

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Appellate Case No. 2017-000692

Billy Wayne Herndon, Employee/Claimant Appellant-Respondent,

v.

G & G Logging, Inc., Employer, and
Palmetto Timber S.I. Fund c/o Walker,
Hunter & Associates, Inc., Carrier Respondents-Appellants.

RECORD ON APPEAL

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INDEX

Orders

Order of the Single Commissioner dated July 26, 2016	1
Order of the Full Commission dated February 23, 2017	27

Pleadings

Form 20.....	52
Form 50 dated June 9, 2014.....	53
Form 51 dated August 7, 2014.....	54
Form 50 dated September 30, 2015.....	55
Form 51 dated October 9, 2015	56
Form 30 dated August 2, 2016.....	57

Transcripts

Transcript of Hearing before Single Commissioner dated May 3, 2016.....	61
Transcript of Hearing before Full Commission dated October 18, 2016	158

Exhibits

Claimant's APA Submissions	183
Employer/Carrier's APA Submissions	368
Certificate of Appellant	407

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1406130

Billy W. Herndon,
Claimant-Employee,

Vs.

G&G Logging, Inc.,
Defendant-Employer,

And

Palmetto Timber Fund,
c/o Walker, Hunter & Associates, Inc.,
Defendant-Carrier.

DECISION AND ORDER

Date of Hearing:	May 3, 2016.
Place of Hearing:	St. Matthews, South Carolina.
Claimant's Attorney:	John R. Hetrick of Hetrick Harvin & Bonds of Walterboro, Attorney for Claimant.
Defendants' Attorney:	Benjamin T. Cruse, Esquire, of McAngus, Goudelock & Courie, LLC of Mt. Pleasant, Attorney for Defendants.
Purpose of Hearing:	To determine the issues set forth in the Forms 50 and 51.
Decision and Order:	By: The Honorable R. Michael Campbell, II, Commissioner.
Electronically Filed:	July 26, 2016

STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing was to determine the issues set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission.
2. The date of claimant's work-related accident was May 12, 2014.
3. Notices were timely and properly served upon all parties of interest.
4. Venue was proper as agreed to by all parties.
5. There were no objections to APA submissions.
6. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical reports.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

On behalf of the claimant:

- APA 1: Medical report and 14B of Dr. James Gee, Toumey Health Care, dated 6-11-2015, pages 1-3;
- APA 2: Medical records of MUSC, dated 8-13-2003 through 5-16-2014, pages 4-31;
- APA 3: Medical records of Dr. Artur Pacult, dated 10-27-2014 through 4-27-2015, pages 32-44;
- APA 4: Medical records of Colleton Medical Center, dated 6-20-2014, pages 45-52;

- APA 5: Medical records of Walterboro Family Practice, dated 5-29-2008 through 9-15-2014, pages 53-86;
- APA 6: Medical records of Dr. Donald R. Johnson, II, Southeastern Spine Institute, dated 6-30-2015, pages 87-89;
- APA 7: Exhibit A, Deposition of Dr. Artur Pacult, dated 1-7-2016, pages 90-103;
- APA 8: Exhibit B, Vocational evaluation of Mr. George Page, dated 2-2-2016, pages 104-109;
- APA 9: Exhibit C, Vocational evaluation of Dixon Pearsall, Ph.D., CRC, NCC, dated 8-31-2015, pages 110 through 122;
- APA 10: Exhibit D, Vocational assessment update of Dixon Pearsall, Ph.D., CRC, NCC, dated 4-5-2016, pages 123 through 129;
- APA 11: Exhibit E, Deposition of claimant, dated 8-21-2014, pages 130 through 185.
- On behalf of the defendants:
- APA 12: Medical records of Medical University of South Carolina, dated 3-1-2011 to 7-28-2012, pages 186 through 197;
- APA 13: Copies of subpoenas, dated 2-24-2016, pages 198 through 203;
- APA 14: Wage records from the SC Department of Employment and Workforce, dated 3-8-2016, pages 204 through 206;
- APA 15: Supplemental report from George Page, dated 4-22-2016, pages 207 through 211.

STATEMENT OF THE CASE

On May 12, 2014, claimant was injured in a work-related, motor vehicle accident on Hwy. 21 in Orangeburg County near Rowesville. The MVA occurred when claimant was

driving his log truck south on U.S. Hwy. 21, and it involved a severe, near head-on collision on the right shoulder of claimant's lane of travel. At the time of the wreck, claimant was working as a log truck driver for his employer, G & G Logging Company, and he was acting within the course and scope of his employment. The accident and claimant's injuries sustained therein arose out of his employment. Claimant felt immediate pain across both shoulders, in his neck, in his left arm and down into his left hand. Claimant alleges to have sustained injuries to his shoulders, neck, back, chest, left arm and left hand with numbness and weakness in the left arm and hand, secondary to radiculopathy. The defendants admit only a scheduled injury to claimant's neck.

Claimant is seeking an indemnity award of permanent and total disability under Sec. 42-9-10, based on the admitted work accident of May 12, 2014, and his injuries sustained therein. Relying on Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960), claimant brought a wage loss claim for general disability for an injury to one body part, claimant's cervical spine, which affects another body part, his left upper extremity, as supported by the diagnosis of radiculopathy provided by Dr. Donald Johnson. (APA 6, p. 87-89) In support of his wage loss claim, claimant retained the services of Dr. Dixon Pearsall who provided a vocational report and supplemental vocational report, analyzing significant vocational factors such as claimant's age, education, residual functional capacity and past relevant work experience. Also, in support of permanent and total disability, claimant relies on McCollum v. Singer Company, 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989), which defines permanent and total disability as not requiring abject helplessness but rather an inability to perform services other than those which are so limited in quality, dependability and quantity that no reasonable market exists. Claimant is also seeking future medicals under Dodge v. Brucoli, Clark,

Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999) and Sec. 42-15-60 of the Act. At the time of the hearing, claimant had determined the present value of the permanent and total disability through the date of the hearing, May 3, 2016, as \$170,954.26, based on 368.9687 weeks at a compensation rate of \$463.33 a week.

Defendants are seeking to limit disability to a single body part, the back or spine only. They rely on the decision in Colonna v. Marlboro Park Hospital, 404 S.C. 537, 745 S.E.2d 128 (2013), denying that claimant sustained an injury to any other body parts other than the neck. They believe that claimant reached MMI on April 27, 2015, when he was released by Dr. Pacult and that he is entitled to a scheduled award based on the 9% whole person impairment rating of Dr. Gee, the defendants' rating doctor. Also, the defendants retained the vocational services of Mr. George Page who found that claimant was capable of returning to gainful employment and was not permanently and totally disabled. The defendants disputed claimant's average weekly wage and corresponding compensation rate based upon the decision in Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978). They seek to establish an average weekly wage of \$297.69 and a compensation rate of \$198.47. Based on this revised compensation rate of \$198.47, the defendants seek a credit for overpayment of TTD both from inception and from the date of MMI in the amount of \$37,802.58, pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).

The case was called for hearing on the merits and the witnesses were duly sworn. The claimant, Billy W. Herndon, and his wife, Deborah Herndon, testified for the claimant, and George Page, the defendants' vocational expert, testified for the defendants.

BIOGRAPHICAL

Billy Wayne Herndon, Sr. is currently 66 years of age with a DOB: 12-11-1949. He was

age 64 at the time of his accident. Claimant has lived at [REDACTED], Walterboro, South Carolina with his wife, Debbie, for the past 30 years. Claimant and Mrs. Herndon have been married for 46 years and have three grown children. Claimant lives on a farm, and before his accident, he would work 12 to 15 hours a day. He was generally in good health before the accident, although he had a heart attack about ten years ago, he took a daily pill for diabetes, and he had a left rotator cuff tear in about 2011 which was asymptomatic at the time of his accident. For hobbies, claimant loved to deer hunt and fish.

Claimant is right handed and has a valid South Carolina driver's license. He had a valid commercial (CDL) driver's license until December, 2015, but on the advice of Dr. Donald Johnson, he did not renew his CDL. He can drive comfortably for about 30 minutes, but he limits his driving because the medicine he takes makes him sleepy and groggy.

Claimant has less than a high school education. He finished the tenth grade but never completed his GED. He served in the National Guard for six years from 1969 to 1975 and was Honorably Discharged as an E-5. His ability to read and write is fair. His ability to subtract, multiply, divide and do basic math skills is fair. He has never done anything with a computer, and he has never had any computer training, computer skills or worked on a computer.

Claimant's past work history primarily included carpentry work, construction work, and driving commercial, 18-wheel trucks. Claimant did carpentry and construction work back in the late 1970's and early 1980's. This involved house framing, inside work, trim work and foundation work, "everything from foundation to finishes." Claimant started driving trucks in the 1980's; he has worked as a log truck driver for about the last 30 years. Claimant testified that logging work, even driving a log truck, is hard and dangerous work. It requires constant alertness. The log truck driver must throw straps across the load, bind the loads down and trim

the loads up with a chain saw. He is steadily bouncing up and down once the truck is in motion. The work also involves climbing in and out of the truck and doing maintenance such as greasing the truck. Even driving requires constant twisting and turning, looking in the mirrors and paying close attention to what is going on. After the accident claimant did not feel he could safely return to truck driving.

