that -- is
13 just an issue that's raised in there --
14 Mr. McDaniel sought to take the deposition of
15 the adjuster on this claim by designating her
16 the managing agent of the insurance company,
17 which is not something that you get to chose to
18 do. You have to identify the actual managing
19 agent of a corporation if you wish to take
20 their deposition in this case.

21 When we received that motion or that Notice of
22 Deposition, we filed a Motion to Quash that
23 deposition and we refused to give that
24 deposition. At the time, no matter was taken
25 up on that, but it was handled again before the

1 hearing.

2 Interestingly enough, we filed a notice with
3 Mr. McDaniel to take the deposition of his
4 client, which was also refused and was also
5 turned down at the time because we didn't give
6 15 days notice of the deposition. But there
7 was no hearing requested and no order sought
8 from the Commission in order to deny that
9 deposition, which is the exact same reason when
10 you read the brief of the Claimant as to why
11 there was error in denying the Claimant's
12 deposition of the adjuster.

13 **COMMISSIONER JAMES:** And I don't mean to interrupt
14 your flow of argument --

15 **MR. BAYNE:** Sure.

16 **COMMISSIONER JAMES:** -- but what about the actual
17 crux of this issue as to what was placed into
18 evidence and how -- how is that -- how do we
19 know that that's part of the investigation?

20 **MR. BAYNE:** Commissioner, we know that's part of the
21 investigation because those were documents that
22 were received by the Defendant prior to the
23 denial of benefits of the Claimant. And we
24 know that because, one, they were presented to
25 the Defendants by the Claimant in June of 2013.

1 The second reason we know that is because the
2 Defendant has the absolute right to those
3 documents under statute and receives those
4 documents. It's --

5 **COMMISSIONER JAMES:** But we don't -- there's nobody
6 there to say they received it, right?

7 **MR. BAYNE:** There's no custodian of records to
8 indicate that they were sent, but the subpoenas
9 exist, the documents exist, the email from the
10 Claimant to the Defendant exists indicating
11 that the medical records were sent. References
12 are made throughout. The records, when you
13 look at them, they involve discussions between
14 the Defendant and the Claimant or the insurance
15 company and the Claimant related to the medical
16 records. The fact that the --

17 **COMMISSIONER JAMES:** And that -- and that -- and
18 that's in the -- that's in the APA's?

19 **MR. BAYNE:** It should be in the APA's, Your Honor.
20 If it's not, we can -- we can bring that up.
21 But the issue, again, goes to that the
22 Defendants are paying the medical bills and as
23 part of the statute under the Workers'
24 Compensation Act, the Defendant is entitled to
25 receive those medical bills.

1 And when we go back to the issue just simply on
2 shifting the burden or who had the burden and
3 then we get to whether or not the Defendants
4 even proved that they had the right to deny
5 that claim, when you look at the medical
6 records and you question whether or not a good
7 faith investigation occurred -- when you read
8 the medical records, what you find out is that
9 the Claimant represented to the hospital six
10 days after he suffered an electrical shock,
11 suffering at that time from myocardial
12 infarction; that he had a severe family history
13 of heart disease; that he had a personal
14 history of heart disease; that he had severe
15 risk factors related to known causes of heart
16 disease such as smoking, alcoholism, and a
17 family history; that the doctors when treating
18 him -- and you look at the symptoms he has that
19 morning, it indicates that he didn't suffer a
20 heart attack on the day he was shocked. He
21 suffered a heart attack on the day he presented
22 to the hospital. And that's the medical
23 records that the Defense looked at.
24 And when you look at those records and when
25 Commissioner Beck looked at those records, he

1 looked at them and said, "That's a reason to
2 deny this claim," which is why we're here in
3 the first place.

4 So, I guess to answer the question,
5 Commissioner, we don't have a records custodian
6 to come up and say we received those records on
7 "X" date before the denial of benefits, but I
8 think it's common sense under the law that we
9 would have had those records. And then when
10 you look at communications that were had or you
11 look at the fact that the Claimant himself sent
12 us those medical records in June of 2013, it
13 becomes logical that we would've had those
14 medical records in order to review them and
15 then make a denial of benefits.

16 That's all I have, Commissioner.

17 COMMISSIONER WILKERSON: Any other questions?

18 COMMISSIONER TAYLOR: No.

19 COMMISSIONER WILKERSON: Thank you. In reply.

20 REPLY BY MR. MCDANIEL:

21 MR. MCDANIEL: Real fast. The -- number one,
22 Mr. Bayne just told you what his opinion was
23 reviewing those records. He just told you what
24 the Commissioner's opinion was reviewing those
25 medical records. That's Mr. Bayne's opinion,

1 that's the Commissioner's opinion, but the
2 Commissioner has to base his decision on the
3 evidence.

4 And the evidence presented -- there is no
5 evidence as to what formed the opinion of the
6 insurance company to deny this claim. There is
7 simply no evidence in the record. It is
8 surmise, conjecture and innuendo for the
9 Commissioner to say, "Well, I see where he had
10 these past preexisting conditions and they
11 could have reviewed that and denied it." Well,
12 they could have had -- they could have denied
13 it because -- that's not -- that shoulda,
14 coulda, woulda? That's not what is required.
15 They are required to come in and prove that
16 they conducted a good faith investigation and
17 found grounds and what those grounds were.
18 They didn't do that.

19 **COMMISSIONER WILKERSON:** Mr. McDaniel, let me ask
20 just a general question.

21 **MR. MCDANIEL:** Sure.

22 **COMMISSIONER WILKERSON:** Is there not some concern
23 that every insurance carrier, if you had
24 prevailed, will take 149 days to investigate
25 every claim and not start anything until the

1 150th day?

2 **MR. MCDANIEL:** Commissioner, as a matter of fact --
3 is there not some concern? Sure.

4 **COMMISSIONER WILKERSON:** Yeah, that -- okay.

5 **MR. MCDANIEL:** However -- okay. Another thing that
6 the statute provides under 42-9-260(A), within
7 the first 150 days, they can deny the claim,
8 okay? They can deny the claim and I
9 contemplate that they would file a 21, okay?
10 But --

11 **COMMISSIONER WILKERSON:** But they're not required to.

12 **MR. MCDANIEL:** What we're talking about, though, is
13 under (B).

14 **COMMISSIONER WILKERSON:** I'm following you.

15 **MR. MCDANIEL:** All right. Under (B), they're --
16 they can stop benefits without a hearing, okay?
17 In other words, under certain limited criteria.
18 So, they can still deny the claim and if the
19 claim is only -- but once they've made the
20 decision, unless they establish one of those
21 six reasons.

22 And if you look at the six -- out of the six
23 reasons, the one really that -- that I think it
24 gives me tremendous -- and has always given me
25 heartburn is this good faith denial of

benefits.

Because, you know, it's easier to attach a doctor's statement "he's released to light duty work." And they say -- you know, they made light duty work available. All right. That's -- that's very -- you know, that's -- the documentation on all the rest of them and y'all see it all the time, you know, what -- and your decisions.

I've had y'all decide both sides of the coin on that. Well, it looks like the doctor's restrictions were 20-pound weight restriction and you didn't provide him a job with a 20-pound weight restriction, you don't reinstate benefits. But what we talking about there? We're talking about evidence.

COMMISSIONER WILKERSON: Yeah.

MR. MCDANIEL: And, Commissioner --

COMMISSIONER WILKERSON: Go ahead and finish your thought.

MR. MCDANIEL: If I -- could I -- one other important issue.

COMMISSIONER WILKERSON: Go ahead.

MR. MCDANIEL: May I have one minute -- one second?

And that's this: Finding two, Commissioner --

1 the issue was whether or not they should
2 reinstate benefits under Form 15. Finding of
3 two is going to become very important and he
4 made a Finding of Fact that Claimant suffered
5 a myocardial infraction on May 28th, 2013.

6 No matter what your decision on anything else,
7 that's an issue that goes towards the day of
8 the heart attack and that was an issue outside
9 of what was before the Commissioner for
10 decision and you're going to see in the later
11 decision. I'd ask that that be struck at a
12 minimum, if you don't agree with me on anything
13 else.

14 **MR. BAYNE:** And I'd like to address that, if
15 that's --

16 **MR. MCDANIEL:** And we will -- and we will stand on
17 my brief as to all the other --

18 **COMMISSIONER WILKERSON:** Let me ask you --

19 **COMMISSIONER JAMES:** In other words, you say that
20 goes to the merits of whether it was
21 compensable or not.

22 **MR. MCDANIEL:** Correct.

23 **COMMISSIONER JAMES:** But it was the allegation of
24 the fact that it was on the 28th that may have
25 been part of the reason for stopping the

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 25

1 benefits, not that it actually occurred on the
2 28th.

3 **MR. MCDANIEL:** Correct. In other words -- but ~~that~~
4 finding could be argued to be the law of the
5 case, that kind of thing.

6 **COMMISSIONER WILKERSON:** Go ahead.

7 **REPLY BY MR. BAYNE:**

8 **MR. BAYNE:** I'd like to briefly -- since that wasn't
9 addressed in the preliminary, I'd like to rebut
10 that briefly. And that is, Commissioners, that
11 the issue is, did we conduct a good faith
12 investigation, and part of that investigation I
13 talked about earlier is that we looked at the
14 sequential events that occurred. And one of
15 those sequential events is that --

16 **COMMISSIONER WILKERSON:** Is that outside the record?

17 **MR. MCDANIEL:** Yeah, I'm going to object. That's
18 outside the record.

19 **COMMISSIONER WILKERSON:** Yeah, I thought it might
20 be.

21 **MR. MCDANIEL:** There's no proof --

22 **COMMISSIONER WILKERSON:** If it's outside the record,
23 we can't --

24 **MR. BAYNE:** That's fine, Commissioner.

25 **COMMISSIONER WILKERSON:** Yeah.

1 MR. BAYNE: If the heart attack -- when you look at
2 the record, the heart attack didn't occur until
3 six days after an accident. That in and of
4 itself is sufficient grounds to deny a case.

5 COMMISSIONER JAMES: And, Mr. Bayne, what I'm saying
6 is, the actual date that it may have occurred
7 may be for another Commissioner.

8 MR. BAYNE: It might be.

9 COMMISSIONER JAMES: It's the allegation of it
10 occurring on that date is the basis of your
11 argument --

12 MR. BAYNE: It might be, Commissioner, yes.

13 COMMISSIONER JAMES: -- for good faith. But to
14 actually find in that hearing what transpired
15 medically would be -- would be outside the ...

16 MR. BAYNE: I don't disagree with you that it's
17 outside --

18 COMMISSIONER JAMES: And the shoe could be on the
19 other foot at another hearing.

20 MR. BAYNE: Right.

21 COMMISSIONER JAMES: In other words, it's a finding
22 that would really go onto the merits
23 Commissioner.

24 MR. BAYNE: Correct, but it's not something that's
25 outside the evidence that was in front of

1 Commissioner Beck and he had that evidence and
2 he looked at it and made that determination
3 based on the medical records.

4 COMMISSIONER JAMES: But it wasn't the purpose of
5 the hearing.

6 MR. BAYNE: Well --

7 COMMISSIONER JAMES: The purpose was --

8 MR. BAYNE: -- we think it was.

9 COMMISSIONER JAMES: -- based on what you're looking
10 at is why there's good faith to stop.

11 MR. BAYNE: Correct, Commissioner.

12 COMMISSIONER JAMES: Not (inaudible).

13 MR. BAYNE: We think it was part of the hearing, but
14 that's for another issue.

15 COMMISSIONER WILKERSON: Okay. If y'all would --
16 this concludes the hearing.

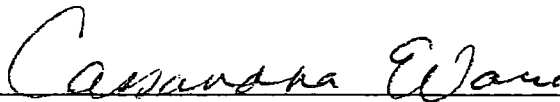
17 (The hearing concluded at 2:03 p.m.)
18
19
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22
23
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25

CERTIFICATE

This is to certify that the within hearing consisting of twenty-seven (27) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 9, 2014.



Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018



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Workers' Compensation Commission

June 12, 2013

American Fire & Casualty Co
13830 Ballantyne Corp Place
Suite 300
CHARLOTTE, NC 28277
Carrier Code No. 00011

Re: WCC File No. 1306305
Clarence Winfrey

Date of Injury: 05/29/2013

Archway Service, Inc
Carrier Policy No.

The above claim has been filed according to Regulation 67-206. However, we have not received a First Report of Injury (Form 12A) for this claim. According to our records, you are the party responsible for filing the First Report of Injury (Form 12A) for the above claim. Please submit a Form 12A to the Commission within ten days of the date this letter, pursuant to Regulation 67-416, which requests the Form 12A be submitted using electronic data interface.

A copy of the correspondence establishing this claim is enclosed for your information. Please reference the WCC file number on all correspondence and forms filed with the Commission regarding this claim.

Sincerely,

Wayne A. Ducote
Coverage & Compliance Director
803-737-6203

:WAD
Enclosure: Claim Filing

I certify this to be a true and correct copy.



POC Online Inquiry

1306305

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Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Address	Names	Addresses	State Exposure	Canc/Reins/Non-Renew	Transaction History
Policy Nbr	XWA1355766739			Cov Prvd ID 11266	Pol Eff Dt 09/12/2012	Pol Exp Dt 09/12/2013
Primary Insured Name	ARCHWAY SERVICE INC					Primary Insured FEIN 510663955

Orig Pol Nbr

Orig Cov Prvd ID

Orig Pol Eff Dt

Primary Insured Information

Primary Insured Name ARCHWAY SERVICE INC
 Name Type 2 - COMMERCIAL NAME
 Street 2316 KINGS ROAD EXT
 City SHELBY
 State NC
 Zip Code 28152

Coverage Provider Information

Cov Prvd ID-Cov Prvd Name 11266 - AMERICAN FIRE AND CASUALTY CO
 Street PO BOX 188060
 City FAIRFIELD
 State OH
 Zip Code 45018
 Group ID 11363
 Branch 909

Orig Pol Rcvd Dt 09/11/2012
 Prior Pol Nbr

Orig POC Rcvd Dt

Last Rcvd Dt 04/16/2013

Last Activity Dt 04/16/2013

Pol Type Plan 01 - VOLUNTARY POLICY
 Pol Type Cvr 01 - STANDARD WORKERS' COMPENSATION POLICY
 Wrap-Up Pol 2 - NON-WRAP UP POLICY
 Legal Nature of Insured 03 - CORPORATION
 Employee Leasing Code 1 - NON-EMPLOYEE LEASING POLICY
 Deductible Losses Code
 Deductible Calc Code

State Cov Prvd
 State Eff Dt 09/12/2012
 State Exp Dt
 Reason State Added
 Gov Class Code 5191
 State Premium (\$) 558

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COVERAGE FOR DIA	Yes ☒ No ☐
CARRIER CODE #	11
FEIN	510663955
CB	

001 05
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I certify this to be a true and correct copy

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 01 11 00

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT. CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY TOP TO BOTTOM.