LAY EVIDENCE

Deborah Herndon testified that she and claimant had been married for 46 years, and she had "gotten to know him pretty well." Before the accident of May 12, 2014, he was able to work 12 to 15 hours a day, was active, had hobbies and was in relatively good health. She stated that "since he had his accident, I've seen a totally different man." Since the accident Mrs. Herndon said that claimant has had a hard time with his nerves and with depression. He is prescribed depression medicine like Zoloft that makes him sleepy, and he doesn't want to do anything. Sometimes he will get out of bed and he comes to his chair; sits down and he goes to sleep. He takes the medicine in the morning and becomes drowsy which lasts "pretty much most of the day." He sits in his recliner all day. He doesn't get out of bed before 11:00. Further, Mrs. Herndon testified that her husband has no patience and did not like to be around a lot of people. Even the grandchildren get on his nerves. She said that "he has lost interest in life."

Claimant testified that prior to his motor vehicle accident of May 12, 2014, he has not had any problems with his neck; he had a rotator cuff problem with his left shoulder in 2011 which had "cleared up." After the accident he had problems with his neck and with his left arm and "tingling in my (left) hand." He did not believe that he was able to drive a log truck "because I'm not going to be able to twist and turn and take the bouncing of the rough truck."

Claimant's average work day driving a log truck was 12 to 15 hours, and he worked 60 to

65 hours a week. He would normally haul four loads a day; he was paid by the load. Claimant tried to retire in January, 2012, but he had to go back to work because there "just wasn't enough money to get by." Claimant went to work for G & G Logging Company in January, 2014. He had worked for them about 13 weeks when the accident occurred in early May, 2014. He had earned about \$9,285 or about \$714.23 per week on average at that point. It was claimant's intention after he came out of retirement to work when he was needed. No decisions or arrangements had been made on the date of claimant's accident which would limit or cap his earned income with G & G Logging Company in 2014.

The job with G & G Logging Company required "a lot of lifting." Sometimes there was heavy lifting involved, and claimant was required to move things out of the road. Walking was required to get out of the way of the equipment. Standing was required while the truck was being loaded and sitting was required the most while the truck was being driven. Bending, stooping and squatting were all required to bind the load and maintain the truck, and climbing was required to get in and out of the truck. Sometimes he was required to climb up onto the back of the truck to cut off limbs from the top of the load with a chainsaw. Pushing and pulling was required with the chainsaw and with putting on the straps. Reaching and twisting and turning were also required.

Claimant testified that before his accident he was required to take a physical examination every year as part of the CDL process. This was required to keep his commercial driver's license.

Before the accident, claimant "passed the physical every year with no problem." Claimant passed his physical exam after the accident as well (Hr. Tr., P. 61; L. 11-25), but he did not renew his CDL in December after his, doctor, Dr. Don Johnson, "advised me not to get back in a

truck (because) he didn't think it would be in my best interest to do so." (Hr. Tr., P. 36; L. 20-24).

After the accident claimant started having chest pains on June 19, 2014, for suspected heart related problems and went to the emergency room at Colleton Medical Center. He was cleared of possible cardiac problems, but an MRI of the neck was ordered to rule out spine disease, based on complaints of "neck pain with tingling down the arm ever since he had a motor vehicle accident 6 weeks ago." (APA 5, P. 74). As a result of the positive MRI, it was determined that claimant's pain was coming from his neck, and he was referred to a neurosurgeon, Dr. Artur Pacult. Dr. Pacult performed surgery on claimant's cervical spine. After his surgery, claimant was prescribed medications which make him sleepy for 2 or 3 hours after he takes them. He was prescribed narcotic medication for pain such as Oxycodone and Hydrocodone but he prefers to take plain Tylenol because he did not want to become addicted to the narcotics. He takes Zoloft for depression which occurs about once a week when he thinks about the wreck. He testified that he has problems with patience and irritability, and now the grandchildren get on his nerves sometimes, and he does not want to be around anyone. He has a difficult time focusing and concentrating on what he is doing when he takes his medication. Also, often he feels lethargic and has lost interest in things. He feels jittery and "shake(s) all the time."

Claimant then described his functional capacities which he has post-accident. He can stand for about 10 minutes and walk a couple of hundred yards. Sitting for more than 30 minutes bothers him, and he gets to moving—"I can't sit still." With bending and stooping, he cannot do half of what he could do before the accident. He can lift and carry about ten pounds with his left hand. Reaching with his left arm bothers him, and especially twisting and turning hurts his neck.

He can only turn his head so far and then he must turn his whole body. He believed the side effects of the medications would impair his ability to safely operate a truck and even driving a car is more difficult. Claimant testified that his wife retired in February, 2016, and he will try and help her a little around the house with "cleaning and stuff." After he helps her for a little bit, he will have to go and sit down. Claimant does not read books, but he tries to read the newspaper once a week. During a typical day, he watches a lot of television, and he estimates that he gets off his feet for 5 or 6 hours a day.

MEDICAL EVIDENCE

Claimant was seen initially by Dr. Bryan Tompkins of Walterboro Family Practice in Walterboro on the day of his accident, May 12, 2014. He was sore and stiff from the collision, and his left arm was "tingling and painful." His pain was about 5 on a scale of 10. Dr. Tompkins noted "tenderness primarily in the left upper arm with some limited range of motion on the left shoulder."

On May 27, 2014, Dr. Tompkins saw claimant a second time and noted "tenderness primarily on the C-spine paraspinal muscles on the left trapezius area and into the left shoulder. He does have decreased strength in the left arm... related to pain." Claimant was continued on pain medication and muscle relaxers. He was written out of work for two additional weeks. Also, Dr. Tompkins made a physical therapy referral "secondary to poor progress and improvement."

Claimant next saw Dr. Tompkins on June 10, 2014, for a follow-up. At that time he "continue(d) to have neck pain with left-sided shoulder and arm radiation." Dr. Tompkins noted "tenderness again left side of the C-spine paraspinal muscles and into the (left) shoulder. Describes radiation into the left arm and does appear to have decreased grip strength and

decreased flexion and extension on the left today." Dr. Tompkins continued claimant's current medications and "continued to recommend physical therapy and also recommended an MRI of the C-spine."

On June 19, 2014, claimant was admitted to Colleton Medical Center complaining of chest pain. Specifically, "the patient complains of neck pain with tingling down the (left) arm ever since a motor vehicle accident 6 weeks ago." Claimant was found to be "negative for myocardial infarction," but an "MRI of the neck was ordered to rule out spine disease."

The following day, on June 20, 2014, an MRI of the cervical spine without contrast was done. The results of this test were noted as follows:

"Impression: Large disc osteophyte complexes with uncovertebral joint hypertrophy from C3/C4 through C6/C7, overall, left greater than right. There is severe multilevel bilateral foraminal stenosis left greater than right as detailed above. There is also mild multilevel spinal cord compression and mild spinal canal stenosis."

On June 23, 2014, Mr. Herndon returned to Dr. Tompkins, who reviewed the cervical MRI with him and concluded with findings of "Musculoskeletal/C-spine: Tenderness primarily on the left side with left upper extremity radiation." He opted for a "neurosurgery referral."

Claimant was referred to Dr. Artur Pacult, a neurosurgeon with Neurosurgery and Spine Specialists of Charleston, on October 27, 2014; he became the authorized treating physician. After taking a history and examining claimant, Dr. Pacult determined that claimant had a "cervical radiculopathy at C7, left." He noted that the "MR(I) of the cervical spine shows significant disc degeneration at multiple levels, and on the left C6/C7 there is a foraminal stenosis with impressive left-sided osteophyte formation compressing as expected C7 nerve root." Based on Mr. Herndon's decision to proceed with surgery, Dr. Pacult "scheduled an anterior cervical discectomy arthrodeses with plating at C6-C7 with Synthes system." Dr. Pacult

performed neck surgery in the nature of an "ACDFP C6-7" on January 13, 2015.

Following surgery, claimant returned to Dr. Pacult on February 2, 2015, for the first time after his "cervical discectomy and decompression of the nerve root at C6-C7." Dr. Pacult noted that claimant still "complains of numbness at night and tightness in his neck and especially when he drives and looks straight." Dr. Pacult's assessment was "cervical radiculopathy at C7, left." He prescribed physical therapy for the cervical spine and left shoulder.

On March 16, 2015, claimant followed-up with Dr. Pacult for a second time since his surgery. At this time he was "complaining of cervical pain into the shoulder and into the arm on the left side." Dr. Pacult continued physical therapy and ordered claimant to remain out of work.