07/23/2013

86984005

Ohio Casualty
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Policy No. **IWA 55266239** Loss Date **05/22/2013**

Claim No. **WCCT-1** WC **22-209963 A**

For: **INVOICE NUMBER 252400**
WCC1306305 CLARENCE WINFREY

FROM: **07/16/2013** THRU: **07/16/2013**

Insured: **ARCHWAY SERVICE INC**

to the order of: **SOUTH CAROLINA WORKERS COMP**
PO BOX 1715, 1612 MARION ST.
COLUMBIA SC 29202-1715

228860

86984005 042200910 0000167363

☐ THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENT. ☐

I certify this to be a true and correct copy.

[Signature]

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

*Proudly representing injured workers
for over 25 years*

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 23, 2013

VIA HAND DELIVERY
Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

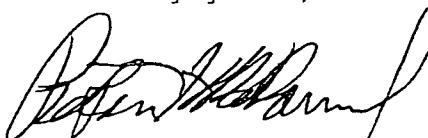
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Ginger:

Please find attached my original letter addressed to the adjuster Ms. Terri Hughes with a copy to Rocky Hughey attorney at law of the Form 15 requesting a Hearing which was hand delivered to the Commission per the attached Affidavit of Hand Delivery on September 18, 2013. In a rush to get this matter filed the envelope was addressed to the Commission and there was no separate letter. By copy of this letter sent via email and regular mail I am again advising Rocky of this filing and serving him with our Affidavits of delivery in this matter.

Pursuant to our telephone conversation I am requesting that this matter be set on an emergency basis by the Commissioner due to the severe situation of my client. By copy of this letter sent via email and mail I am notifying and serving both the adjuster who generated the Form 15 and Rocky Hughey who is now representing them with a copy of this refilling. I am also going to file a Form 50 Requesting a Hearing and would ask that it be set as soon as possible if necessary after the Form 15 Hearing as I have no earthly idea why this claim was denied or what the defendants will present at the Form 15 Hearing.

Sincerely yours,



Preston F. McDaniel

PFM/bre
Enclosures
cc: Landon Hughey, Esquire
Terri Hughes

CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the FORM 15 by depositing the same in the United States Mail, with adequate postage thereon, AND VIA Electronic Mail, addressed as follows:

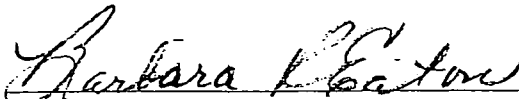
VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

VIA EMAIL - rhughey@mgclaw.com
AND US MAIL

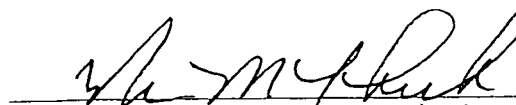
Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211

I also hereby certify that a regular communication by mail exists.


Barbara R. Eaton
Paralegal

SWORN TO BEFORE ME this

23 day of September, 2013.


Notary Public for South Carolina (L.S.)

My Commission Expires: 1/21/14

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ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
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Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 18, 2013

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

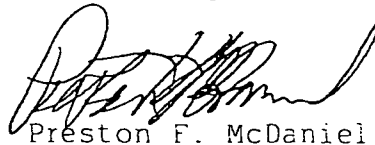
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305
Claim #: 22209963

Dear Ms. Hughes:

Please find attached the Form 15 which I am today filing with the Commission by hand delivery. While you note on your letter denying the claim that attorney Rocky Hughey of McAngus, Goudelock & Courie will be representing you, we have checked with the Commission and he is not yet on Record as being your attorney nor have we have been notified as such and so I am therefore returning this Form 15 and serving the Form 15 on you.

In addition, I am forwarding a copy to Mr. Rocky Hughey and asking him to confirm whether or not he is in fact representing you on this matter.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Mr. Clarence B. Winfrey
Landon Hughey, Esquire



WCC File #: 1306305
Carrier File #: 22209963
Carrier Code #: 00475
Employer FEIN #: 510663955

Claimant's Name: Clarence Winfrey SSN: _____ Employer's Name: Archway Services
Address: _____ Address: 2316 Kings Road Extn.
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: 803 429 7590 Work Phone: _____ Insurance Carrier: Liberty Mutual Insurance
Preparer's Name: Terri Hughes Law Firm: _____ Preparer's Phone #: 800 331 0078

Date of injury: 5/22/2013 (m/d/yyyy) Date of Notice to Employer of Injury: 5/22/2013 (m/d/yyyy)

I. Payment of Temporary Compensation Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☒ A. Temporary Total at the compensation rate of \$426.69 per week. For this period of disability, disability began on 6/1/2013 (m/d/yyyy) and the date of first payment was 7/11/2013 (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of _____ per week. Note: When the Temporary Partial compensation rate varies, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury

-	Current weekly wage	
=	Difference in wages before injury and now	\$0.00
x	.6667	\$0.00
	Temporary Partial Compensation Rate	\$0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of _____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on 9/12/2013 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: Employee fails to meet the burden of a compensable injury under the SC Workers' Compensation Act.
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Terri Hughes
Signature of Claims Administrator

9/12/2013

Date (m/d/yyyy)

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: ☒ Form 15(II) ☐ Has not been received.

Robert H. [Signature]
Signature of Claimant or Legal Representative

9/17/13
Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

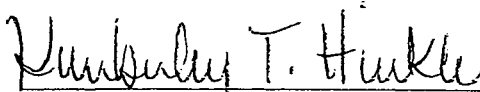
CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the FORM 15 by depositing the same in the United States Mail, with adequate postage thereon, AND VIA Electronic Mail, addressed as follows:

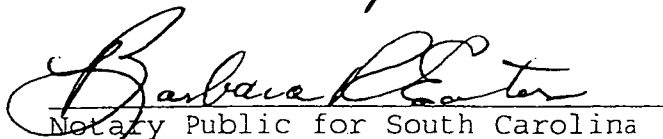
VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL
Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
18th day of Sept., 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 05.12.18

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1306305

Clarence Winfrey,)
)
Employee-Claimant,)
)
v.)
)
)
Archway Service, Inc.,)
)
as Employer, and)
)
American Fire and)
Casualty, Co.)
)
as Carrier,)
)
Respondent-Defendants.)
_____)

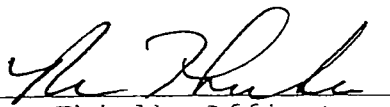
AFFIDAVIT OF ROSE
THIELKE AS TO SERVICE
BY HAND DELIVERY

I, ROSE THIELKE, having been DULY AND PROPERLY SWORN, do
depose and state that on September 18, 2013 I was instructed to
and did hand deliver a copy of the Form 15 in a sealed envelope
which I served upon the South Carolina Workers' Compensation
Commission by delivering a copy of the same to the receptionist
for deliveries at the Commission. To my knowledge the envelope

was addressed to the South Carolina Workers' Compensation
Commission at the following address:

South Carolina Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

FURTHER THE AFFIANT SAYETH NOT


Rose Thielke Affiant

SWORN TO BEFORE ME this

23rd day of September, 2013.

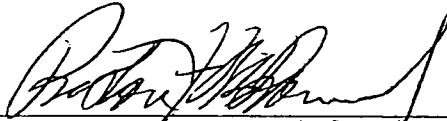
 L.S.
Notary Public for South Carolina

My Commission Expires: 10/28/18

CERTIFICATE OF SERVICE BY Hand Delivery

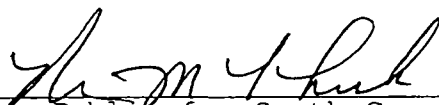
I hereby certify that I have on this day served the following in the matter of Clarence Winfrey v. Archway Services and American Fire and Casualty Insurance, with a copy of the **Form 15** by hand delivery, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29202



Preston F. McDaniel

SWORN TO BEFORE ME this 23
day of September, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 1/21/14

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 7, 2013

VIA EMAIL - abracy@wcc.sc.gov
& US Mail

Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Objection to Pre-Hearing Brief and APA Submissions of
the Defendants, the Moving Parties, pursuant to Rule
67-612(B)(4) and Supplemented and Amended
Pre-Hearing Brief and APA Submissions

Dear Commissioner Beck:

The above referenced matter is set before you on November 13, 2013.

On November 5th we received a cover letter, a Pre-Hearing Brief and Affidavit of Service along with alleged APA Submissions and Exhibits all of which were dated and served according to the Notice of Service on November 4, 2013. Obviously the filing and service of the Pre-Hearing Brief is late and in violation of Commission Rule 67-611 and 67-612(B), which provides that the Pre-Hearing Brief and APAs and Exhibits must be filed at least ten (10) days before the Hearing. Pursuant to Rule 67-211, when service is made by first class mail, which it was in this case, it is as of the date of service and mailing. In fact, Rule 67-612(B)(4) provides that the carrier is the moving party in a Rule 67-504(C) hearing, i.e., Form III hearing thus requiring that they file fifteen (15) days before the Hearing. Obviously this matter was mailed and served on November 4th which is only 9 days prior to the Hearing.

In addition by letter and Affidavit of Service, we received a Supplemental Notice of Witnesses and Amended Pre-Hearing Brief

on November 6th, but the Affidavit of Service and the cover letter were all dated for November 5th. Obviously again, this is in violation of Rule 67-611, Rule 67-612, and Rule 67-211.

Therefore, as to both the original Pre-Hearing Brief and the Amended Pre-Hearing Brief and the original Notice of Witnesses and the Supplemental Notice of Witnesses which all were not timely filed, I would move that they be stricken and not be considered by you in reference to the Hearing on November 14th.

In addition, we will also move to strike all of the items listed as exhibits as they are not medical records and are self-serving declarations and/or out of Court hearsay statements that are not admissible into evidence and are prejudicial to the Claimant, specifically because they are hearsay and deny him the right of cross examination as guaranteed both in the Administrative Procedures Act, the Rules of Evidence and our Constitution. Of course, none of these type documents are admissible under any of the Commission Rules wherein the only place that any documents are admissible under the Commission Rules are under 67-612, which provides only for the admission of experts reports as evidence.

In addition, we will object to a document which was part of the supplemental submissions, which is alleged to be some type of a report offering expert opinion, however, the evidence will establish that this alleged expert has never seen Mr. Winfrey and has no personal knowledge of him. There are only two ways that expert opinion evidence is admissible, one is based on the firsthand knowledge of the expert, and the second is based on a properly phrased hypothetical question setting out the entire basis for the opinion. While we are moving to strike this without you even seeing this document because of the late filing, we also will object on the basis that there is not foundation laid for this document to be submitted as an expert opinion based upon a properly phrased hypothetical question. In addition, we object to the submission of this document as being in violation of the Administrative Procedures Act, which provides that no document may be admitted into evidence which is prejudicial to the interest of the party and the submission of this written document would violate the Claimant's right of cross-examination and confrontation as guaranteed under the Administrative Procedures Act, the Rules of Evidence and our South Carolina Constitution. The right of confrontation and cross-examination is a fundamental requirement of Due Process.

Commissioner T. Scott Beck

November 7, 2013

Page 2

Please take notice the Defendants apparently are trying to take the position Commissioner that they no burden of proof under the Statute and contrary to that, it is our position as set forth in our Pre-Hearing Brief, that they have the burden of proof to establish that they were entitled to stop payment without a hearing as that Statute specifically provides an exception under very limited bases for stopping benefits without a hearing. In correlation with our position and in support of that, I would quote from the Commission Regulations which specifically clarify that the Defendants have the burden of proof to put forth evidence to prove that they complied with SC Code §42-9-260. Specifically, Rule 67-612(B)(4) provides:

"The carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67-504(C)." (Emphasis added).

Of course Rule 67-504(C) is the section that provides that,

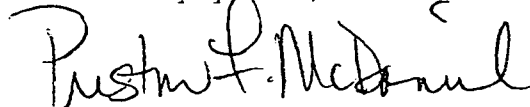
"the claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing section III of the Form 15 and filing it according to Rule 67-207."

I submit this just to confirm that the Defendants are the moving party and have the responsibility of putting forth evidence to support the stopping of benefits.

By copy of this letter I am notifying and serving Mr. Rocky Hughey, Counselor for the Defendants, of this objection to the submission of the Pre-Hearing Briefs and Notice of Witnesses and documents.

I look forward to seeing you at the Hearing and to reinstatement of benefits.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Landon L. Hughey, Esquire

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 27, 2013

VIA EMAIL - abracy@wcc.sc.gov
& US Mail

Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Commissioner Beck:

With great reluctance and all due respect for your Honor but with consideration of my client's dire situation of which you are aware, it has now been fourteen (14) days since the Form 15 Hearing was held and we have not received a decision.

Quite frankly this is the first Form 15 Hearing I have had where the Commissioner did not rule at the Hearing but I assumed that you wanted to review the limited documentary evidence before you ruled on the only issue for decision which is whether or not the defendants met their burden of proof of establishing that they had conducted a good faith investigation before they stopped benefits and the grounds for denial that that investigation disclosed.

I fully expected a ruling within days and I am sure you can understand why I waited this long to write this request (sent via email and mail). Knowing you, and knowing your diligence, I know in my heart you have already ruled but that with your workload and the voluminous number of other cases you have to decide, this decision just got misplaced somehow. I know also that you will not feel ill of me for having brought this to your attention.

I know also that:

1. You exercised your discretion and considered their untimely

Pre-Hearing Brief and APA Submissions and Notice of Witnesses to give the defendants every opportunity to prove their case.