Dr. Pacult saw claimant a final time on April 27, 2015. At that time claimant had completed the prescribed physical therapy, and his condition had plateaued. Claimant described his job to Dr. Pacult and told Dr. Pacult that the vibration from driving causes "severe neck pain and left shoulder pain." Claimant believed that he could not return to work due to his persistent pain. Dr. Pacult noted that he would refer claimant "to the impairment rating specialist at this point in order to close the Workmen's Compensation case," since he did not do "impairment ratings." However, Dr. Pacult never made the referral to an impairment rating specialist. This was arranged solely by the defendants. Also, Dr. Pacult opined that "Patient has reached maximum medical improvement and no further treatment is suggested and recommended and the patient is according to him due to pain unable to return to truck driving."

The defendants then sent claimant to be evaluated and rated by a Dr. James E. Gee with Tuomey Medical Professionals in Sumter, South Carolina. Dr. Pacult practices medicine in Charleston, and all of the claimant's medical treatment was in the Walterboro/ Charleston area. Dr. Gee, who is an Industrial Medicine and Wellness doctor, saw claimant on referral from the

defendants on June 11, 2015, for the sole purpose of rating him. He had not participated in any of claimant's treatment. Dr. Gee completed a Form 14B, and signed the 14B "Dr. Pacult/James E. Gee" on the line to be signed by the "Treating Physician." In his deposition, Dr. Pacult stated that his name on the signature line of the 14B was not in his handwriting and was not his signature. Dr. Pacult did not authorize Dr. Gee to sign his name on the form and did not know who Dr. Gee was. (APA 7, Exhibit A, P. 101 (Depo. Tr. 42; L. 14-22)). Dr. Pacult stated in his deposition that he did not refer claimant to Dr. Gee, that he did not know Dr. Gee and that to his knowledge he had never met Dr. Gee.

Dr. Gee in his 14B finds that the nature of claimant's injury is a "radiculopathy," and he finds that the injured body part is "cervical." However, he does not note any other body parts which are "affected," by the radiculopathy. Dr. Gee placed claimant at MMI on April 27, 2015, and assigned a 9% medical impairment to the whole person with assigned work restrictions to limit heavy work and strain. He opined that claimant will not need future medical treatment.

Claimant obtained his own IME on June 30, 2015, with Dr. Donald R. Johnson, II, a spinal surgeon with Southeastern Spine Institute in Mt. Pleasant, for an evaluation of injuries to his "neck and radiating left arm pain." Dr. Johnson noted that Mr. Herndon has "complaints of neck pain with radiating pain, paresthesias and numbness down the left arm to the left hand." Dr. Johnson's evaluation was after claimant was seen and rated by Dr. Gee on June 11, 2015, when Dr. Gee noted that "he (claimant) does not have radicular pain and paresthesias in the left arm as he did prior to surgery." Although the records of Dr. Johnson and Dr. Gee appear to contradict one another, Dr. Johnson's records are more current in time than Dr. Gee's. Dr. Johnson noted that claimant's "pain is typically 6 out of 10," and the "pain is made better by medication and worse by driving, riding, lifting or straining." On physical examination, Dr.

Johnson found that the "Spurling's maneuver is provocative on the left side," while Dr. Gee noted that "Spurling's sign is not present." Also, Dr. Johnson noted that "His numbness interestingly is in the C5-6 distribution. He has symptoms down into the index and forefinger. He also has some symptoms along the brachioradialis. He has pain with range of motion of the neck." The surgery performed by Dr. Pacult was to claimant's C6-C7 disc, and the "C5-6 distribution" is the disc above this. Based on his review of claimant's cervical MRI scan, Dr. Johnson noted that "the patient has multilevel pathology at 3-4, 4-5, 5-6 and 6-7. Indeed, in regards to left-sided pathology, the 6-7 level looks the worse. However, I am concerned the patient has pathology at the adjacent levels above." Dr. Johnson was "concerned about the levels above the previous cervical fusion," at C6-C7 performed by Dr. Pacult. He believed that claimant needed an updated cervical MRI scan and would need future medical treatment.

Dr. Johnson assigned "a 26% impairment to the whole person, per page 392, table 15-5 of the Fifth Edition, AMA Guides," which constitutes a cervical category IV impairment. He noted that "the patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand." Dr. Johnson went on to address the issue of claimant's ability to return to work. He stated that "In regards to work, the patient may not return to his previous vocation. If he tries to do so, I think it is inevitable that he will injure a disc above his cervical fusion. Work restrictions of avoiding heavy lifting and strain are impossible in the line of work this gentleman is currently employed by." In conclusion, Dr. Johnson noted that "Most probable to a reasonable degree of medical certainty the patient's work injury of 05-12-14 exacerbated a pre-existing asymptomatic degenerative condition. All opinions given above are most probable to a reasonable degree of medical certainty."

The parties took the deposition of the authorized treating neurosurgeon, Dr. Artur Pacult,

at his office in Charleston on January 7, 2016. Dr. Pacult was the neurosurgeon who operated on claimant's cervical spine at C6/C7; he is the authorized treating physician. Dr. Pacult acknowledged that he did not do impairment ratings. He agreed that there was a greater risk of further injury to claimant's neck by going back to work in the logging woods, and he did not recommend that claimant return to work as a log truck driver. Dr. Pacult's testimony is as follows:

Q. Well, the reason I ask that is because you said the reason that Mr. Herndon should not go back to work or would not be able to go back to work was because of his pain, and only he can determine the pain.

A. Correct.

Q. I'm looking at it from an objective standpoint, if there's a greater risk of further injury to his back (neck) by going back to work in the logging woods –

A. Uh-huh.

Q. – would you recommend – if he came back in today and said, you know, "Going out in the logging woods, I bounce around all the time. I don't want to do further damage to my back," would you recommend to him, "Well, you need to go back to work" or "You need to go back to work as a log truck driver"?

A. No, I don't.

(APA 7, Exhibit A, P. 99 (Dep. Tr. 36-37, L. 6-25, 1))

Further, regarding Dr. Johnson's professional qualifications to provide an impairment rating for claimant, Dr. Pacult stated as follows:

Q. Okay. Are you familiar with Don Johnson?

A. Yeah, I know Dr. Johnson, yes.

Q. You have practiced in the Charleston area a long time, and, of course, you've got a good reputation Dr. Pacult, but I wanted to ask you, are you familiar with Dr. Johnson's reputation?

A. Yes.

Q. Does he have a good reputation?

A. Yes.

Q. Do you feel that Dr. Johnson would be a competent individual to give an impairment rating in a particular case?

A. Absolutely.

(APA 7, Exhibit A, P. 100 (Dep. Tr. 39-40, L. 23-25, 1-10))

VOCATIONAL EVIDENCE

Based on claimant's belief that he could not return to work as a log truck driver because of the severe neck pain and left upper extremity pain caused by the vibration and based on Dr. Johnson's opinion that return to work as a truck driver or any work involving heavy lifting or strain would likely injure adjacent disc levels above the level of claimant's cervical fusion (C6-C7), claimant retained the services of Dixon Pearsall, Ph.D., a vocational expert with Pearsall Vocational Services, to provide a Vocational Assessment and Residual Vocational Capacity (Employability) Opinion relating to Mr. Herndon's employability capacity. Dr. Pearsall noted that as regards prior work experience, "Mr. Herndon's primary work for the course of 30+ years has been as a heavy truck operator/driver." Further, his "prior work as a truck driver/operator (all positions), per the USDOL/DOT, are at the exertion level of "Medium," with a "specific vocational preparation (SVP) or 'skill' level is 4."

Dr. Pearsall then reviewed the medical records and noted several significant medical

findings with "Vocational Implications." The MRI scan showed "severe multilevel bilateral foraminal stenosis left greater than right as detailed above. There is also mild multilevel spinal cord compression and mild spinal canal stenosis." Then, Dr. Johnson noted that claimant has "decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand." Dr. Gee noted that claimant "indicates at times that the 'vibration' while driving causes cervical pain."

In his Vocational Assessment Update, dated April 5, 2016, Dr. Pearsall, while noting that the "minimum wage in South Carolina is consistent with the national minimum wage of \$7.25 per hour," goes on to opine at page 5 of his report as follows:

"Mr. Herndon has no transferable skills to 'semi-skilled' or 'skilled' sedentary work (SVP levels 4-8). He is limited by physician return to work (r-t-w) conditions to 'unskilled' sedentary positions. Mr. Herndon is limited and restricted to 'unskilled' sedentary positions.

Unskilled sedentary work is exceptionally and extraordinarily limited in the United States economy. Unskilled sedentary positions encompass less than 1% of the national economic base. This may also be stated that greater than 99% of all positions (part-time or full-time) represented in the United States economy base are not available or accessible to Mr. Herndon based upon physician return-to-work conditions, limitations, and restrictions."

Mr. George H. Page was retained as a vocational expert by the defendants. He is the owner of Page Rehabilitation for the last 18 years, and the majority of their work is workers' compensation in North and South Carolina. Mr. Page stated that in his experience "age is not an issue with regard to employment..." and he believed that claimant was capable of performing "light duty work" in comparison to the "unskilled sedentary work" determined by Dr. Pearsall. Mr. Page concluded that "there are abundant work options available to Mr. Herndon within his physical restrictions," and his "return to gainful employment in any capacity depends largely on his motivation." Mr. Page then listed certain jobs for Mr. Herndon which he found "utilizing

indeed.com in a time limited survey.”

NET PRESENT VALUE OF INDEMNITY

Claimant was injured on May 12, 2014. He has received temporary total benefits from this time. The net present value of the indemnity award for permanent and total disability is determined from August 1, 2016. $(5/12/2014 - 8/1/2016 = 116.1429 \text{ weeks})$ The remaining weeks of indemnity are 384 weeks $(500 - 384)$. The present value of 384 weeks is equal to 356.9254 weeks, using a “Net Present Value Table – 2% per annum.” This number of weeks is multiplied by claimant’s compensation rate of \$463.33 and results in a net present value indemnity amount of \$165,374.25 to August 1, 2016.

FINDINGS OF FACT

Based upon the stipulations of the parties, a review of the evidence in the record in its entirety, sworn testimony of witnesses received at the hearing and personal observations of the witnesses, by a preponderance of the evidence, I make the following Findings of Fact:

1. Jurisdiction, venue and notice are proper and stipulated by the parties.
2. The AWW and CR reflected on the Form 20 are correct and have not been contested by the defendants for more than two years.
3. Claimant sustained a admitted injury by accident to his neck arising out of and in the
course and scope of his employment
on 05/12/2014.
4. Claimant alleged additional causally related injuries to his left shoulder, left arm, left hand and fingers. Dr. Donald Johnson, II, in his narrative report of 6/30/2015, opines that “the patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand.” Also, claimant was

initially diagnosed by Dr. Bryan Tompkins on 5/27/2014 and 6/10/2014 with "neck pain and left shoulder pain" starting after a motor vehicle accident while working. It is noted that the left shoulder pain improved significantly throughout the course of treatment although the left arm radiation continued even following claimant's anterior discectomy and fusion at C6-7 by Dr. Artur Pacult on 1/13/2015.

4. Claimant underwent various evaluations and treatments for his alleged work related injuries as provided in detail in the Medical Evidence section of this Decision and Order as set forth herein and incorporated herein by reference.
5. On 4/27/2015 the ATP, Dr. Artur Pacult of Neurosurgery and Spine Specialists of Charleston, placed Claimant at MMI, recommended no further treatment and referred him to another specialist for an impairment rating. (APA 3, P. 42)
6. On 6/11/2015, on a 14B, Dr. James E. Gee of Toumey Internal Medicine and Wellness placed Claimant at MMI as of 04/27/2015, assigned a 9% medical impairment to the whole person, assigned work restrictions to limit heavy work and strain and opined claimant will not need future medical treatment. (APA 1, P. 1)
7. On 6/30/2015, in an IME for the Claimant, Dr. Donald R. Johnson, II of Southeastern Spine Institute opined to a reasonable degree of medical certainty before claimant closes his case he should update his cervical MRI scan because of concerns about the levels above the previous cervical fusion. In addition, Dr. Johnson assigned a 26% impairment to the whole person and opined Claimant has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand. Dr. Johnson recommended future medical treatment and opined Claimant may not return to his previous vocation and assigned work restrictions. Specifically, Dr. Johnson

noted that Mr. Herndon has "complaints of neck pain with radiating pain, paresthesias and numbness down the left arm to the left hand." Dr. Johnson's evaluation was **after** claimant was seen and rated by Dr. Gee on June 11, 2015, when Dr. Gee noted that "he (claimant) does not have radicular pain and paresthesias in the left arm as he did prior to surgery." The records of Dr. Johnson and Dr. Gee appear to contradict one another, but Dr. Johnson's records are more current in time than Dr. Gee's. Dr. Johnson noted that claimant's "pain is typically 6 out of 10," and the "pain is made better by medication and worse by driving, riding, lifting or straining." On physical examination, Dr. Johnson found that the "Spurling's maneuver is provocative on the left side," while Dr. Gee noted that "Spurling's sign is not present." Also, Dr. Johnson noted that "His numbness interestingly is in the C5-6 distribution. He has symptoms down into the index and forefinger. He also has some symptoms along the brachioradialis. He has pain with range of motion of the neck." The surgery performed by Dr. Pacult was to claimant's C6-C7 disc, and the "C5-6 distribution" is the disc above this. Based on his review of claimant's cervical MRI scan, Dr. Johnson noted that "the patient has multilevel pathology at 3-4, 4-5, 5-6 and 6-7. Indeed, in regards to left-sided pathology, the 6-7 level looks the worse. However, I am concerned the patient has pathology at the adjacent levels above." Dr. Johnson was "concerned about the levels above the previous cervical fusion," at C6-C7 performed by Dr. Pacult. He believed that claimant needed an updated cervical MRI scan and would need future medical treatment. (APA 6, P. 87-89)

8. On 01/07/2016, in deposition testimony, Dr. Pacult testified he did not recommend Claimant

returning to work as a logging truck driver. At the time of his deposition he was asked:

Q. I'm looking at it from an objective standpoint, if there's a greater risk of further injury to his back (neck) by going back to work in the logging woods –

A. Uh-huh.

Q. – would you recommend – if he came back in today and said, you know, “Going out in the logging woods, I bounce around all the time. I don’t want to do further damage to my back,” would you recommend to him, “Well, you need to go back to work” or “You need to go back to work as a log truck driver”?

A. No, I don’t.

(APA 7, P. 99)

9. Claimant underwent vocational evaluations/assessments by George Page and Dixon Pearsall Ph.D. Dr. Pearsall in his private interview with claimant determined that claimant “does consider himself to be depressed and anxious.” He determined that “unfortunately, (claimant) can not meet the basic expectations and requirements of competitive employment (work) at any exertion or skill level. This would include but not be exclusive to SEDENTARY positions.”

Dr. Pearsall concluded as follows:

“In consideration of current medical and functional residual capacity, in consideration of age (65) and prior work experiences, and incorporating the absence of readily transferable skills to “Light” and/or “Sedentary” work; it is “highly likely” and “probable” that Mr. Herndon will not return to competitive employment. This is true of all full-time competitive positions represented in significant numbers in the national economy at all exertion and skill levels.”

Dr. Pearsall went on to opine that “I am confident to a reasonable degree of professional

assurance that my analyses and opinions accurately represent Mr. Herndon's vocational capacity and vocational access (employability)."

10. Claimant's alleged additional body parts, left shoulder, left arm, left hand and fingers are causally related to his admitted work injury.
11. I give the greatest weight to Dr. Johnson and little weight to Dr. Gee. I find no reason for claimant to be rated by Dr. Gee in Sumter, South Carolina when all of claimant's medical treatment was provided in the Walterboro/Charleston area.
12. I give greater weight to the vocational assessment of Dixon Pearsall.
13. Claimant is at MMI as of 04/27/2015.
14. Based on Claimant's sworn testimony, which I found to be very credible, and the evidence as a whole, I find the Claimant is totally and permanently disabled pursuant to 42-9-10(B). I incorporate by reference the lay testimony of Claimant and his wife as previously set forth herein, which corroborates the medical and vocational evidence herein. In McCullum v. Singer Company, 300 S.C. 103, 386 S.E.2d 471 (Cl.App. 1989), the South Carolina Court of Appeals, citing our Supreme Court opinion in Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965), stated a guideline for determining permanent and total disability under the general disability criteria of loss in earning capacity. The court stated that "Under Workers' Compensation Law 'total disability' does not require complete, abject helplessness. Rather it is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them." McCullum, id. at 474. Continuing, "evidence that the claimant has been able to earn occasional wages or perform certain

kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial.” Colvin v. E.I. DuPont De Nemours Company, 227 S.C. 465, 88 S.E.2d 581 (1955). I find that determining disability involves more than simply listing jobs which theoretically an injured worker may be able to do. This has never been the standard and is but one factor to be considered. Other factors, such as age, education, past relevant work, special training, ability to transition, job availability in the local, state and national economies, local and regional unemployment rates, general health, degree of medical impairment and other factors are critical to the determination of disability.

15. Pursuant to 42-15-60, claimant is entitled to causally related medical treatment and lifetime medicals.
16. Claimant is entitled to a lump sum award of 500 weeks less previous payments by the Defendants.
17. The indemnity proceeds to August 1, 2016, of \$165,374.25 shall be allocated as follows: \$55,124.75 as attorney’s fees of (33-1/3%) of the permanent and total disability award pursuant to written contract between the claimant/employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in compromise settlement of disputed future lost earnings at the rate of \$152.66 per week, commencing on August 1, 2016, and continuing thereafter for a period of 696 weeks. Utica-Mohawk v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); POMS 52001.555 (c) (4).
18. The AWW of \$695.00 and a corresponding CR of \$463.33, reflected on the Form 20, are correct.