2. You noted they presented no testimony from the adjuster nor any witness from either the insurance company or employer at the Hearing.
3. You noted they presented no evidence as to whether any documents dated prior to September 13, 2013 were in the possession of or considered by the insurance carrier prior to September 13, 2013.
4. You noted that I allowed Mr. Winfrey to testify even though he was not listed as a witness and that he testified that no one from his company nor the insurance company ever contacted him or in any way stated to him that they were questioning whether his injuries were caused by his electrocution.
5. You noted this was the sum total of the evidence before you.

I look forward to receiving notice of your decision and by copy of this email I am notifying Mr. Hughey and Mr. Bayne of this communication. I also look forward to receiving the separate written Order you indicated you would be issuing confirming your rulings from the bench on the other motions you considered that day.

I hope you have a wonderful Thanksgiving.

Respectfully submitted,

Dictated but final not read

Preston F. McDaniel

PFM/bre

cc: Landon L. Hughey, Esquire
Brett H. Bayne, Esquire



ATTORNEYS AT LAW

REPLY TO
BRETT BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com
COLUMBIA

December 3, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Commissioner Beck:

I am in receipt of Mr. McDaniel's letter to you dated November 27, 2013. I would like to briefly address one issue raised by Mr. McDaniel in section number 4 of his letter.

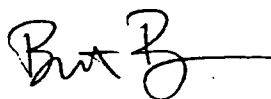
At the time this claim was denied, Mr. Winfrey was represented by counsel. Unless the rules have changed, it would have been improper for anyone from the defense to contact Mr. Winfrey directly to question him or discuss his alleged injuries. Rather, the appropriate course would have been to contact Mr. McDaniel and request to speak to, or get a statement from, Mr. Winfrey.

On July 31, 2013, prior to the denial of this claim, Dave Sanders (an employee of Liberty Mutual) contacted Mr. McDaniel via telephone and asked to get a recorded statement from Mr. Winfrey about the alleged accident. At that time, Mr. McDaniel would not allow the adjuster to get a recorded statement from Mr. Winfrey but instead indicated he would submit a generic statement if he could review the questions to be asked beforehand.

To say that Defendants did not attempt to contact Mr. Winfrey prior to a denial of benefits is incorrect. I know Mr. McDaniel is very busy and I am sure that he simply overlooked this conversation when addressing this issue as it occurred several months ago and before this claim was denied.

With kindest regards,

Very truly yours,

A handwritten signature in black ink, appearing to read "Brett Bayne", with a long horizontal flourish extending to the right.

Brett Bayne

LLH/bhb

cc: Beth Wrinkle, Liberty Mutual Group (via email)
Preston F. McDaniel, Esquire

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

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Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

December 5, 2013

IMMEDIATE ATTENTION
REQUESTED!!

VIA EMAIL - abracy@wcc.sc.gov
AND HAND DELIVERY
Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Commissioner Beck:

To say that I am livid after receiving the letter from Brett Bayne dated December 3, 2013 would be to say the least. Mr. Bayne has made statements that are not in evidence and has sought to supplement their evidence by making these unsupported statements that are contained in the letter. Those statements are extremely, extremely prejudicial to my client and are definitely improper and constitute statements made by Counsel that are unsupported from the Record.

Mr. Sanders was not called as a witness and there is nothing in reference to this allegation put into the Record. Therefore, there is absolutely no evidentiary basis or support for this comment being made and I would respectfully request a conference on Monday, as I am out of town today and tomorrow, to review this matter for a determination as to whether or not this constitutes unethical conduct on behalf of Defense Counsel; as to whether or not the Defense Counsel should be required to withdraw from representation in this case; and as to whether or not, since you cannot "unring the bell", this matter should be referred to another Commissioner for decision. Also, at this conference which I want on the Record, the letter of December 3rd should be stricken from the Commission Record.

By copy of this letter sent via email and US Mail, I am notifying Mr. Bayne of this communication.

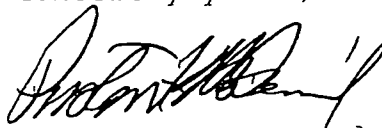
RECEIVED

DEC 05 2013

(FRONT DEL.

PFM/kth SC Workers' Comp Com.

Sincerely yours,


Preston F. McDaniel

cc: Landon L. Hughey, Esquire (Via Email and US Mail)
Brett Bayne, Esquire (Via Email and US Mail)
P.629

Preston mcDaniel

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Friday, June 06, 2014 2:46 PM
To: Brett Bayne (brett.bayne@mgclaw.com); preston@pfmcdlaw.
Cc: BMOORE@MGCLAW.COM
Subject: Winfrey 1

Below is a request for a proposed decision and order.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Clarence Winfrey v Archway Service Inc.
SCWCC: 1306305
Commission Panel: Taylor, James, Wilkerson; Chair
Order Assigned to Commissioner: James
Court Reporter – Cassandra Vance – 803-252-3445

Preston F. McDaniel
Brett Harris Bayne

Claimant/Appellant
Defendants/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **affirms with amendments** the Decision and Order of the Single Commissioner.

The Panel affirms the findings of the Hearing Commissioner while amending Finding of Fact number two (2) to read "The claimant was admitted to Lexington Medical Center on May 28, 2013 and underwent surgery for a myocardial infraction. This is based on the medical records submitted by the Claimant from Lexington Medical Center". Add Finding of Fact number seven (7) to read "Notwithstanding the above, we find that the communications by and through the Claimant's attorney and the Defendants representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial". Add Finding of Fact number eight (8) to read "Notwithstanding the above, we find that a heart attack and its relationship to a work related injury is a medically complex case".

Mr. Bayne, please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803-737-5737

Judicial

Transmitted via email and regular mail this 6 June 2014

- CONFIDENTIAL & PRIVILEGED -

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001815

Clarence Winfrey, Employee, ... Appellant,

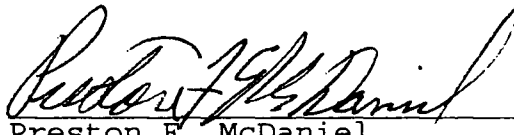
v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

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 not any other materials.

Dated: 9/24/15



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for Appellant

P.632

P748

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Clarence Winfrey, Employee, Appellant,

v.

Archway Services, Inc., Employer, and American Fire &
Casualty Insurance Company, Carrier, Respondents.

Appellate Case No. 2014-001815

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2017-UP-338
Heard December 6, 2016 – Filed August 2, 2017

AFFIRMED

Preston F. McDaniel, of McDaniel Law Firm, of
Columbia, for Appellant.

Brett Harris Bayne, of McAngus Goudelock & Courie,
LLC, of Columbia, for Respondents.

PER CURIAM: Clarence Winfrey appeals from the decision and order of the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) finding Archway Services, Inc. and American Fire & Casualty Insurance Company

(collectively Archway) properly complied with section 42-9-260 of the South Carolina Code (2015) in stopping payment of Winfrey's temporary total disability benefits. Winfrey argues the Appellate Panel erred in (1) improperly shifting the burden of proof to him to show Archway did not conduct a good faith investigation under section 42-9-260; (2) failing to reinstate benefits under Workers' Compensation Act (the Act); (3) considering Archway's late filed pre-hearing brief and APA submissions; (4) excluding evidence developed after September 15, 2013; (5) adopting the Single Commissioner's rulings on pre-hearing motions when the Single Commissioner erred as a matter of law in reaching the decisions on the motions; (6) by issuing a finding of fact on when Winfrey suffered his myocardial infarction; (7) reaching findings of fact numbers 4 through 11 when those findings are unsupported by testimony, stipulations, or other evidence; and (8) finding the Single Commissioner did not err in waiting twenty-two days to issue a written decision. We affirm.

I. STANDARD OF REVIEW

The South Carolina Administrative Procedures Act¹ (APA) governs the standard of judicial review in workers' compensation cases. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 610–11 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

"On appeal from [the Appellate Panel], this [c]ourt can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 2 (2015). "In a workers' compensation case, the [A]ppellate [P]anel is the ultimate fact-finder." *Id.* at 384, 769 S.E.2d at 3. "However, whe[n] there are no disputed facts, the question of whether an accident is compensable is a question of law." *Id.* at 384–85, 769 S.E.2d at 3. "Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation

¹ S.C. Code Ann. §§ 1-23-310 through -400 (2005 & Supp. 2016).

Act; only exceptions and restrictions on coverage are to be strictly construed." *Id.* at 385, 769 S.E.2d at 3.

II. WINFREY'S ISSUE #1

We find no evidence the Appellate Panel shifted the burden of proof with respect to whether Archway conducted a good faith investigation prior to stopping payment of benefits. The record makes patently clear that Archway received Winfrey's medical records prior to stopping payment of benefits. Winfrey's medical records evince a prolonged history of tobacco and alcohol use, obesity, and a family history of heart disease. Archway does not dispute Winfrey suffered an accident during the course of his employment. Archway does dispute the electrical shock caused Winfrey's subsequent myocardial infarction and ventricular septal defect. Archway points to Winfrey's tobacco and alcohol use, obesity, and family history of heart disease as potential causes of Winfrey's heart ailments. The Appellate Panel held Winfrey's medical records provided a sufficient basis for a good faith denial of benefits. We review the Appellate Panel's determinations on such matters to ensure they are supported by substantial evidence. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610–11 (noting under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law). We find the evidence sufficient to support Archway's denial of benefits following a good faith investigation. Further, we fail to see how this finding is an improper burden shift. Therefore, the Appellate Panel did not err in finding Archway complied with section 49-6-260(B)(3) in stopping payment for benefits.

III. WINFREY'S ISSUE #2

Winfrey argues Archway should be subject to a twenty-five percent penalty in addition to the amount of benefits withheld provided by section 42-9-260(G) of the South Carolina Code (2015) because of Archway's alleged failure to comply with the Code and attendant regulations. Section 42-9-260 imposes a twenty-five percent fine on the carrier or employer computed on the amount of benefits withheld for failure to comply with the section. *See S.C. Code Ann. § 42-9-260(G)*. We read section 42-9-260(G) to ensure compliance with the six methods for stopping payment of benefits found in section 42-9-260(B). In our view, the fine would be triggered if, for example, the employer or carrier stopped payment absent a good faith investigation. We have found no support for the Appellate Panel's reasoning that Archway was not required to submit two copies of the Form 15 to Winfrey because he was represented by counsel. However, we have similarly found no authority for Winfrey's assertion that failure to submit two

copies triggers the fine. As stated above, we find the Appellate Panel's ruling that Archway conducted a good faith investigation to be supported by substantial evidence. Therefore, we find Archway is not subject to the fine imposed by section 42-9-260(G) because Archway complied with one of the methods for stopping payment of benefits within that section.

IV. WINFREY'S ISSUE #3

We find Archway timely filed its Form 58 pre-hearing brief and APA submissions. Archway was required to file its Form 58 ten days before the hearing. *See* S.C. Code Ann. Regs 67-611 (2012). However, as that date was a Sunday, Archway was required to file the following Monday. *See* Rule 6(a), SCRCP. Archway met this requirement. Accordingly, we find the Appellate Panel and Single Commissioner properly considered Archway's Form 58 pre-hearing brief and APA submissions.

V. WINFREY'S ISSUE #4

Winfrey stipulated to the date from which evidence would be considered and is, therefore, bound to it. *See Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) ("A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them."). Accordingly, we find no error by the Single Commissioner in excluding evidence developed after September 13, 2013.

VI. WINFREY'S ISSUE #5

We find the Single Commissioner's actions in conducting a pre-hearing motions conference are allowable and contemplated by the Act. *See* S.C. Code Ann. § 42-17-40 (2015); *see also* SCALC Rule 28. Furthermore, we note Winfrey has provided no evidence the Single Commissioner made decisions based on evidence not contained within the record. Finally, as discussed above, we fail to see how the Single Commissioner impermissibly shifted the burden to Winfrey. As stipulated by the parties, the sole issue before the Single Commissioner was whether Archway conducted a good faith investigation prior to stopping payment of benefits as contemplated by section 42-9-260.

VII. WINFREY'S ISSUE #6

Winfrey alleges the Single Commissioner wrongfully denied him the right to take the deposition of Archway's adjuster as the managing agent. Winfrey argues the

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Single Commissioner erred in denying his request to depose the adjuster under Rule 30(b)(6), SCRCP, when the request was to depose Archway's managing agent.

Winfrey asserts the Single Commissioner denied him due process by not hearing a motion to quash a subpoena for the adjuster's file and by not requiring production of the file at the hearing. Furthermore, Winfrey argues the Single Commissioner denied him due process by not deciding on the motion until the date of the hearing because this denied Winfrey discovery, production of evidence, the right to cross-examination, and failed to give him an adequate opportunity to be heard. We disagree.

Winfrey sought to depose Terri Hughes as managing agent for Archway's insurance carrier and as a Rule 30(b)(6), SCRCP, representative of the carrier. Rule 30(b)(6), SCRCP, provides:

A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify.

A cursory glance at Winfrey's subpoena reveals that he did not comply with Rule 30(b)(6). Rather than naming the insurance corporation as the deponent and allowing them to designate their managing agent, Winfrey simply sought to name Terri Hughes as the managing agent on his own. This is clearly not the method contemplated by the rule. Therefore, we find the subpoena was defective on its face and the Single Commissioner committed no error in granting Archway's motion to quash.

Contrary to Winfrey's assertion, the Single Commissioner denied Archway's motion to quash the subpoena as it pertained to the production of documents. However, Winfrey declined the Single Commissioner's offer to postpone the hearing so he could have an opportunity to examine and respond to the documents. Therefore, Winfrey has lost his right to advance this argument because he chose not to avail himself of adequate remedies below. *See TNS Mills, Inc. v. S.C. Dep't of Revenue,*

331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded [below] may not be argued on appeal.").

VIII. WINFREY'S ISSUE #7

The Appellate Panel did not adopt the Single Commissioner's finding regarding the date Winfrey suffered his myocardial infarction. The Appellate Panel only found Winfrey was admitted for treatment as a result of a myocardial infarction on May 28, 2013. The Appellate Panel reached no determination as to when Winfrey actually suffered the heart attack. Therefore, we find Winfrey's argument as to this issue is meritless.