CONCLUSIONS OF LAW

1. Under Sec. 42-1-160, claimant sustained an admitted injury to his neck by accident arising out of and in the course of his employment. The additional body parts of left shoulder, left arm, left hand and fingers are causally related to his admitted work injury.
2. Under Sec. 42-15-20, proper notice of the injury was given. Also, jurisdiction and venue are proper and are agreed to by the parties.
3. Under Sec. 42-15-40, the claim was filed in a timely manner.
4. Under Sec. 42-1-40, claimant's compensation rate as determined in this Decision and Order is \$463.33.
5. Under Sec. 42-9-10 (B), claimant is totally and permanently disabled.
6. Under Sec. 42-9-301, claimant is entitled to a lump sum award of 500 weeks less previous payments by the defendants.
7. Under Sec. 42-15-60, claimant is entitled to causally related medical treatment and as a result of being permanently and totally disabled, to causally related lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers. Lifetime medical care and treatment shall include, but is not limited to, all causally related, reasonable and necessary nursing services, prescription medications, medicines, prosthetic devices, sick travel, pain management, medical, hospital, and other authorized treatment and care, including mileage.
8. Under Regulation Rule 67-1205, claimant's attorney is entitled to an attorney's fee of thirty-three and one-third percent (33-1/3%) of claimant's award of permanent and total disability from the date of this Decision and Order.

AWARD

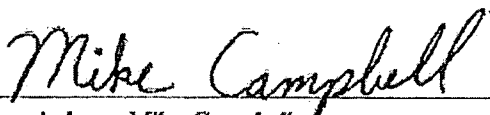
IT IS HEREBY ORDERED that claimant is entitled to a lump sum award of 500 weeks less previous payments by the defendants.

IT IS FURTHER ORDERED that pursuant to 42-15-60 claimant is entitled to causally related medical treatment and lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers.

IT IS FURTHER ORDERED that the indemnity award to August 1, 2016, of \$165,374.25 shall be allocated as follows: \$55,124.75 as attorney's fees of (33-1/3%) of the gross settlement amount pursuant to written contract between the claimant/employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in compromise settlement of disputed future lost earnings at the rate of \$152.66 per week, commencing on the date of this Award and continuing thereafter for a period of 696 weeks. Utica-Mohawk v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); POMS 52001.555 (c) (4).

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Mike Campbell

July 26, South Carolina

26th day of July, 2016

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
July 26, 2016

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1406130

Billy Wayne Herndon

EMPLOYEE,
CLAIMANT/RESPONDENT

vs.

G & G Logging, Inc.

EMPLOYER,

and

Palmetto Timber S.I. Fund c/o Walker, Hunter
& Associates, Inc.

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on October 10, 2016 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

February 23, 2017

APPEARANCES: Claimant/Appellant represented by John R. Hetrick, Esquire
Defendants/Respondents represented by Benjamin T. Cruse, Esquire

STATEMENT OF THE CASE

This matter came to be heard before the Single Commissioner on May 3, 2016, upon the filing of Claimant's Form 50 and Defendants' Form 51. Claimant alleged a work-related accident on May 13, 2014 involving injury to the cervical spine with an affect to Claimant's left upper extremity in the form of cervical radiculopathy. Claimant sought entitlement to permanent and total disability benefits pursuant to S.C. Code Ann. §42-9-10. Claimant contended he has an average weekly wage of \$695.00, with a compensation rate of \$463.36, based upon a Form 20 previously submitted in this claim. Claimant asserted that social security retirement benefits have no bearing on a workers' compensation case and should not be considered. It was Defendants' position that Claimant was involved in a work-related accident on May 12, 2014 involving injury to the cervical spine only. Defendants asserted Claimant failed to meet his burden of proof to establish any other injuries pursuant to *Collona v. Marlboro Park Hosp.*, 404 S.C. 537, 745 S.E.2d 128 (2013), as there was no opinion from any physician that Claimant sustained any injury or impairment to any other body part aside from the cervical spine. Defendants further asserted Claimant's correct average weekly wage is \$297.69, with a compensation rate of \$198.47. This figure is based upon the social security retirement cap offset for wages earned in 2014, equaling a maximum of \$15,480.00 in earned wages per year and based upon Claimant's admission that he planned to limit his earnings to that cap so as not to reduce his retirement benefits. Defendants sought a credit for overpayment of temporary total disability benefits paid at the wrong compensation rate, as well as following the date of maximum medical improvement.

The Single Commissioner issued the following Findings of Fact, Conclusions of Law, and Order.

SINGLE COMMISSIONER'S FINDINGS OF FACTS

1. Jurisdiction, venue and notice are proper and stipulated by the parties.
2. The AWW and CR reflected on the Form 20 are correct and have not been contested by the Defendants for more than two years.
3. Claimant sustained an admitted injury by accident to his neck arising out of and in the course and scope of his employment on 5/12/2014.
4. Claimant alleged additional causally-related injuries to his left shoulder, left arm, left hand, and fingers. Dr. Donald Johnson, II, in his narrative report of 6/30/2015, opined that "The patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand." Also, Claimant was initially diagnosed by Dr. Bryan Tompkins on 5/27/2014 and 6/10/2014 with "neck pain and left shoulder pain" starting after a motor vehicle accident while working. It is noted that the left shoulder pain improved significantly throughout the course of treatment, although the left arm radiation continued even following Claimant's anterior discectomy and fusion at C6-7 by Dr. Artur Pacult on 1/13/2015.
5. Claimant underwent various evaluations and treatment for his alleged work-related injuries as provided in detail in the medical evidence section of this Decision and Order as set forth herein and incorporated herein by reference.
6. On 4/27/2015 the ATP Dr. Artur Pacult of Neurosurgery and Spine Specialists of Charleston, placed Claimant at MMI, recommending no further treatment and referred him to another specialist for an impairment rating. (APA 3, P. 42)
7. On 6/11/2015, on a Form 14B, Dr. James E. Gee of Tuomey Internal Medicine and Wellness placed Claimant at MMI as of 04/27/2015, assigned a 9% medical impairment to

the whole person, assigned work restrictions to limit heavy work and strain, and opined Claimant will not need future medical treatment. (APA 1, P. 1)

8. On 6/30/2015, in an IME for the Claimant, Dr. Donald R. Johnson, II of Southeastern Spine Institute opined, to a reasonable degree of medical certainty, that before Claimant closes his case he should update his cervical MRI scan because of concerns about the levels above the previous cervical fusion. In addition, Dr. Johnson assigned a 26% impairment to the whole person and opined Claimant has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand. Dr. Johnson recommended future medical treatment and opined Claimant may not return to his previous vocation and assigned work restrictions. Specifically, Dr. Johnson noted that Mr. Herndon has "complaints of neck pain with radiating pain, paresthesias and numbness down the left arm to the left hand." Dr. Johnson's evaluation was after Claimant was seen and rated by Dr. Gee on June 11, 2015, when Dr. Gee noted that "He (Claimant) does not have radicular pain and paresthesias in the left arm as he did prior to surgery." The records of Dr. Johnson and Dr. Gee appear to contradict one another, but Dr. Johnson's records are more current in time than Dr. Gee's. Dr. Johnson noted that Claimant's "pain is typically 6 out of 10," and the "pain is made better by medication and worse by driving, riding, and lifting or straining." On physical examination, Dr. Johnson found that the "Spurling's maneuver is provocative on the left side," while Dr. Gee noted that "Spurling's sign is not present." Also, Dr. Johnson noted that "His numbness interestingly is in the C5-6 distribution. He has symptoms down into the index and forefinger. He also has some symptoms along the brachioradialis. He has pain with range of motion of the neck." The surgery performed by Dr. Pacult was to Claimant's C6-7 disc, and the "C5-6 distribution" is the disc above this. Based on his review of Claimant's cervical MRI scan, Dr.

Johnson noted that "the patient has multi-level pathology at 3-4, 4-5, 5-6, and 6-7. Indeed, in regards to left-sided pathology, the 6-7 level looks to be worse. However, I am concerned the patient has pathology at the adjacent levels above." Dr. Johnson was "concerned about the levels above the previous cervical fusion," at C6-C7 performed by Dr. Pacult. He believed that Claimant needed an updated cervical MRI scan and would need future medical treatment. (APA 6, P. 87-89)

9. On 01/07/2016, in deposition testimony, Dr. Pacult testified he did not recommend Claimant returning to work as a logging truck driver. At the time of his deposition, he was asked:

Q. I'm looking at it from an objective standpoint, if there's a greater risk of further injury to his back (neck) by going back to work in the logging woods.