IX. WINFREY'S ISSUE #8

A. Findings of Fact #4, #5, & #6

The record makes clear that Archway provided Winfrey with temporary total disability payments and medical treatment prior to the date Archway stopped payment. Furthermore, it is inarguable Archway stopped payment on September 12, 2013, following an investigation. Therefore, these findings are wholly supported by the evidence, and the Appellate Panel committed no error in reaching its determination. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610–11 ("This [c]ourt's review is limited to deciding whether the [Appellate Panel's] decision is unsupported by substantial evidence or is controlled by some error of law.").

B. Finding of Fact #7

The record is clear that Winfrey's medical records were provided to Archway prior to the September 12, 2013, denial of benefits. Therefore, the Appellate Panel committed no error in reaching this conclusion.

C. Finding of Fact #8

The Appellate Panel committed no error in finding Winfrey's alleged injury is a medically complex case. The Act defines a "medically complex case" as "sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment." S.C. Code Ann. § 42-1-160(E) (2015). Winfrey's myocardial infarction and resulting surgery to repair a ventricular septal defect are perfectly encompassed within the Act's definition of a medically complex case.

D. Finding of Fact #9

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We find no error in the Appellate Panel's finding of fact that Archway's Form 15, Section II, was received no later than September 18, 2013. This was a matter of record before the Commission, and the Appellate Panel's finding is wholly supported by the evidence. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610-11 ("This [c]ourt's review is limited to deciding whether the [Appellate Panel's] decision is unsupported by substantial evidence or is controlled by some error of law.").

E. Finding of Fact #10

Archway's Form 15, Section II, clearly documented the reason for termination of benefits was based on a good faith investigation that Winfrey failed to meet the burden of a compensable injury under the Act. We find this is inarguable. Furthermore, we find Winfrey's contention this finding impermissibly shifted the burden under the Act to be untenable. As discussed above, Winfrey holds the ultimate burden under the Act to prove he has suffered a compensable injury. Archway, as they are required to do, stated they were denying Winfrey's claim based on a good faith investigation. We fail to see how the Appellate Panel's finding shifted any burden whatsoever. Therefore, the Appellate Panel committed no error in issuing this finding.

F. Finding of Fact #11

As discussed in the analysis to Winfrey's second issue, we have found no support for the Appellate Panel's statement that the two copies requirement was unnecessary because Winfrey was represented by counsel. However, we decline to address the issue because it has no bearing on the ultimate disposition of this appeal. Winfrey argues that Archway's failure to give him two copies of its Form 15, Section II, triggers the fine found in section 42-9-260(G). However, as discussed above, we view that penalty to be triggered only when the benefits provider does not follow one of the methods provided in section 42-9-260(B) when stopping payment of temporary total benefits. Archway stopped payment after a good faith investigation led to a reasonable belief that Winfrey did not sustain a compensable injury under the Act. In our view, this finding by the Appellate Panel is supported by substantial evidence and is dispositive of the appeal. Therefore, we need not address the Appellate Panel's statements regarding the two copy requirement. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating the appellate court need not reach remaining issues when prior issues are dispositive).

Additionally, Winfrey is incorrect in stating Archway did not attach documentation to their Form 15, Section II, when stating they were cancelling benefits based on a good faith investigation because Archway's reasoning was stated on the face of the form.

X. WINFREY'S ISSUE #9

We find no error by the Single Commissioner in issuing the decision. The Act states that the Commissioner "shall determine the dispute in a summary manner." *See* S.C. Code Ann. § 42-17-40 (2015). The timeline surrounding the Single Commissioner's decision and order easily falls within this mandate.

XI. CONCLUSION

For the foregoing reasons, the decision and order of the Appellate Panel is:

AFFIRMED.

LOCKEMY, C.J., and WILLIAMS and THOMAS, JJ., concur.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001815

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SC Court of Appeals

Clarence Winfrey, Employee, ... Petitioner,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

PETITION FOR REHEARING

Pursuant to SCACR 221(a), the Petitioner hereby petitions the Court for rehearing on the following points that the Petitioner would respectfully submit to the Court that the Court overlooked or misapprehended in its decision in this matter as set forth hereinafter.

1. That the Petitioner would respectfully first request that the Opinion be withdrawn and Oral Argument be granted specifically and only on this Appeal. This Appeal involves a

reinstatement hearing involving many important issues on which the Court will have very few opportunities to speak. It is one of three Appeals arising out of the same workers' compensation case but is the only one arising out of that proceeding and was originally set for hearing before this Court individually. That argument was canceled and approximately six months later this matter was reset for hearing along with all three Appeals with the parties appearing as both Appellant(s) and Respondent(s) and being given an argument time of 10-10-5 to address all issues in all three Appeals. There was no way the Court could question and the parties could address all of the issues arising out of this Appeal.

2. That as to the **STANDARD OF REVIEW I** - The Standard of Review in this workers' compensation Appeal should be amended to include the following principles. First, the guiding principle of a liberal construction set forth in the Standard of Review by Court does not only apply to Coverage issues but as this Court and the Supreme Court have stated it undergirds our workers' compensation system in that the Act in its entirety is to be construed liberally in favor of the injured worker. Only exceptions and restrictions on coverage are to be strictly construed. James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010). Also, the Workers' Compensation Act provides an exclusive compensatory system in derogation of common law rights

and therefore the Court must strictly construe such statutes, leaving it to the Legislature to amend and define any ambiguities. Cox v. BellSouth Communications, 356 S.C. 468, 589 S.E.2d 766 (S.C. App. 2005); Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003). In Wigfall, the Court also held that where the term, "shall" is used, the action is mandatory.

Second, our Courts have repeatedly held that another guiding principle which must be added to the Standard of Review is the evidentiary principle that the Award may not rest upon surmise, conjecture or speculation but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Hudson v. S.C. State Port's Authority, 399 S.C. 381, 732 S.E.2d 500 (2012). Finally, the construction of a statute by an agency charged with its administration will be accorded the most respectful consideration and will not be overturned absent compelling reasons and the Regulations of an agency authorized by the Legislature have the force of law. Glover by Cauthen v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (S.C. App. 1995), rehearing denied.

3. That in reference to II. **ISSUE #1** of the Opinion, the Court overlooked or misapprehended the fact and law that the Commission's decision must be based upon the evidence in the Record and cannot be based upon surmise, speculation or

innuendo. Pleadings or forms are not evidence. In Finding of Fact No. 6, the Commission found that the:

"termination was based on a denial of the claim following an investigation. This is based on the Form 15, section II. dated September 12, 2013."

However, there is no evidence in the Record of an investigation; only the "representations" made by counsel for the Respondents. In Finding of Fact No. 7, the Commission found that the evidence in the Record was sufficient to establish that the Defendants had the medical records of the client in their possession prior to September 13, 2013 and that those records alone, "provide a basis for the Defendant's knowledge and good faith denial."

(R., p. 28). Then in Finding of Fact No. 10, the Commission does not refer to or set out the factors and evidence that the Court refers to in its Opinion but instead, again based on a pleading, makes the Finding of Fact not that a, "good faith investigation" had disclosed the pre-existing factors that the Court refers to but simply that the Form contains the unsupported allegation that the basis was that the Claimant, "employee fails to meet the burden of a compensable injury ..."
(R., p. 28). This is not evidence.

When the Court makes the statement from the Record that:

"Winfrey's medical records evince a prolonged history of tobacco and alcohol use, obesity, and a family history of heart disease."

and then states that:

"Archway points to Winfrey's tobacco and alcohol use, obesity, and family history of heart disease as potential causes of Winfrey's heart ailments." (emp. added).

Why is that not judicial fact finding? Where is the evidence there are "potential causes"? Where Liberty Mutual had accepted the claim where is the evidence Mr. Winfrey or Liberty Mutual's authorized doctors told they were questioning causation? Where are these potential causes even listed as a basis on the form? Why were the records if they were the basis not attached to the form? From the Record: why is it not surmise that these factors could potentially cause Mr. Winfrey's heart problems or were the basis for Liberty Mutual's decision?

The statute and Commission Regulation both set forth that in a stop payment, "without a hearing," situation under S.C. Code §42-9-260 (A) (B) (1-6), the insurance carrier is the moving party and thus has the burden of proof. Rule 67-612(B) (4), "the carrier shall be deemed the moving party in all hearings pursuant to a request under R. 67-504(C)." "COMMISSIONER BECK: ... as a moving party, Mr. Hughey, you may call your first witness ...". (R., p. 381, ll. 21-22). As the moving party without citation, the carrier has the burden of proof.

Not in any of the Findings of Fact but in the Conclusions of Law, the Commission found that the Defendants "represented"

to the Commission that their grounds for denial was a "good faith investigation" that the Claimant had failed to meet the burden of compensable injury. The Commission then specifically held as a matter of law, under the Act that , "Claimant bears the burden of proving by a preponderance of the evidence" (R., p. 30). Then, after stating that the Claimant has the burden of proof, the Commission then goes on to make the Conclusion of Law,

"a belief of the Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants".

In Conclusion of Law No. 4, the Commission held as a matter of law, not a Finding of Fact, that Defendants terminated benefits,

"on the justification that a good faith investigation reveals grounds for the denial of the claim".

The Commission in Conclusion of Law No. 4, again not a Finding of Fact, makes the holding as a matter of law that:

"it is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim."

The Court overlooked the fact that the Commission clearly states that the Claimant has the burden of proof in proving a compensable injury a principle with which everyone agrees, where

a claim is denied; but then makes absolutely no statement that the Defendants have the burden of proof to prove (present evidence) that: 1) they have conducted a good faith investigation, and 2) the good faith basis (evidence) for denial that is disclosed by that good faith investigation.

There is no evidence in the Record setting forth the proof of, and the findings of, any investigation. There is no evidence they contacted the authorized treating physicians to determine their opinion prior to September 13th. There is no evidence that they contacted any medical doctor or medical professional such as even a nurse to determine whether or not the cause of the Claimant's problem was the work-related accident. There is no testimony from an investigator nor from the adjuster or any other representative of the insurance carrier (or employer who was really not involved in this hearing) of any investigation that was conducted or the evidentiary basis for the denial. There are simply medical records and "representations" by Defense Counsel that those medical records constituted the investigation and the basis for the stoppage of benefits.

Our whole system of justice is based upon the presentation of evidence and there is simply no evidence linking any pre-existing conditions or facts found in the medical records to a decision to deny benefits. There must be evidence linking any

facts found in the medical records to the determination made and it simply is not there.

In fact, an issue that was not contested on appeal which is found in Finding of Fact No. 13 is that the Claimant is:

"alleging a medically complex condition resulting from an injury by accident" and further that, "the causal relation between Claimant's alleged electrical shock and his current medical condition, is one that can best be determined by review of the expert medical reports ...".

So where is the evidence that is part of their alleged investigation, that the Defendants contacted any doctors prior to September 13th (much less their authorized treating physicians) or that there is any medical evidence in this, "medically complex case" to establish under evidence a cause other than the electrocution as a cause of injury.

Did the Defendants have the burden of proof to prove they had conducted a good faith investigation? Yes. Are there any facts, evidence, in the Record of pre-existing conditions upon which they could have formed a belief that there was a basis for a denial based on those pre-existing conditions and that they would require Claimant to meet his burden of proving a compensable injury? Yes. Is there any, "evidence" in the Record not, "representations" that the pre-existing conditions found in the medical records constituted a potential cause and the basis for the denial of benefits? No.

The Defendants have the burden of proof to prove a good faith investigation and the basis of any belief they formulate.

There is no evidence of the actual basis, and again the actual basis, based on evidence that resulted from a good faith investigation necessary to meet the Defendants burden of proof.

The Commission then found that the Claimant did not provide any evidence at the hearing to indicate the Defendants acted, "in anything other than good faith". Where is the evidence of good faith that needed to be controverted by the Claimant? In other words, where is the prima facia case that needed to be rebutted. The Commission clearly failed to set out that the Defendants had the burden of proof under the statute and regulation and then clearly shifted the burden of proof to the Claimant to rebut a prima facia case that was never made by the Defendants.

4. That as to **III. ISSUE #2**, Petitioner agrees that if the Defendants are found to have met their burden of proof they conducted a good faith investigation and submitted evidence that they had found a good faith reason to deny benefits, they are not subject to the fine.

5. That in reference to **IV. ISSUE #3** in the Opinion the Court clearly overlooked the Commission Regulations in regard to the time for admission of APA Submissions and Pre-Hearing Briefs. Reg. 67-612 provides for the submission of expert

reports and APA Submissions and specifically in reference to an expert's report which is what medical records from doctors are, Reg. 67-612(B)(1) provides that the moving party must provide for the report at least 15 days before the scheduled hearing. Under that same Regulation, under subsection(B)(4), the carrier is deemed to be the moving party in a reinstatement hearing which is what this hearing was under Rule 67-504(C) and had to file and serve APAs fifteen (15) days before.

In addition, the Court affirmed on the position taken by the Respondents and the Circuit Court Rule, and while the Petitioner would submit that it was agreed that the Pre-Hearing Brief was late filed, the time for filing under the Regulation is different from our Circuit Court Rules specifically as to the Pre-Hearing Brief. Reg. 67-611(A) and specifically subsection (B)(1) controls the filing of a Pre-Hearing Brief and specifically provides that the Pre-Hearing Brief and Proof of Service must be filed "at least 10 days before the hearing".

Where the 10th day before the hearing falls on a Saturday, Sunday or holiday, the Regulation has been and is interpreted by the Commission to require that the Brief be filed on the last day before the holiday, Saturday or Sunday. In this case, to have been timely filed, the Pre-Hearing Brief should have been filed on the Friday before it was filed in this case. This specific requirement is the same as and is in accordance with other

stricter, different requirements in the various Rules of the Circuit Court and Appellate Courts which set specific deadlines for filing or providing notice to various parties involved in specific situations [see, ex. SCACR Rule 221(a)]. The Regulation has the specific purpose of making sure that no later than 10 days before the hearing, the parties have notice of the position of the parties and the documents that have been submitted or will be submitted. Regardless the APAs, documentary evidence, were late.

Finally, the Petitioner would ask the Court to look at p. 9 in the Order of Commissioner Beck where Commissioner Beck clearly states that the Pre-Hearing Brief of the Respondents was not timely filed and where he gave the opportunity during the informal conference to continue the hearing to allow the Petitioner, "adequate time to respond to Defendants Pre-Hearing Brief, Notice of Witness, APA Submissions and Exhibits." There is no question that the Pre-Hearing Brief was filed late, as were more importantly, the APA Submissions evidence.

6. That as to V. **ISSUE #4**, the Court overlooked the fact that the Petitioner nowhere, and the Petitioner wants to reiterate nowhere, in the Record stipulated to the evidence to be considered was only evidence before September 13, 2013. What the Court will find from a review of the Record, is that after the pre-hearing conference, the Commissioner told the parties

that he was only going to, consider "evidence" on and before September 13, 2013 (R., p. 378, l. 15, l. 23; p. 380, ll. 14-17). Funny, then the Commissioner bases his decision on a pleading form, not "evidence" filed September 13, 2013. Quoting the Commissioner:

" . . . the Commission file becomes a part of the Record with the exception of self-serving declarations"

Petitioner guesses the form is not a self-serving declaration.

7. That as to **VI. ISSUE #5**, the Court misapprehended the argument being made as to the pre-hearing motions conference that was held off the Record. The Hearing Notice was made a part of the Record which is found at the Record at p. 57. A party is required to be given notice of the issues to be addressed and it is a denial of due process and it is required that the case at the least be remanded where the Commission goes into issues of which the party did not have notice. The purpose of the hearing is set forth in the **Subject** of the Hearing Notice: "to determine if Claimant's temporary compensation was legally terminated." There is simply no reference to the fact that the outstanding motions would be considered at that time.

As all of the members of the Court are aware, and which the Petitioner is pointing out in this case, motions in reference to discovery are scheduled soon after they filed because the parties have to have rulings on those so that there can be

adequate preparation for the trial. In this situation, because the insurance carriers are stopping a claimant's benefits without hearing, the law makes a provision for a quick hearing. The Commission should have held a hearing on those motions way before the hearing that was held in this matter. Also, based upon a review of the Hearing Record the Court will find, which Petitioner verily believes and hopes that the Court will find to be abhorrent to due process, that the Petitioner did not even know until the day of the hearing that he would not be allowed to take the deposition of the adjuster and that the Defendants would have to produce their file but only 30 days after the hearing. The very purpose of requesting the file was to present evidence on the essential issue for decision so the Commissioner based on evidence, as argued above, could decide whether or not Defendants had conducted a good faith investigation which they, "represented" to the Commissioner they had conducted.

Again, in reference to the shifting of the burden of proof, the Defendants have the burden of proof, not to prove compensable injury but they have the burden of proof where they have chosen to stop benefits without a hearing to prove that they conducted a good faith investigation and the basis they found for denial. That is their responsibility under the statute and that is their responsibility under the Regulation as passed by the Commission. They are the moving party. The

moving party has the burden of proof. They had the burden of proof to prove that they conducted a good faith investigation. That was and is simply the issue before the Commission. How can it be argued that the Commission did not shift that by not requiring them to put forth evidence in that regard but simply to, "represent" to the Commission that they had conducted a good faith investigation and then make a specific Finding of Fact that the Claimant had not provided any evidence at the hearing to indicate that the, "Defendants acted in anything other than good faith ...". Without evidence to substantiate a good faith investigation, not medical records and not assumptions, but evidence of a good faith investigation establishing a prima facia case of a good faith investigation, and then without that the Claimant is required to put up rebuttal evidence that they had, "not conducted" a good faith investigation, how can it logically be argued that the burden of proof was not shifted to the Claimant? That is illogical.

The Court stated the Petitioner provided no "evidence" (there's that word again), that the single Commissioner had made decisions based on "evidence" not contained in the Record. In Conclusion of Law #2 (c) and (e), the Commissioner bases his ruling on the "representations" of the Defendants ("Defendants represented to the Commission"). The Court will not find those "representations" anywhere in the Record before him.

Even in their Pre-Hearing Brief, facts in issue:

"Defendants have denied this claim pursuant to SC Code §42-9-260. The issue for this hearing is whether or not claimant can meet his burden of proving a compensable claim pursuant to the Act."

Where in the Record are the "representations"; where are the "factors" the Commissioner found they "possibly" relied upon?

8. That as to VII. ISSUE #6, in the Court's opinion, the Court overlooked or misapprehended that the Subpoena was issued under the Workers' Compensation Act; was for the deposition of the adjuster as the managing agent for the corporation, Liberty Mutual, a party to the action and whose name appeared on the Form 15, filed with the Commission stopping benefits and was for the production of Terri Hughes's file and other documents to which she as a party had access; that nothing in the subpoena prevented the Defendants from naming a 30(B)(6) representative as to any documents not relevant to the deposition of Ms. Hughes as a managing agent for the corporation in her capacity as a party as such; and that the Workers' Compensation Commission is not a Court but is a quasi-judicial body which is limited to its statutory authority; and nowhere in the Motion to Quash the Subpoena will the Court find any reference to or citation of the legal basis upon which the Commission actually based its decision.

First, this Court needs to address the legal fact that the

Commission's decision contains legal arguments outside of those made by the parties and issues raised. Since the Commission is a quasi-judicial body made up of lay and attorney Commissioners and since the specific basis for the Court's Opinion affirming the decision, which is a legal basis by the Commission found at p. 3 of the Record, where did that legal argument and basis come from? A review of the Motion to Quash, Pre-Hearing Brief, and Hearing Transcript will establish that the basis for and decision made by the Commission is nowhere to be found within that Motion nor is there even any reference to 30(B)(6) anywhere. S.C. Code §42-3-250 makes the Commissioners subject to the Code of Judicial Conduct as contained in Rule 501. Under Cannon 3(B)(7) and subsection (b), a Judge shall base his/her decision on the evidence and arguments made to him and shall not consider ex parte communications and shall not consult with outside legal experts concerning the issues of law "unless the Judge gives notice to the parties of the person consulted and/or the substance and advice sought and affords the parties a reasonable opportunity to respond." Where is that legal argument?

Next, the Court misapprehended and overlooked the fact that the subpoena was specifically for the adjuster as a party as the assigned Managing Agent as evidenced by the Form 15 II, that was filed by her with the Commission stopping payment of benefits on

September 13th. The Commission is a quasi-judicial body, not a Court, and is a creature of statute as is the Workers' Compensation Act, and its powers/authority is only as set out in the statute. Subpoenas, for the production of books and records and witnesses is provided for under S.C. Code §42-3-140; S.C. Code §42-3-150 provides for attendance of witnesses, taking depositions and production of records and subpoenas in conjunction with proceedings; and §42-3-160 allows for the taking of the deposition of witnesses either "within or without the state". Under Commission Regulation 67-214, attorneys are authorized to issue subpoenas on behalf of the Commission. Under §42-3-160, depositions are taken pursuant to the Circuit Court Rules.

Again, this Subpoena was for the deposition of the adjuster as a party as the managing agent on the file for the insurance carrier.

Under SCRCF Rule 45, under subsection (a), a subpoena for attendance at a deposition shall issue from the Court or the County designated in the Notice of Deposition and specifically provides that there is a different treatment for a subpoena issued to a person, "who is not a party or an officer, director or managing agent of a party". Under subsection (b), service on any person may be made in the same manner as prescribed for service, "of a summons and complaint in Rule 4(d) or (j). Under

Rule 4(d)(3), in reference to corporations, the Summons and Complaint may be served on a corporation by delivering a copy of the Complaint to, "an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process. (Counsel will not bother with citing the numerous decisions by this Court and the Supreme Court in reference to agents wherein even a timber agent is considered as a managing agent and an appropriate party for service on a corporation). Rule 30(2), specifically provides in reference to a deposition that, "a party may be compelled to attend in the County in which the subject civil action is pending". The adjuster was subpoenaed as a party as one of the flesh and blood designated human beings that can be subpoenaed for a corporation as a party. See for example: James v. South Carolina Department of Transportation, 393 S.C. 440, 711 S.E.2d 919, (S.C. App. 2011).

The notice of stopping payment of benefits filed with the Commission on September 12, 2013 was issued by Ms. Terri Hughes, Senior Claims Specialist II for Liberty Mutual Insurance Company. Ms. Hughes certified by her signature that she had served the form per Rule 67-211 on the form and line stating, "signature of claims administrator". Ms. Hughes also attached a Form 19 Status Report in which she asserted that she was the, "employer's representative". (R., pp. 37-39). The caption on

the subpoena and to whom it was directed which was served on the Attorney of Record for the Defendants at that time was captioned and addressed to Ms. Hughes as follows:

"TERRI HUGHES, SENIOR CLAIMS SPECIALIST II, as Managing Agent for the Insurance Carrier and as a 30(b)(6) Representative of the Insurance Carrier. (R., p. 43)."

In addition, the form subpoena, which was issued pursuant to the Workers' Compensation Act under the authority provided for the production of records, checked and required the production of records on a different date, September 30th, as compared to the date of the deposition set for October 2nd. There is no reference to this being for a 30(b)(6) representative and was within the format prescribed by the Workers' Compensation Act.

Further, there was no objection made by the Defendants/ Respondents to the subpoena as being an improper designation as a 30(b)(6) representative nor was there any effort to designate a separate 30(b)(6) representative. The Defendants simply sought to avoid the Claimant having the right to take the deposition of Ms. Hughes as the managing agent on the file who instituted and instigated the stopping of this man's benefits without a hearing. Without citation, this Court and our Courts have always been committed to liberal discovery and Counsel would beg the Court to tell him in light of the Record in this

matter, any evidence in the Record that would establish that Ms. Hughes was not the managing agent for Liberty Mutual and how that subpoena should have been captioned in reference to the Appellant's desire to take the deposition of Ms. Hughes. The Court will also not find any effort on behalf of the Defendants to allow the deposition by telephone or to require the deposition be held where Ms. Hughes resides, either of which Counsel would have been glad to accommodate. Also, under the rulings and in particular under the ruling of James, the Appellant is well aware that he would be responsible of payment for the witness fee and the costs for Ms. Hughes to have attended the deposition.

Next, Rule 37(2) places on a corporation or other entity the responsibility to designate a 30(b)(6) representative and specifically provides that the failure to do so can result in sanctions for failure to cooperate in discovery. Quoting subsection (2):

"a corporation or other entity fails to make a designation under Rule 30(b)(6) ... the discovering party may move for an Order compelling ... a designation, ..."

The Defendants never defended on this basis. It was wrong for the Commission to go outside of the issues presented and to consider, obviously, outside legal research and advice. The subpoena is in accordance with and actually goes far beyond the

requirements of normal practice and procedure in reference to the issuance of a subpoena and was actually more encompassing than is required under a concept of liberal discovery. The Commission had a responsibility to timely rule on the Motion to Quash and not to wait for the date of trial to do so.

How in the world can it be argued that the Claimant was not denied due process by not having the opportunity to perform discovery on the very person that signed the pleadings that stopped his weekly checks and stopped his entitlement to medical care at a time when under doctor's orders he was supposed to call EMS if he had a 2-pound weight gain or loss on a given day and when he was totally disabled and had no other source of income to pay the normal subsistence of life? Ms. Hughes signed the 15 II; Ms. Hughes certified that she was the Claims Administrator; Ms. Hughes asserted to the Commission that she was employer's representative.

Finally, an issue this Court does not want to address but at some point, needs to be addressed, the Workers' Compensation Commission is a creature of statute and it is limited specifically to its statutory authority. There is literally no statutory authority for the Commission to entertain a Motion to Quash. The enforcement powers of the Commission are extremely limited and in addition to that, the enforcement powers of the Commission as to discovery lie where they have always laid since

the inception of the Act and that is in the Circuit Court. It is up to the Circuit Court to enforce all discovery proceedings within the Commission in its authority over its Rules. If the Court wants to deal with this issue which at some point, it has to deal with, the Court will find that the Circuit Courts have always enforced the subpoenas and there are specific decisions by the Supreme Court directly on point. Wofford v. Ethyl Corp., 316 S.C. 75, 447 S.E.2d 187 (1994); prior to the advent of the Circuit Court Rules, the statutes read, "the Court of Commons Pleas shall upon application . . . enforce by proper proceedings" . . . §72-63 S.C. Code of Laws, 1962.

The Commission was wrong to quash the subpoena. The Commission was wrong to not allow discovery and the Commission did deny the Claimant due process and the Claimant's Counsel would beg the Court to tell him what he should have done in reference to issuance of a subpoena that was not done in this subpoena or what he could have stated to have the fundamental right to take the deposition of the very representative of the company that asserted to the Commission and certified to the Commission that she was the company representative and who stopped this Claimant's benefits. The Act is to be liberally construed in favor of benefits to the injured worker, to cast upon industry upon which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden

of injured employees and their dependents from becoming charges on society. The right to trial by jury was taken away from the injured worker in exchange for swift and sure compensation. Citation as to these fundamental principles of the Act are omitted as not being necessary.

9. That as to **VIII. ISSUE #7** in the Court's Opinion, the Petitioner agrees with the same and does not request rehearing on this issue. The Full Commission altered Finding of Fact No. 2 to the extent that it is not prejudicial nor binding on the parties as establishing an exact date of the myocardial infarction.

10. That as to **IX. ISSUE #8** of the Opinion, as to A. and Findings of Fact Nos. 4, 5 and 6, the Appellant agrees with the Court as to Findings 4 and 5 and the only objection is to the sentence contained in Findings of Facts No. 6 that the, "determination was based on a denial of the claim following an investigation." The Petitioner would submit as he did in his Brief that this is a Finding of Fact which would be binding on Appeal which must be based on the Record. That sentence as challenged, makes a Finding of Fact on an essential issue for determination by the Commission that the basis for a denial of the Claim was, "following an investigation" and would make it a fact that there was an investigation performed that would meet the requirements of conducting a good faith investigation which

is not in the evidence. As cited above, the Commission's decision must be based on the Record and the evidence before it and if it is not based on the evidence, it is the subject of surmise, speculation and innuendo.