A. Uh-huh.

Q. Would you recommend – if he came back in today and said, you know, "Going out in the logging woods, I bounce around all the time. I don't want to do further damage to my neck," would you recommend to him, "Well, you need to go back to work" or "You need to go back to work as a log truck driver?"

A. No, I don't ...

(APA 7, P. 99)

10. Claimant underwent vocational evaluations/assessments by George Page and Dixon Pearsall, Ph.D. Dr. Pearsall, in his private interview with Claimant, determined that Claimant "does consider himself to be depressed and anxious." He determined that "unfortunately, (Claimant) cannot meet the basic expectations and requirements of competitive employment (work) at any exertion or skill level. This would include but not be exclusive to SEDENTARY positions."

Dr. Pearsall concludes as follows:

In consideration of current medical and functional residual capacity, and consideration of age (65) and prior work experience, and incorporating the absence of readily transferrable skills to "Light" and/or "Sedentary" work; it is "highly likely" and "probable" that Mr. Herndon will not return to competitive employment. This is true of all full-time competitive positions represented in significant numbers in the national economy at all exertion and skill levels.

Dr. Pearsall went on to opine that "I am confident to a reasonable degree of professional assurance that my analyses and opinions accurately represent Mr. Herndon's vocational capacity and vocational access (employability)."

11. Claimant's alleged additional body parts, left shoulder, left arm, left hand and fingers are causally-related to his admitted work injury.

12. I give the greatest weight to Dr. Johnson and little weight to Dr. Gee. I find no reason for Claimant to be rated by Dr. Gee in Sumter, South Carolina when all of Claimant's medical treatment was provided in the Walterboro/Charleston area.

13. I give greater weight to the vocational assessment of Dixon Pearsall.

14. Claimant is at MMI as of 04/27/2015.

15. Based on Claimant's sworn testimony, which I found to be very credible, and the evidence as a whole, I find the Claimant is totally and permanently disabled pursuant to §42-9-10(B). I incorporate by reference the lay testimony of Claimant and his wife as previously set forth herein, which corroborates the medical and vocational evidence herein. In *McCollum v. Singer Company*, 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989), the South Carolina Court of Appeals, citing our Supreme Court opinion in *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 142 S.E.2d 43 (1965), stated a guideline for determining permanent and total disability under the general disability criteria for loss in earning capacity. The court stated that "Under

workers' compensation law 'total disability' does not require complete, abject helplessness. Rather, it is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them." *McCollum*, Id. at 474. Continuing, "Evidence that the Claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial." *Colvin v. E.I. DuPont deNemours Company*, 227 S.C. 465, 88 S.E.2d 581 (1955). I find that determining disability involves more than simply listing jobs which theoretically an injured worker may be able to do. This has never been the standard and is but one factor to be considered. Other factors, such as age, education, past relevant work, special training, ability to transition, job availability in the locale, state and national economies, local and regional unemployment rates, general health, degree of medical impairment and other factors are critical to the determination of disability.

16. Pursuant to §42-15-60, Claimant is entitled to causally-related medical treatment and lifetime medicals.

17. Claimant is entitled to a lump sum award of 500 weeks, less previous payments by the Defendants.

18. The indemnity proceeds to August 1, 2016 of \$165,374.25 shall be allocated as follows: \$55,124.75 as attorneys' fees of (33-1/3%) of the permanent and total disability award pursuant to written contract between the Claimant/Employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in compromise settlement of disputed future lost earnings at the rate of \$152.66 per week, commencing on August 1, 2016, and continuing thereafter for a period of 696 weeks. *Utica-Mohawk v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955); *Sciarotta v. Bowen*, 837 F.2d 135 (3d Cir. 1988); POMS 52001.55(c)(4).

19. The AWW of \$695.00 and a corresponding CR of \$463.33, reflected on the Form 20, are correct.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

1. Under Sec. 42-1-160, Claimant sustained an admitted injury to his neck by accident arising out of and in the course of his employment. The additional body parts of left shoulder, left arm, left hand and fingers are causally-related to his admitted work injury.

2. Under Sec. 42-15-20, proper notice of the injury was given. Also, jurisdiction and venue are proper and are agreed to by the parties.

3. Under Sec. 42-15-40, the claim was filed in a timely manner.

4. Under Sec. 42-1-40, Claimant's compensation rate as determined in this Decision and Order is \$463.33.

5. Under Sec. 42-9-10(B), Claimant is totally and permanently disabled.

6. Under Sec. 42-9-301, Claimant is entitled to a lump sum award of 500 weeks, less previous payments by the Defendants.

7. Under Sec. 42-15-60, Claimant is entitled to causally-related medical treatment and as a result of being permanently and totally disabled, to causally-related lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers. Lifetime medical care and treatment shall include, but is not limited to, all causally-related, reasonable and necessary nursing services, prescription medications, medicines, prosthetic devices, sick travel, pain management, medical, hospital, and other authorized treatment and care, including mileage.

8. Under Regulation Rule 67-1205, Claimant's attorney is entitled to an attorneys' fee of thirty-three and one-third percent (33-1/3%) of Claimant's award of permanent and total disability from the date of this Decision and Order.

SINGLE COMMISSIONER'S AWARD

IT IS HEREBY ORDERED that Claimant is entitled to a lump sum award of 500 weeks, less previous payments by the Defendants.

IT IS FURTHER ORDERED that, pursuant to §42-15-60, Claimant is entitled to causally-related medical treatment and lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers.

IT IS FURTHER ORDERED that the indemnity award to August 1, 2016 of \$165,374.24 shall be allocated as follows: \$55,124.75 as attorneys' fees of (33-1/3%) of the gross settlement amount pursuant to written contract between Claimant/Employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in compromise settlement of disputed future lost earnings at the rate of \$152.66 per week, commencing on the date of this award and continuing thereafter for a period of 696 weeks. *Utica-Mohawk v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955); *Sciarotta v. Bowen*, 837 F.2d 135 (3d Cir. 1988); POMS 52001.555(c)(4).

Defendants timely appealed the Single Commissioner decision raising, among other issues, whether the Single Commissioner erred in finding that the average weekly wage and compensation rate as reflected on the Form 20 are correct. The parties briefed their arguments and were heard by the undersigned on October 10, 2016. The following is the Decision of the Commission:

EVIDENCE OF THE CASE/ANALYSIS

The Form 20 previously filed in this matter was based upon Claimant's limited 13 weeks of wages earned while working for the Defendants prior to his work related accident. In light of the limited time worked prior to the accident, the Form 20 was initially calculated by taking the

total wages earned divided by the total number of weeks worked pursuant to S.C. Code Ann. §42-1-40. This section provides, in pertinent part, that “[w]hen the employment, prior to the injury, extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, *as long as results fair and just to both parties will be obtained.*” (emphasis added)

During the course of discovery, Defendants learned that Claimant was receiving Social Security retirement benefits, having voluntarily retired from employment in January of 2012. Despite his voluntary retirement and receipt of Social Security retirement benefits, Claimant continued to work on a part-time basis in order to supplement his income. Further discovery revealed Claimant intended not to earn more than \$15,000.00 per year following his retirement so as to avoid the Social Security retirement offset and, in fact, had not earned wages in excess of the earnings cap since his retirement. Pursuant to the Social Security Administration, a retired worker could earn up to \$15,480.00 in 2014 prior to having an offset of his retirement benefits.

Claimant reported his plan to limit his earnings in 2014 to Defendants’ vocational evaluator, George Page, during his interview with Claimant on January 22, 2016. Mr. Page included this conversation in his vocational report dated February 2, 2016. In that report, Mr. Page stated: “Mr. Herndon retired at age 62 and began working part-time and revealed he could make up to \$15,000.00 per year. He noted he would work until he reached the \$15,000.00 and not work the rest of the year. He noted G & G Logging was aware.” (Claimant’s APA p. 106) Defendants were first aware of Claimant’s plan to limit his earnings up to the Social Security offset cap of \$15,000.00 in 2014 upon receipt of the vocational evaluator’s report dated February 2, 2016.

Based upon this new information, Defendants obtained Claimant's tax records for 2012, 2013, and 2014 to determine whether Claimant had earned greater than \$15,480.00 in any year he worked following his retirement. In 2012, Claimant earned \$7,780.00 while working for Bootle Logging Company. In 2013, Claimant earned \$8,806.50 while working for Bootle Logging Company. In 2014, Claimant earned \$9,285.00 while working for G & G Logging, Inc. (Defendants' APA No. 13 and No. 15) Based upon the wage records and tax returns obtained by Defendants, it is clear Claimant did not exceed the Social Security cap of \$15,480.00 of wages earned during any year of part-time work following his voluntary retirement and receipt of retirement benefits.

Claimant testified before the Single Commissioner concerning his plan and intention to limit his income following his retirement in 2012. Specifically, Claimant testified as follows:

Q: You then went to work for G & G in 2014; is that correct?