As to Finding of Fact No. 7, while the first part of that finding would provide a reasonable basis for concluding that the Defendants had the medical records of the Claimant prior to September 13, 2013, the Petitioner verily believes that the Court overlooked or misapprehended the remainder of that finding which is that the medical records alone, "provide a basis for the Defendants knowledge and good faith denial". (Emp. added.) Since the Commission is the fact-finder (jury), as the Court knows, the Supreme Court long ago in its decisions added and held the Act adds a specific safeguard requiring the Commission to make detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough to allow for judicial review. Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962). The Commission must make those Findings of Fact on all essential factual issues and "awards without such specific findings do not comply with requirements of the Act and are illegal." Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E.2d 646 (1967). As an example, in the case of Hill v. Jones, 251 S.C. 219, 178 S.E.2d 142 (1970). Where the Commission made a finding that,

"in the absence of any medical testimony to the effect that the Claimant had a history of suffering from physical seizures and since there is so much controversy as to how the Claimant fell."

The Supreme in remanding that Finding of Fact as being inadequate held that the vice in such a finding,

"which we here disapprove, is that the quoted statement, in the absence of further factual or legal clarification of the basis for the ultimate finding of compensability, creates a substantial question as to whether the majority Commission applied the correct rule of law ..." (Emp. add.).

in reference to the essential factual issue and issue of law for decision.

The essential issue in this case under the pleadings was whether or not the evidence in the Record established that the Defendants had conducted a, "good faith investigation". This Finding of Fact contains no factual references to the evidence in the Record to either the specific communications between the Claimant's attorney and the Defendant's representatives nor does it contain specific references to the medical records that would establish that the claim was not compensable.

11. That as to (C) **Finding of Fact #8**, most respectfully, that Finding of Fact is nowhere near to being a Finding of Fact but is actually a Conclusion of Law. This Court's statement in its decision is much more of a Finding of Fact than is the Commission's Finding of Fact No. 8. It is not the job of this

Court to perform the Commission's duty. The Commission is the fact-finder and the law requires that they make Findings of Fact on the essential issues and where they have not done that, this Court and the Supreme Court have repeatedly reversed those decisions and remanded to the Commission to perform their statutory responsibility. Most respectfully, this Court refers to the "myocardial infarction" and the resulting surgery to repair a ventricular septal defect as evidence of this being a "medically complex case" but yet that is not contained in the Commission's Finding of Fact: where is it? It is not there and the Commission has not fulfilled their statutory duty to make detailed Findings of Fact. The Petitioner is well aware that the decision by the Legislature in 2007 to provide for direct appeal from the Commission to this Court has placed a much greater burden on this Court as to the review of the Record and to oversee the responsibility of the Commission as to practice procedures and adherence to the Act. Prior to 2007, this matter would have been reviewed by the Circuit Court and would have been remanded to the Commission to make those detailed Findings of Fact and Conclusions of Law at a minimum. Unfortunately, now this Court must fulfill that role in addition to its other judicial responsibility to review the decisions of the Commission.

While not pertinent to a review of the adequacy of this

Finding of Fact, the Petitioner would differ with the Court as to this being a, "medically complex" case. The Court in its quotation leaves out that part of the requirement concerning a medically complex case that has to be considered in determining whether a case is a medically complex case. The Court recites and applies that part of the definition that the case must require, "highly scientific procedures or techniques for diagnosis or treatment" but leaves out the remainder of that sentence which defines the type of procedures and provides that, "excluding MRIs, CT scans, x-rays, or other similar diagnostic techniques." There are no, "highly scientific procedures and techniques" necessary to diagnose a myocardial infarction and septal defect. A doctor can diagnose those simply by the use of a stethoscope and that diagnosis was made long before even MRIs or CT scans were in existence.

12. That as to subsection (D) **Finding of Fact #9**, the Petitioner did not challenge that Finding of Fact individually and would not disagree with the Court's decision other than to state that when reviewing a Finding of Fact, the standard is whether or not it is a Finding of Fact that is sufficiently definite and detailed enough to allow for judicial review as to the essential factual issue which it addresses.

13. That as to subsection (E) **Finding of Fact #10**, the Petitioner would submit that there appears to be a fundamental

disagreement between the Petitioner and the Court over "state" versus "prove". The Court would agree with the Petitioner that pleadings are not evidence. The Petitioner is sure that every member of this Court has filed numerous pleadings even with the Workers' Compensation Commission. In every case, no matter what Board, Commission or Court you are before, the moving party has the responsibility to prove the allegations in the Complaint or Motion or the Form 50 or in this case, the Form 15 II. The Claimant and actually his employer agreed that Mr. Winfrey had sustained an injury by accident under the law that was compensable and reported it to the insurance carrier, Liberty Mutual. Liberty Mutual at that time accepted the claim as establishing a compensable injury by accident under the law. Liberty Mutual then approximately 118 days later filed a, "pleading" alleging that they had conducted a good faith investigation that established a basis for good faith denial. As the moving party, they simply had to put up evidence to establish that. Petitioner has been trying to think of a good example since there seems to be a lack of agreement on the fact that the Defendants who want to stop the Claimant's benefits without a hearing should be entitled to do so: without putting up any evidence; without conducting a good faith investigation; by simply throwing into the Record the medical records that simply establish that he had some pre-existing conditions; and

that the Commission can then review those and surmise that, "yes, in my opinion 'it is possible' you had sufficient grounds to deny this case"; and without putting up anybody to say that that was in fact the basis. (Petitioner would ask the Court to note that there are two totally different allegations as to the basis for denial; one being that he failed to establish compensable injury by accident and the other being the argument that he had pre-existing conditions that he smoked, etc.). The best correlation Petitioner can think of is in family Court and in criminal law as in a pendente lite decision or obtaining a search warrant. In a pendente lite hearing, you have to put up documents and records supported by affidavit or in other words, you have to produce some evidence. In obtaining a search warrant, you have to put in enough evidence to establish probable cause. Where is the evidence in this case of a good faith investigation other than unsupported, "representations" made by defense counsel to the Commission that the Commission should review the medical records and should find that Mr. Winfrey had pre-existing conditions such as smoking and should surmise that could have caused a heart attack. Medical evidence? After acceptance should there not be evidence to defeat the burden to require the burden?

There is nothing in this Record that is evidence to show either a good faith investigation or to defend compensable

injury by accident. In reality, the Defendants got the Commission to chasing rabbits and not looking at the evidence by alleging the smoke screen that this is a heart attack case. The heart attack standard has never been applied to an electrocution injury. Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879 (1949). In reality, there is no difference between someone smoking as a possible cause of a heart attack versus somebody having degenerative changes in their back which are then aggravated by a subsequent work-related injury. Neither of those establish that the Claimant did not sustain injury by accident under the Act. Uncontested in the Record in the only records that the parties were allowed and considered which were prior to September 13, 2013, the day the Claimant found out that Liberty Mutual had changed its mind and was denying him benefits and would require him to prove that he had sustained a compensable injury, the uncontested evidence in the Record from the Rehab Nurse assigned by Liberty Mutual to the file states:

"Claimant underwent heart surgery on May 29, 2013 as a result of an M.I. caused by electrical shock."

"Assessment:

Claimant is a 50-year-old man that suffered an electrical shock on May 22, 2013. As a result of the shock, Claimant suffered a myocardial infarction and underwent heart surgery on May 29, 2013. ..."

Further,

"Dr. Karen Greenfield, 5-28-13 recorded injury as being workers' compensation, rotisserie shock on Thursday, diagnoses - tachycardia/electrical shock/muscle shock." (R., p. 169). "Off duty due to work related condition, Dr. Greenfield." (R., p. 173).

"Dr. Jeffery Allan Travis, diagnoses, 5-29-13 - electrocution, cardiogenic shock, acute myocardial infarction, acute myocardial infarction ventral septal defect, severe pulmonary hypertension." (R., p. 166).

"Lexington Medical Center Emergency Room, diagnoses - acute myocardial infarction, cardiogenic shock, tachycardia, acquired septal defect, electrocution and non-fatal effects of electric current, accident caused by unspecified electric current, place of occurrence - industrial places and premises."

There is not a scintilla of, "evidence" of a good faith investigation or that the Claimant's problems were not caused by the electrical shock injury.

The Commission found that, "a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of compensability is adequate grounds for a denial of the claim by the Defendants." The Commission then went on to find that, "Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith." (R., pp. 30-31). So, the Defendants are allowed to simply make uncorroborated, unsubstantiated, undocumented statements to the Commission that they have formed a belief

based on a good faith investigation and do not have to put in any, "evidence" as to what that good faith investigation was but then the Claimant is denied benefits because he did not provide any, "evidence" that the Defendants conducted their investigation (what investigation?) in anything other than good faith. So, the Defendants can state that they conducted a good faith investigation, do not have to prove it and then claimants have to introduce, "evidence" proving that the Defendants' investigation was not conducted in good faith when he does not know what that is; and that does not shift the burden to the Claimant. The Petitioner verily believes that the Court overlooked these actual issues and lack of evidence and overlooked these essential facts in reference to the Commission's decision.

14. As to subsection (F) **Finding of Fact #11**, the Petitioner agrees with the Court as to the production of two Form 15s, if the Court's conclusion is supported by the evidence. The Court concluded that, "Archway stopped payment after a good faith investigation lead to a reasonable belief that Mr. Winfrey did not sustain a compensable injury under the Act. In our view, this finding by the Appellate Panel is supported by substantial evidence and is dispositive of the Appeal. The Petitioner would beg the Court to point to the "evidence" in the Record, testimony or otherwise, that

establishes that the Defendants conducted a good faith investigation and that someone or some document, states that there was a reasonable belief based on evidence in the Record that Mr. Winfrey did not sustain a compensable injury under the Act. The Commission's decision cannot be based on surmise, speculation or innuendo but must be based on substantial evidence in the Record. Redundantly, there is simply no, "evidence" of a good faith investigation and no, "evidence" that would support a reasonable belief that the Claimant had not sustained injury by accident as defined in the Act.

As to the failure of the Respondents and in fact the insurance carrier, Liberty Mutual, to attach documentation to the Form 15, Regulation 67-504 requires that documentation "shall" be attached as to the reason for termination or suspension. The other Rules to the Commission are instructive as to what this entails. §42-9-260 under subsection (B)(1-6) provides six very limited and specific bases upon which an insurance carrier can stop benefits to the injured worker without a hearing. Of course, under general principles of law, this should be strictly construed because it would deny benefits or take away benefits to the injured worker as is set forth in the Standard of Review.

Subsection (B)(2) requires that the employee sign and, "execute a proper Commission form". (B)(4) requires that

employee has been released by the treating physician to work without restriction and employer offers comparable employment. (B) (5) provides that the employee has been released to limited duty work by a physician indicating limited duty work which requires a statement again by the physician or in other words, evidence and the employer provides limited duty work consistent with the terms upon which the employee had been released. If the employee contests that position, of course, as in all of the other exceptions referred to above, the employer is going to have to show that it was comparable work. Under (B) (6), if the employee refuses medical care or refuses examination, can stop benefits which requires documentation or in other words, evidence substantiating the refusal. As noted, other Commission Rules are instructive. Rule 67-505 suspending benefits after 150 days requires a, "report" concerning limited work or return to work without restriction and when the employers and insurance carriers seek to terminate benefits on one of those bases, they have to present evidence at the hearing.

So, prior to 150 days, the insurance carrier can stop benefits without a hearing and then at a reinstatement hearing make "representations" to the Commission whereas after 150 days, they have to have a hearing before stopping benefits and at that hearing, they have to present "evidence" to stop payment. So, before the first 150 days, they can just make the blanket

assertion without any evidence whatsoever, robbing the injured worker of the very subsistence of life but after 150 days they have to submit evidence. Query: to require evidence after 150 days and to not require it before, does that not violate equal protection?

The Petitioner would submit that reading the Commission Rules in conjunction the same type of reports are contemplated and the same type of evidence is required to be presented by, in this case, Liberty Mutual before 150 days as it would have to submit after 150 days in order to be able to stop benefits. There has to be evidence. Blanket assumptions by the Commission as to what the Defendants believed or that they conducted a good faith investigation are not adequate.

15. As to X. ISSUE #9 in the Opinion, it is a general principle of law that the Legislature is presumed in its enactments to have done or not done something for a reason. When the Amendment to S.C. Code §42-9-260 allowing the Defendants to start benefits and then for a period of up to 150 days, to be able to stop those benefits based on certain specific enumerated, very limited bases without a hearing, the Legislature saw fit to mandate and require also that if a hearing is requested by the Claimant that the employee whose benefits have been terminated or suspended, may request a hearing and that that hearing, "must be held within 60 days of

the employee's request for a hearing". In all cases and in this case, that hearing is limited to one specific issue and here as to whether Liberty Mutual conducted a good faith investigation and did that investigation reveal grounds for denial of the claim. Under subsection (A) of §42-9-260, that means grounds which establish a basis for a, "good faith denial". Based on the evidence presented, it is a simple decision as to whether or not the evidence establishes they conducted a good faith investigation in the opinion of the Commission or they did not conduct a good faith investigation in the opinion of the Commission and that that good faith investigation determined a good faith reason for denial or it did not establish a good faith reason for denial.

The Legislature contemplated a very quick hearing to be held within no more than 60 days and the Legislature contemplated an immediate decision. The 22-day delay and a very formal written Order is not what was contemplated by the Legislature. The Petitioner stands by the position taken in the Brief and verily believes that the Court overlooked the purpose and intent of the Legislature in providing for the hearing and limiting that hearing to a very specific purpose so that a quick decision could be made. Remember, part of the purpose of the Act is to provide swift and sure benefits to the injured worker. In support of the position that as rapid a decision that can be

made is to be made and that the Legislature contemplated a rapid decision, an injured worker who is receiving temporary total disability benefits and medical care during the first 150 days, pursuant to the Act, is in the identical same posture as that of a welfare recipient. As Justice Brennan in Goldberg v. Kelley, 397 U.S. 254, 90 S.C.T. 1,011 (1990), writing for the Court that a welfare recipient should be allowed a hearing and the right of confrontation to test the "evidence" upon which the stoppage of welfare benefits was based before those benefits were stopped, as part of the fundamental requirements of due process in the Opinion stated:

"Thus, the crucial factor in this context - a factor not present in ... virtually anyone else whose governmental entitlements are ended - is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. ..."

The Court went on to quote from Green v. McElroy, 360 U.S. 474, 79 S.C.T. 1,400, 3 L. ED. 2d 1,377 (1959):

"Certain principles have remained relatively immutable in our jurisprudence. One of these is where governmental action seriously injures an individual and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of

individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the 6th Amendment *** This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, *** but also in all types of cases where administrative *** actions were under scrutiny."