A: Yes, sir. I did.

Q: And you worked approximately 13 weeks or so?

A: Yes, sir, until the accident in May.

Q: Okay. And -- and during that time period while you were working for G & G you earned about \$9,285; does that sound right?

A: Yes, sir. That's close.

Q: And was it your intention in 2014 then to earn as much as you could without reducing your retirement benefits?

A: Yes, sir.

(Hrg. Tr. p. 59, ll. 10-22) (emphasis added)

Furthermore, George Page, vocational expert, testified before the Single Commissioner

as follows:

Q: And did Mr. Herndon have a conversation during your evaluation regarding his retirement status?

A: Yes.

Q: And what did Mr. Herndon say about his retirement benefits and his plan to earn wages?

A: In our conversation he indicated he had retired at age 62 and that he -- he needed to work and that he could make up to \$15,000.00 a year without being penalized.

Q: And was this -- was it relayed to you that this was his plan?

MR. HETRICK: Object to the form of question Commissioner, leading.

THE COURT: Can you please rephrase?

Q: I'll rephrase. Did Mr. Herndon discuss his current situation -- current employment situation with you with G & G Logging?

A: Yes.

Q: Did Mr. Herndon have any plan for working for G & G Logging with regard to the restrictions -- I am sorry, the limitation on earnings?

A: Yes.

Q: And what is your understanding based on your conversation with Mr. Herndon as to his plan while working for G & G Logging?

A: On page 3 of my report I -- I'll just read what I said. "Mr. Herndon retired at age 62 and began working part-time and revealed he could make up to \$15,000.00 per year. He noted he would work until he reached \$15,000.00 and not work the rest of the year. He noted G & G Logging was aware."

(Hrg. Tr. p.80, ll. 3-25, p. 81, ll. 1-9)

The Workers' Compensation statute which sets forth several different methods for calculating the Claimant's average weekly wage provides an elasticity and flexibility with a view toward always achieving the ultimate objective of reflecting fairly Claimant's probable future earning loss. *Bennett v. Gary Smith Builders*, 271 S.C. 94 (1978). The Appellate Panel of the Full Commission finds that exceptional reasons exist to recalculate Claimant's average weekly wage as it would be unfair and unjust to Defendants to find Claimant has an average weekly wage of \$695.00 and further find that an alternative method for computing the average weekly wage must be resorted to in order to most nearly approximate the amount which Claimant would have earned were it not for his injury.

As such, The Appellate Panel finds the average weekly wage as calculated in this claim is unfair and unjust as it does not fairly reflect Claimant's probable future earning loss. Rather, it provides a windfall for Claimant to receive fulltime wages in excess of any wages he was planning to earn by his own admission in light of the Social Security offset. In that regard, The Appellate Panel finds Claimant's average weekly wage of \$695.00, which the Single Commissioner found to be accurate, equates to a salary or earnings totaling \$36,140.00 per year. Based upon the Social Security office that cap of \$15,480.00 in earnings for 2014 and Claimant's assertion that he did not plan to exceed that cap, The Appellate Panel finds that awarding an average weekly wage as originally calculated which represents earnings that are more than double the amount Claimant advised he would not exceed is grossly unjust and unfair to Defendants. Moreover, based upon Claimant's reported income following his retirement in 2012 and 2013, the two years prior to his accident where he supplemented his income working part-time, it is clear Claimant did not intend to earn more than \$15,480.00 per year and established a pattern of supplementing his income with wages well below the \$15,480.00 cap. In that regard,

as noted above Claimant earned \$7,780.00 in 2012, \$8,806.50 in 2013 while working for Bootle Logging. Claimant's current average weekly wage of \$695.00 as reported on the Form 20 represents more than 4.5 times the wages he actually earned in those two years following his retirement. The Appellate Panel finds an average weekly wage based upon purported earnings 4.5 times greater than Claimant's history of earnings following his retirement is grossly unfair and unjust to the Defendants and supports the conclusion that an alternative method for calculating Claimant's average weekly wage must be used in this instance.

This conclusion is supported by the South Carolina Supreme Court's decision in *Bennett v. Gary Smith Builders*, 271 S.C. 94 (1978). That decision is on four corners with the fact pattern presented in this case. In the *Bennett* decision, Bennett worked for the employer while drawing Social Security retirement. Bennett worked each year for the employer until he received the maximum he was permitted to earn without penalty while drawing Social Security payments. Bennett would then quit work and not work the rest of the year. Bennett's plan and pattern of work is the exact same plan and pattern of work as Claimant's in the present matter. While working for his employer, Bennett was injured on the job and filed a Workers' Compensation claim. Due to the short duration of time Bennett worked in the year of his accident, Bennett's average weekly wage was initially computed by dividing his total earnings by the number of weeks worked. This is the same method of calculating Claimant's average weekly wage that Defendants initially used in the present case.

The Supreme Court analyzed this issue and found that the average weekly wage used by dividing total wages by actual numbers of weeks worked resulted in a salary almost twice as much as Bennett actually earned during any one of the previous years following his retirement and resulted in an unjust and unfair calculation. In the present case, calculating Claimant's

average weekly wage by dividing total wages by actual number of weeks worked resulted in a salary greater than four times as much as Claimant actually earned in the previous years following his retirement. The Supreme Court found in the *Bennett* case that an alternative method to calculate the average weekly wage was proper in order to compute an average weekly wage which would be fair and just to both parties based upon Bennett's work history and retirement status. The Supreme Court stated that based upon Bennett's previous earning indicating he earned \$2,500.00 per year (the maximum he could earn prior to his retirement benefits being offset), "it is grossly unfair to the employer to require payments of almost twice the amount." *Bennett*, 271 S.C. at 98. The Supreme Court further reasoned that "failure to receive any amount over and above that figure in the past or future is not attributable to the injury he has sustained, but rather is attributable to the pattern of work activity he has voluntarily assumed." *Id.* Finally, the Supreme Court stated, "[t]he calculation we hereby approve brings about a result fair to the employee and to the employer. It neither rewards the employee for working less than fulltime, nor punishes the employer for having given Bennett part-time employment..." *Id.* at 99.

FINDINGS OF FACT AS AMENDED BY THE APPELLATE PANEL

After a careful, deliberate and thoughtful review of the complete record, and arguments and briefs of counsel, the Appellate Panel affirms in part and reverses in part the Decision and Order from the Hearing Commissioner dated July 26, 2016 with amendment to the Findings of Fact and Conclusions of Law as follows:

1. Jurisdiction, venue and notice are proper and stipulated by the parties.

2. Claimant voluntarily retired from employment in 2012. Following his voluntary retirement, Claimant returned to the workforce working part-time in order to supplement his income. This finding is based upon the testimony of Claimant.
3. In 2012, following Claimant's voluntary retirement, Claimant returned to work for Bootle Logging and earned \$7,780.00 in 2012. In 2013 Claimant continued to work part-time for Bootle Logging and earned \$8,806.50. This finding is based upon the testimony of Claimant as well as Defendants' APA No. 13 and No. 15.
4. In 2014, Claimant was hired part-time by G & G Logging, Inc. Prior to Claimant's work accident on May 12, 2014, Claimant earned \$9,285.00 while working part-time for G & G Logging. This finding is based upon Claimant's testimony as well as Defendants APA No. 13 and No. 15.
5. Claimant testified that it was his intention in 2014 following his voluntary retirement to limit his earnings up to the Social Security retirement offset cap of \$15,480.00 so as to avoid his retirement benefits being offset. This finding is based upon the testimony of Claimant, specifically Hrg. Tr. p. 59, ll. 10-22.
6. Claimant presented for a vocational evaluation with George Page, at which time during that evaluation Claimant advised that it was his plan to limit his earnings up to the Social Security retirement offset amount of \$15,000.00 so his retirement benefits would not be reduced. This finding is based upon the vocational report of George Page (Claimant's APA p. 106) as well as the hearing testimony of George Page at Hrg. Tr. pp. 80-81.
7. The Appellate Panel finds that exceptional reasons exist in this claim which require recalculation of Claimant's average weekly wage to obtain a result that is fair and just to both parties.

8. The Appellate Panel finds Claimant's correct average weekly wage is \$297.63 with a corresponding compensation rate of \$198.47 which is calculated using the maximum allowable yearly earnings totaling \$15,480.
9. Defendants are entitled to a credit of overpaid weekly compensation paid at the incorrect compensation rate. As of January 16, 2017 Defendants have paid a total of \$64,313.62 in weekly compensation since the date of accident. During that same time period, Claimant was entitled to only \$27,785.80 (140 weeks x \$198.47). Defendants' credit therefore equals \$36,527.82 which shall be deducted from the total award.
10. Claimant sustained an admitted injury by accident to his neck arising out of and in the course and scope of his employment on 5-12-2014.
11. Claimant alleged additional causally-related injuries to his left shoulder, left arm, left hand, and fingers. Dr. Donald Johnson, II, in his narrative report of 6-30-2015, opined that "The patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand." Also, Claimant was initially diagnosed by Dr. Bryan Tompkins on 5/27/2014 and 6/10/2014 with "neck pain and left shoulder pain" starting after a motor vehicle accident while working. It is noted that the left shoulder pain improved significantly throughout the course of treatment, although the left arm radiation continued even following Claimant's anterior discectomy and fusion at C6-7 by Dr. Artur Pacult on 1/13/2015.
12. Claimant underwent various evaluations and treatment for his alleged work-related injuries as provided in detail in the medical evidence section of this Decision and Order as set forth herein and incorporated herein by reference.