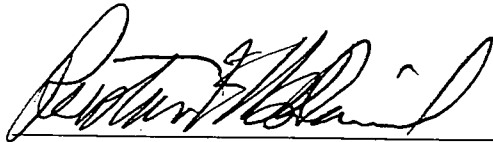
The Commissioner in this reinstatement hearing had two simple essential issues of fact to decide based on the evidence before him and the decision whether or not to reinstate benefits should have been made on the very day of the reinstatement hearing. The Legislature intended to have a very fast decision because the worker is out there without benefits, the very means upon which to live.

CONCLUSION

For all of the foregoing reasons, the Petitioner verily believes that the Court overlooked or misapprehended these very critical points as set forth in this Petition for Rehearing and in fairness to the Court and to the parties, the Court should withdraw the opinion and grant the parties further Oral Argument on these issues. These issues are very important to this injured worker and to the injured workers of our State who stand to have their benefits stopped without a hearing at a time when they represent the most vulnerable members of our society. To

receive temporary total disability benefits you must be temporary totally disabled from gainful employment and obviously, you need substantial medical care if that is in fact your condition. The Petitioner respectfully prays for Rehearing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Preston F. McDaniel', is written over a horizontal line.

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August 17, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Appellant Case No. 2014-001815

Clarence Winfrey Appellant,

v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company, and
Liberty Mutual Group, Carrier, ... Respondents,

**RESPONDENTS' RESPONSE TO APPELLANT'S
PETITION FOR REHEARING**

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STATEMENT OF THE CASE

This claim arises out of an alleged accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. Claimant had scheduled time off after May 23, 2013. Claimant suffered a myocardial infarction on or around May 28, 2013. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease, an occluded coronary artery, and an acute myocardial infarction caused by a plaque rupture which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (on May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the plaque rupture and subsequent myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied on September 13, 2013.

Immediately following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Respondents from denying

the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. The Summons and Complaint was filed on or around September 27, 2013. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant on or around October 1, 2013. Judge Benjamin conducted a lengthy hearing on the merits of the Complaint but has not yet rendered a decision as to whether S.C. Code Ann. § 42-9-260 is unconstitutional. After the temporary restraining order was rescinded, the Commission set Appellant's Form 15, Section III for a hearing before Commissioner Beck. In addition, Respondents filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Appellant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions including Respondents' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing and were necessary to have prior to the hearing. Specifically, Respondents' Motion to Postpone alleged the Commission did not have jurisdiction to hear the claim because Appellant had asserted the statute (42-9-260) by which the hearing was scheduled was unconstitutional and Appellant could not claim or exercise the benefits of the statute while simultaneously arguing it was unconstitutional for Respondents to also act pursuant to the statute. Commissioner Beck warned Appellant of the risk of proceeding based on the jurisdictional issues raised by Respondents. Commissioner Beck gave Appellant the opportunity to postpone the Form 15 hearing in

order to spend time preparing for each of the motions that were timely served. Appellant turned down that opportunity. At the hearing, all parties agreed that the only issue for Commissioner Beck was to determine whether or not Respondents had conducted a good faith investigation. In order to make that determination, Commissioner Beck limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Respondents had conducted a good faith investigation. The Full Commission conducted a review hearing on May 19, 2014. The Full Commission issued its Decision and Order on July 25, 2014. That Decision and Order is the subject of this appeal.

By way of further background, on October 22, 2013, after the Form 15 hearing was set by the Commission but before that hearing was held, Appellant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. A hearing notice for the Form 50 hearing was sent by the Commission on December 6, 2013 with explicit instructions that the hearing would be to determine compensability of Appellant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. The Form 50 hearing was held before the Single Commissioner on January 13, 2014. Following the hearing, the Single Commissioner issued a Decision and Order on February 27, 2014. The Full Commission conducted a review hearing on May 19, 2014. The Full Commission issued its Decision and Order on July 25, 2014. That Decision and Order is also on appeal by both parties in a companion action.

ARGUMENT

Appellant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (R. p. 222). Employment records of Appellant indicate that he continued working the remainder of the day and the entire following day. (R. p. 224-25). An email from Appellant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (R. p. 223). Appellant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident) (R. p. 215). Appellant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Appellant had some tenderness in his shoulder and neck area. Id. Further, Dr. Greenfield noted that Appellant did not complain of any chest pressure. Id.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Appellant suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28. (R. p. 448, line 10 – p. 449, line 8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (R. p. 464, line 19 – p. 465, line 4). Additionally, Dr. Greenfield stated that Appellant presented without any chest pain. (R. p. 452, line 5-9, p. 460, line 3-8). Dr. Greenfield also noted the pain in Appellant's arm and shoulder was not indicative of having sustained a

myocardial infarction. (R. p. 452, line 13-25). Dr. Greenfield issued a written opinion stating Appellant's heart condition was caused by the electrical shock.

Appellant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Appellant denied chest pain but did have minimal left shoulder pain. (R. p. 216). Dr. Dasgupta diagnosed Appellant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Appellant had a prior history of hypertension, tobacco abuse (one pack a day smoker), as well as a significant family history for heart disease (Appellant's father passed away from coronary disease and myocardial infarction). (R. p. 216-17). Dr. Dasgupta also noted that Appellant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. (R. p. 216). Dr. Dasgupta referred Appellant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (R. p. 219-21).

Dr. Travis described the mechanism of Appellant's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (R. p. 415, line 24 – p. 416, line 2). Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (R. 416, line 3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (R. p. 416, line 12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another absolutely not." (R. p. 416, line 16-18) (emphasis added). Dr. Travis also stated that "the [electrical shock] *could* of started

the whole domino effect.” (R. p. 431, line 23-24) (emphasis added). Finally, Dr. Travis indicated that the neck pain Appellant experienced “could be just neck pain.” (R. p. 432, line 12-16).

Dr. Travis indicated that part of his opinion formed because of the presence of a plaque on Appellant’s heart. However, Dr. Travis stated that this was his first open heart surgery on a patient who had received an electrical shock. (R. p. 431, line 2-5). Further, Dr. Travis stated that he had never “read about or seen anything” related to whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (R. p. 431, line 6-12). Following the care provided to Appellant, Dr. Travis issued a written opinion stating Appellant’s heart condition was caused by the electrical shock.

After the surgery, Appellant began treating with Dr. Lide on an outpatient basis for his heart condition. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (R. p. 551, line 13-15). Dr. Lide agreed with the statement that “...we don’t really know what causes plaque rupture.” (R. p. 551, line 16-22). Dr. Lide also testified that “I don’t know whether the electrical shock caused the plaque rupture... .” (R. p. 552, line 14-15). Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (R. p. 556, line 13 – p. 557, line 1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (R. p. 557, line 2-6). Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Appellant’s condition was

“proximity in time.” (R. p. 557, line 20-21). Dr. Lide issued a written opinion stating Appellant’s heart condition was caused by the electrical shock.

LEGAL ARGUMENT ON APPELLANT’S ISSUES RAISED ON APPEAL

I. NEITHER THIS COURT NOR THE COMMISSION ERRED AS A MATTER OF LAW BY FINDING RESPONDENTS MET THE REQUIREMENTS FOR CONDUCTING A GOOD FAITH INVESTIGATION PURSUANT TO S.C. CODE ANN. § 42-9-260.

The record is clear that the Commission reviewed all of the evidence relevant to the hearing¹, including testimony and representations of counsel, and rendered a decision on whether or not Respondents conducted a good faith investigation as required by S.C. Code § 42-9-260. The record is also clear that the Commission determined by a preponderance of the evidence (i.e. more likely than not) that Respondents conducted a good faith investigation based on the medical records available by statute at the time of the denial of benefits², records of the Nurse Case Manager³, the medical records provided by Appellant’s counsel to Respondents’ counsel on June 26, 2013⁴, as well as the Form 15 filed in this case⁵. There is no dispute that the burden rests with Respondents in proving that a good faith investigation occurred by a preponderance of the evidence. Respondents clearly met that burden as set out in the Commission’s Decision and Order. Nowhere in the Commission’s Decision and Order does the Commission state that Appellant has the initial burden of proving Respondents did not conduct a good faith

¹ As will be discussed further in other exceptions raised by Claimant/Appellant, the relevant evidence for this hearing was limited to only the evidence dated prior to the denial of benefits as that would have been the only evidence available to Defendants to make a decision on compensability.

² See R. p. 31-32

³ Id.

⁴ See R. p. 28

⁵ See R. p. 28, p. 30-31

investigation. Rather, the only finding by the Commission on this subject is a finding that Appellant presented no evidence to rebut Respondents' presentation that a good faith investigation occurred. This is not an error of law. The Commission did not shift or place the burden on Appellant. Rather, the Commission noted that once Respondents showed by a preponderance of the evidence that a good faith investigation occurred, Appellant presented no rebuttal evidence that showed a good faith investigation did not occur. This fact is noted by the careful sequential placement of the findings of fact and conclusions of law. All findings related to Appellant's burden of proof are located sequentially after the Commission finds Respondents conducted an investigation and had a good faith basis to terminate benefits. Further, the Commission noted that Appellant does have the burden of proving a compensable injury by accident arising out of and in the course and scope of his employment. *See Full Commission Conclusions of Law #2(e) citing to S.C. Code Ann. § 42-1-60; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009); Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960); S.C. Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003).*

Therefore, because Respondents proved they conducted a good faith investigation by a preponderance of the evidence and no contrary or rebuttal evidence was presented by Appellant, the Hearing Commissioner was required by law to make a finding that Respondents conducted a good faith investigation pursuant to S.C. Code Ann. § 42-9-260. For these reasons, this court should uphold the Commission's Decision and Order in its entirety.

II. THIS COURT AND THE COMMISSION DID NOT ERR AS A MATTER OF LAW BY NOT ORDERING REINSTATEMENT OF BENEFITS BECAUSE RESPONDENTS COMPLIED WITH S.C. CODE § 42-9-260.

Appellant next argues that the Commission erred in not reinstating medical and temporary disability benefits. Out the outset it should be noted that Appellant misstates the series of event surrounding the Form 15. Respondents' fine was rescinded by the Commission on October 3, 2013 and Respondents' did not pay any fine associated with the Form 15 in this case.

Appellant likewise misstates that it is "undisputed" that Respondents did not serve Appellant with "any supporting documentation as required by Commission Regulation 67-504 setting forth the reason for termination." Respondents provided Appellant with the supporting documented reasons for the termination of benefits. This is undisputed as it appears on the face of the Form 15⁶. Appellant cannot say that he was not put on notice as to the reason for the denial nor can Appellant say that Respondents did not comply with Regulation 67-504 related to the reason for termination. There is likewise no dispute that Appellant received a copy of the Form 15 when it was filed. The Commission specifically notes this is shown by Appellant filing a Form 15, Section III (which would not have been done unless Appellant received a Form 15, Section II). Appellant's exception or complaint is that he did not receive two copies of the Form 15. The Commission determined that because Appellant was represented by counsel at the time the Form 15, Section II was served, the requirement to serve two copies was unnecessary. Case law on this issue indicates only that an employer *should* apply to the commission

⁶ See R. p. 37

for permission to terminate benefits and that the employee *should* receive notice of the application⁷.

Because the Form 15, Section II was determined to be properly filed and served and because Respondents complied with the "reason for denial" component of Reg. 67-504, the denial of benefits was properly enacted under the Act. The denial of benefits is not defective or otherwise inoperable because Appellant only received one copy of the Form 15, Section II. Appellant was on notice of the denial of benefits within the statutorily prescribed period and in full compliance with S.C. Code Ann. § 42-9-260 and Reg. 67-504. Therefore, for the foregoing reasons, the Commission's Decision and Order should be affirmed in its entirety.

III. THIS COURT AND THE COMMISSION DID NOT ABUSE ITS DISCRETION BY CONSIDERING RESPONDENTS' PRE-HEARING BRIEF AND APA SUBMISSIONS.

Appellant next argues that the Commission erred by allowing Respondents' pre-hearing brief and APA submissions into the record. This is based on two factors: (1) pursuant to Reg. 67-612(B)⁸, Respondents are the moving party and, therefore, were required to serve their APA submission fifteen days prior to the hearing; and (2) Reg. 67-611 requires all parties file a Form 58 ten days before the hearing. Each of these will be addressed in turn.

First, Appellant is patently incorrect that Reg. 67-612(B) makes Respondents the moving party insofar as it subjects Respondents to filing APA submissions fifteen days before a hearing. **Reg. 67-612 is limited in scope to the admission of expert reports as**

⁷ See e.g. Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946).

⁸ Claimant repeatedly refers to Reg. 67-613 in his Brief. Defendants presume this to be an error and presume Claimant is referring to Reg. 67-612.

evidence. Respondents did not submit any expert reports into the record that were considered by the Commission for the purpose of the hearing⁹ (e.g. determining if a good faith investigation occurred prior to denial of benefits). Therefore, Reg. 67-612(B) simply does not apply to the hearing before the Commission. In addition, it should be noted that Appellant submitted his pre-hearing brief and APA submissions fifteen days prior the hearing¹⁰. This is evidence that Appellant, in fact, believed he was the moving party under the Act and did not believe Respondents were the moving party under the Act.

Second, Appellant is correct that Reg. 67-611 requires a Form 58 be filed ten days before a hearing. However, Respondents are unsure what Appellant's basis for this exception is. In this case, this 10 day requirement was met by Respondents. Ten days prior to the November 13, 2013 hearing was November 3, 2013. November 3, 2013 was a Sunday. The Commission is not open on Sundays and cannot accept service of documents on that day. Likewise, Appellant's attorney's office is not open on Sundays and cannot accept service of documents on that day. Because all entities available for service were closed and unable to accept service on November 3, 2013, Respondents Form 58 was filed on Monday, November 4, 2013. South Carolina Rule of Civil Procedure 6 states "[i]n computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, **unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the period runs until the end of the next**

⁹ Defendants did submit the report of Dr. Barry Feldman but the Hearing Commissioner excluded it from evidence.

¹⁰ Claimant filed his brief on October 30, 2013 for the November 13, 2013 hearing.

day which is neither a Saturday, Sunday nor such holiday.” Monday, November 4, 2013 was the first day available to file and serve Respondents’ Form 58 and readily complies with the Act and the South Carolina Rules of Civil Procedure.

Therefore, for the foregoing reasons, the Commission did not abuse any discretion in allowing Respondents’ Pre-Hearing Brief and APA Submissions because the Commission did not have any discretion to exercise. Reg. 67-612 is inapplicable to the underlying hearing as it relates only to expert reports as evidence and Reg. 67-611 is not in issue as Respondents filed their pre-hearing brief 10 days prior to the hearing. Appellant functionally argues he was prejudiced by a timely and properly filed pre-hearing brief—that argument fails outright. Therefore, the Commission’s Decision and Order should be upheld in its entirety.

IV. THIS COURT AND THE COMMISSION DID NOT ERR BY EXCLUDING EVIDENCE DATED AFTER SEPTEMBER 13, 2013.

Respondent must first point out to the court that this limitation and/or exclusion of records was a stipulation as noted by Commissioner Beck in his December 5, 2013 Order. Appellant appealed the actual application of that date but has not at any time formally appealed the actual stipulation to the Full Commission or this court. Respondents would submit Appellant is bound by his unappealed stipulation regardless of whether or not he agrees with the application of the date in the context of the case.

Appellant next argues that the Commission erred by limiting the evidence in the record to any evidence created prior to the verbal denial of benefits on September 13,

2013¹¹. The basis for this ruling is that Respondents could not have had access on or before September 13, 2013 to any documents or records created after September 13, 2013. When the Commission was asked to determine if Respondents conducted a good faith investigation, the only relevant documents to review were the documents available to Respondents at the time the decision to deny benefits was made. To permit or consider documents produced or created after September 13, 2013 would circumvent and undermine the stated purpose of the hearing on the Notice of Hearing.

Appellant argues that by excluding evidence after September 13, 2013, the Commission excluded written opinions from medical doctors related to causation. Again, that was the purpose of the decision by the Commission. The records and written opinions created after September 13, 2013 were not available to Respondents prior to September 13, 2013 and therefore cannot be weighed against the evidence used to deny benefits to Appellant. The only evidence relevant to the Commission's inquiry was the evidence available prior to September 13, 2013. Therefore, for the foregoing reasons, the Commission's Decision and Order should be upheld in its entirety.

V. THIS COURT AND THE HEARING COMMISSIONER DID NOT ERR AS A MATTER OF LAW IN ANY OF HIS ORDERS RELATED TO THE OUTSTANDING MOTIONS.

Appellant next argues that the Hearing Commissioner erred as a matter of law related to specific findings and decisions in the Motions Hearing conducted prior to the

¹¹ Appellant mistakenly uses the date "September 15, 2013" in his brief. A review of the Stipulations in the Single Commissioner Decision and Order dated December 5, 2013 clearly states "No documentary evidence dated after September 13, 2013 would be considered by the undersigned in the adjudication of the dispute."

Form 15 hearing. Respondents would respond to each sub part of the exception as follows:

- (a) Appellant first argues that the Hearing Commissioner denied his right to take the deposition of the adjuster “as a managing agent” of Carrier. Appellant also asserts error in that the Hearing Commissioner did not make a finding of fact that Respondents failed to obtain an Order prior to the adjuster refusing to appear for the deposition. First, Appellant’s request to depose the adjuster failed for several reasons. However, the chief reason is that the adjuster is not a managing agent of Carrier and, therefore, is not subject to subpoena for a deposition *as a managing agent*. Simply naming the adjuster as a managing agent does not magically make it so. Appellant sought to depose the wrong person with Carrier and the Hearing Commissioner properly denied his request. Second, the Hearing Commissioner properly refused to make a finding that Respondents failed to obtain an Order prior to the adjuster refusing the deposition. Interestingly, Appellant refused to appear for his own properly noticed deposition without filing a Motion to Quash and without obtaining an Order to postpone the deposition and took the position that no Order was needed to choose not to appear his own deposition. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.
- (b) Next, Appellant argues the Hearing Commissioner erred by not holding a hearing on the Motion to Quash the subpoena of the adjuster’s file prior to the Form 15 hearing. Appellant never requested an alternate date for the motion to quash and never asked that it be expedited. Therefore, Appellant has waived any objection to its expediency. Further, Appellant’s position stated herein was that the motions

should not have been heard at all at the Form 15 hearing (rather, they should have been done later). If Appellant was successful on that issue, it would be at odds with this position stated herein. Therefore, the Hearing Commissioner did not err in regards to this sub-part of the exception.

VI. THIS COURT AND THE COMMISSION DID NOT ERR AS A MATTER OF LAW BY MAKING FINDINGS OF FACT #4 THROUGH #11 BECAUSE EACH FINDING IS SUPPORTED BY TESTIMONY, STIPULATIONS OR DOCUMENTARY EVIDENCE IN THE RECORD.

Appellant next argues that the Hearing Commissioner erred as a matter of law related to Findings of Fact #4 through #11¹². Respondents would respond to each individual Finding of Fact of the exception as follows:

a. Finding of Fact #4

This finding of the Full Commission states “Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12, 2013.” This evidence for this finding is a matter of record with the Commission. It is undisputed that Respondents *did* pay temporary total disability benefits from June 1, 2013 through September 14, 2013 and Respondents *did* file a Form 19 with the Commission on September 12, 2013. Respondents are not aware of any ground or basis under which Appellant asserts this finding of fact is an error of law (or fact).

b. Finding of Fact #5

This finding of the Full Commission states “Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12, 2013. This

is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12, 2013.” This evidence for this finding is a matter of record with the Commission. It is undisputed that Respondents *did* provide medical care to Appellant through September 12, 2013 and Respondents *did* file a Form 19 with the Commission on September 12, 2013. Respondents are not aware of any ground or basis under which Appellant asserts this finding of fact is an error of law (or fact).

c. Finding of Fact #6

This finding of the Full Commission states “Defendants terminated Claimant’s workers’ compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12, 2013.” This evidence for this finding is a matter of record with the Commission. It is undisputed that Respondents *did* terminate benefits on September 12, 2013 and that Respondents terminated those benefits by filing a Form 15, Section II dated September 12, 2013.

Appellant’s contentions related to Finding of Fact #6 appear to center around the portion of the finding related to the language “following an investigation.” Specifically, throughout his brief, Appellant challenges any finding that indicates an investigation was conducted because Respondents did not present live testimony from Employer or Carrier related to an investigation. While Appellant is correct that Respondents did not present live testimonial evidence, Respondents did present documentary evidence in the form of medical records and form filings with the Commission. The Act does not require live

¹² See R. p. 27-29

testimonial evidence to support a denial of benefits pursuant to S.C. Code Ann. § 42-9-260. The evidence presented by Respondents and the forms filed with the Commission make it clear that an investigation was performed and a conclusion that the claim was not compensable was reached based on a review of the medical records produced to Respondents prior to September 13, 2013.

Because the record is clear that Respondents denied compensation benefits because Appellant failed to meet his burden of proving a compensable claim, the Commission did not err in relying on those form filings and submitted medical records to support a conclusion that Respondents conducted an investigation in this claim. Therefore, the Commission's Decision and Order should be affirmed in its entirety.

d. Finding of Fact #7

This finding of the Full Commission states "We find that the communications by and through the Claimant's attorney and the Defendants' representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial."

Appellant's challenge to this finding of fact should raise serious concerns to this court. Specifically, on page 41 of his brief, Appellant states:

"[t]here is absolutely no evidence...as to when the Respondents received any of the belated medical records that they were allowed to put into evidence...and there was simply no testimonial or documentary evidence submitted into the Record that would establish whether or not those records were received by the Respondents before September 13, 2013..."

This same contention was made in Appellant's prior brief to the Full Commission. The undersigned brought it to Appellant's attention at that time, and before the Full

Commission, that this statement/allegation is patently false. **Appellant's counsel provided Appellant's medical records to Respondents via e-mail on June 26, 2013.** This email has been previously provided to both the Full Commission and Appellant's counsel¹³. Appellant's counsel has not denied sending this e-mail. This specific issue was not raised with the Hearing Commissioner because Respondents never imagined or contemplated Appellant's counsel would later deny providing Respondents with the medical records he previously provided via e-mail. Nevertheless, that is the situation this case finds itself in. Appellant's counsel has been notified by Respondents' counsel of this incorrect and inaccurate allegation on several occasions prior to filing the present brief with this court and Appellant's counsel apparently still insists on pursuing it with this court. At best Appellant's position is disingenuous. At worst it is a position which Appellant's counsel knows to be false and misleading.

Respondents received the records Appellant on June 26, 2013. The receipt of these records is a sufficient basis for the Commission to determine Respondents conducted an investigation before denying the case over six weeks later.

e. Finding of Fact #8

This finding of the Full Commission states: "We find that a heart attack and its relationship to a work related injury is a medically complex case."

¹³ Due to it being evidence presented after the Single Commissioner hearing, it was not accepted into the file as a piece of evidence by the Full Commission. However, the existence of Finding of Fact #7 reflects the Commission's belief that Appellant's counsel did, in fact, submit the records to Respondents prior to September 13, 2013.

Claimant argues that the Commission erred by determining and stating this claim is medically complex. Claimant, on his Form 50 and Form 58 indicates that he is seeking medical benefits for his heart, left hand, left arm, left shoulder, neck, head, brain, chest, and all organs, members, and body parts. Alleging the entire body, including brain injury, necessarily makes this a medically complex claim. Therefore, the Commission did not err by stating this claim is “medically complex.”

f. Finding of Fact #9

This finding of the Full Commission states: “The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission’s file and the Form 15, Section III filed by the Claimant.” This evidence for this finding is a matter of record with the Commission. It is undisputed that Commission *did* receive the Form 15, Section II no later than September 18, 2013 and that Appellant *did* file a Form 15, Section III. . Respondents are not aware of any ground or basis under which Appellant asserts this finding of fact is an error of law (or fact).

g. Finding of Fact #10

This finding of the Full Commission states: “The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers’ Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.”

Appellant argues that the Commission erred in Finding of Fact #10 for two reasons: (1) the finding is in error because the Commission found Appellant was not prejudiced by receiving only one copy of the Form 15 when there is no evidence of lack

of prejudice to Appellant; and (2) the finding is in error because Appellant was prejudiced when Respondents did not attach a separate attachment setting forth the grounds for denial. Each of these will be addressed in turn.

First, Finding of Fact #10 is not an error of law because there was no evidence of prejudice. If Appellant was prejudiced by receiving only one copy of the Form 15, Appellant was required to present evidence of prejudice to rebut the Commission's finding. Appellant failed to present any evidence that he was prejudiced by receiving only one copy of the Form 15. Therefore, the Commission properly determined that Appellant was not prejudiced by receiving only one copy of the Form 15.

Second, Finding of Fact #10 is not an error of law because Respondents *did* attach the grounds for denial of benefits. Appellant reasserts issues raised previously in his brief that Respondents Form 15, Section II was deficient because it did not include the reasons for denial. In fact, the Form 15, Section II clearly includes the information required by the Act. Respondents Form 15, Section II states that Appellant's claim is being denied because "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act." Therefore, Appellant cannot say he was prejudiced by receiving the very notice the Act requires.

Because Appellant presented no evidence of prejudice by only receiving one copy of the Form 15, Section II and because Respondents complied with the Act in stating the reasons for denial, the Commission's Decision and Order should be affirmed in its entirety.

h. Finding of Fact #11

This finding of the Full Commission states:

"Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of this is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper."

Appellant argues that the Commission erred in Finding of Fact #11 for two reasons: (1) the finding is in error because the Commission found Appellant was not prejudiced by receiving only one copy of the Form 15 when there is no evidence of lack of prejudice to Appellant; and (2) the finding is in error because Appellant was prejudiced when Respondents did not attach a separate attachment setting forth the grounds for denial. Each of these will be addressed in turn.

First, Finding of Fact #11 is not an error of law because there was no evidence of prejudice. If Appellant was prejudiced by receiving only one copy of the Form 15, Appellant was required to present evidence of prejudice to rebut the Commission's finding. Appellant failed to present any evidence that he was prejudiced by receiving only one copy of the Form 15. Therefore, the Commission properly determined that Appellant was not prejudiced by receiving only one copy of the Form 15.

Second, Finding of Fact #11 is not an error of law because Respondents *did* attach the grounds for denial of benefits. Appellant reasserts issues raised previously in his brief that Respondents Form 15, Section II was deficient because it did not include the reasons for denial. In fact, the Form 15, Section II clearly includes the information required by the Act. Respondents Form 15, Section II states that Appellant's claim is being denied because "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act." Therefore, Appellant cannot say he was prejudiced by receiving the very notice the Act requires.

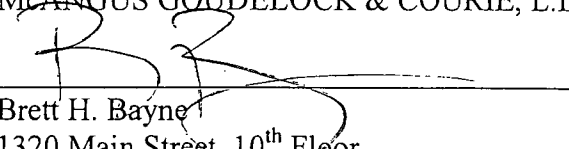
Because Appellant presented no evidence of prejudice by only receiving one copy of the Form 15, Section II and because Respondents complied with the Act in stating the reasons for denial, the Commission's Decision and Order should be affirmed in its entirety.

CONCLUSION

This court should DENY Appellant's Petition for Rehearing in its entirety.

Respectfully submitted,

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August 23, 2017

The South Carolina Court of Appeals

Clarence Winfrey, Employee, Appellant,

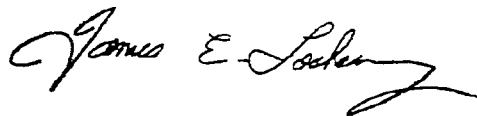
v.

Archway Services, Inc., Employer, and American Fire &
Casualty Insurance Company, Carrier, Respondents.

Appellate Case No. 2014-001815

ORDER

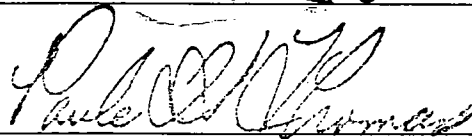
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

FILED

cc: Preston F. McDaniel, Esquire
Brett Harris Bayne, Esquire
Amy Bracy

September 28, 2017