13. On 4/27/2015 the ATP Dr. Artur Pacult of Neurosurgery and Spine Specialists of Charleston, placed Claimant at MMI, recommending no further treatment and referred him to another specialist for an impairment rating. (APA 3, P. 42)
14. On 6/11/2015, on a Form 14B, Dr. James E. Gee of Tuomey Internal Medicine and Wellness placed Claimant at MMI as of 04/27/2015, assigned a 9% medical impairment to the whole person, assigned work restrictions to limit heavy work and strain, and opined Claimant will not need future medical treatment. (APA 1, P. 1)
15. On 6/30/2015, in an IME for the Claimant, Dr. Donald R. Johnson, II of Southeastern Spine Institute opined, to a reasonable degree of medical certainty, that before Claimant closes his case he should update his cervical MRI scan because of concerns about the levels above the previous cervical fusion. In addition, Dr. Johnson assigned a 26% impairment to the whole person and opined Claimant has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand. Dr. Johnson recommended future medical treatment and opined Claimant may not return to his previous vocation and assigned work restrictions. Specifically, Dr. Johnson noted that Mr. Herndon has "complaints of neck pain with radiating pain, paresthesias and numbness down the left arm to the left hand." Dr. Johnson's evaluation was after Claimant was seen and rated by Dr. Gee on June 11, 2015, when Dr. Gee noted that "He (Claimant) does not have radicular pain and paresthesias in the left arm as he did prior to surgery." The records of Dr. Johnson and Dr. Gee appear to contradict one another, but Dr. Johnson's records are more current in time than Dr. Gee's. Dr. Johnson noted that Claimant's "pain is typically 6 out of 10," and the "pain is made better by medication and worse by driving, riding, and lifting or straining." On physical

examination, Dr. Johnson found that the "Spurling's maneuver is provocative on the left side," while Dr. Gee noted that "Spurling's sign is not present." Also, Dr. Johnson noted that "His numbness interestingly is in the C5-6 distribution. He has symptoms down into the index and forefinger. He also has some symptoms along the brachioradialis. He has pain with range of motion of the neck." The surgery performed by Dr. Pacult was to Claimant's C6-7 disc, and the "C5-6 distribution" is the disc above this. Based on his review of Claimant's cervical MRI scan, Dr. Johnson noted that "the patient has multi-level pathology at 3-4, 4-5, 5-6, and 6-7. Indeed, in regards to left-sided pathology, the 6-7 level looks to be worse. However, I am concerned the patient has pathology at the adjacent levels above." Dr. Johnson was "concerned about the levels above the previous cervical fusion," at C6-C7 performed by Dr. Pacult. He believed that Claimant needed an updated cervical MRI scan and would need future medical treatment. (APA 6, P. 87-89)

16. On 01/07/2016, in deposition testimony, Dr. Pacult testified he did not recommend Claimant returning to work as a logging truck driver. At the time of his deposition, he was asked:

Q. I'm looking at it from an objective standpoint, if there's a greater risk of further injury to his back (neck) by going back to work in the logging woods.

A. Uh-huh.

Q. Would you recommend – if he came back in today and said, you know, "Going out in the logging woods, I bounce around all the time. I don't want to do further damage to my neck," would you recommend to him, "Well, you need to go back to work" or "You need to go back to work as a log truck driver?"

A. No, I don't ...

(APA 7, P. 99)

17. Claimant underwent vocational evaluations/assessments by George Page and Dixon Pearsall, Ph.D. Dr. Pearsall, in his private interview with Claimant, determined that Claimant "does consider himself to be depressed and anxious." He determined that "unfortunately, (Claimant) cannot meet the basic expectations and requirements of competitive employment (work) at any exertion or skill level. This would include but not be exclusive to SEDENTARY positions."

Dr. Pearsall concludes as follows:

In consideration of current medical and functional residual capacity, and consideration of age (65) and prior work experience, and incorporating the absence of readily transferrable skills to "Light" and/or "Sedentary" work; it is "highly likely" and "probable" that Mr. Herndon will not return to competitive employment. This is true of all full-time competitive positions represented in significant numbers in the national economy at all exertion and skill levels.

Dr. Pearsall went on to opine that "I am confident to a reasonable degree of professional assurance that my analyses and opinions accurately represent Mr. Herndon's vocational capacity and vocational access (employability)."

18. Claimant's alleged additional body parts, left shoulder, left arm, left hand and fingers are causally-related to his admitted work injury.

19. We give the greatest weight to Dr. Johnson and little weight to Dr. Gee. We find no reason for Claimant to be rated by Dr. Gee in Sumter, South Carolina when all of Claimant's medical treatment was provided in the Walterboro/Charleston area.

20. We give greater weight to the vocational assessment of Dixon Pearsall.

21. Claimant is at MMI as of 04/27/2015.

22. Based on Claimant's sworn testimony, which we find to be credible based on the record and the observations of the Single Commissioner, in which he found the Claimant to be very credible, and the evidence as a whole, we find the Claimant is totally and permanently disabled pursuant to §42-9-10(B). We incorporate by reference the lay testimony of Claimant and his wife as previously set forth herein, which corroborates the medical and vocational evidence herein. In *McCollum v. Singer Company*, 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989), the South Carolina Court of Appeals, citing our Supreme Court opinion in *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 142 S.E.2d 43 (1965), stated a guideline for determining permanent and total disability under the general disability criteria for loss in earning capacity. The court stated that "Under workers' compensation law 'total disability' does not require complete, abject helplessness. Rather, it is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them." *McCollum*, Id. at 474. Continuing, "Evidence that the Claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial." *Colvin v. E.I. DuPont deNemours Company*, 227 S.C. 465, 88 S.E.2d 581 (1955). We find that determining disability involves more than simply listing jobs which theoretically an injured worker may be able to do. This has never been the standard and is but one factor to be considered. Other factors, such as age, education, past relevant work, special training, ability to transition, job availability in the locale, state and national economies, local and regional unemployment rates, general health, degree of medical impairment and other factors are critical to the determination of disability.

23. Pursuant to §42-15-60, Claimant is entitled to causally-related medical treatment and lifetime medicals.
24. Claimant is entitled to a lump sum award of 500 weeks, less previous payments by the Defendants.
25. Claimant's average weekly wage equals \$297.63 with a corresponding compensation rate of \$198.47.

CONCLUSIONS OF LAW AS AMENDED BY THE APPELLATE PANEL

After careful, deliberate and thoughtful review of the complete record, and the arguments and briefs counsel, the Appellate Panel affirms in part and reverses in part the Hearing Commissioner's Decision and Order dated July 26, 2016 with amendments to the following Conclusions of Law:

1. Pursuant to S.C. Code Ann. §42-1-160, Claimant sustained an admitted injury to his neck by accident arising out of and in the course of his employment. The additional body parts of left shoulder, left arm, left hand and fingers are causally related to his admitted work injury.
2. Pursuant to S.C. Code Ann. §42-15-20, proper notice of the injury was given. Also, jurisdiction and venue are proper and are agreed to by the parties.
3. Pursuant to S.C. Code Ann. §42-15-40, the claim was filed in a timely manner.
4. Pursuant to S.C. Code Ann. §42-1-40, and *Bennett v. Gary Smith Builders*, 271 S.C. 94 (1978), Claimant's correct average weekly wage equals \$297.63 with a corresponding compensation rate of \$198.47.
5. Pursuant to S.C. Code Ann. §42-9-10(B), Claimant is totally and permanently disabled.

6. Pursuant to S.C. Code Ann. §42-9-31, Claimant is entitled to a lump sum award of 500 weeks less previous payments by the Defendants.
7. Pursuant to S.C. Code Ann. §42-9-210, Defendants are entitled to a credit of overpaid weekly compensation paid at the incorrect compensation rate. As of January 16, 2017 Defendants have paid a total of \$64,313.62 in weekly compensation since the date of accident. During that same time period, Claimant was entitled to \$27,785.80 (140 weeks x \$198.47). Defendants' credit therefore equals \$36,527.82 which shall be deducted from the total award.
8. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to causally related medical treatment and as a result of being permanently and totally disabled, to causally related lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers, lifetime medical care and treatment shall include, but is not limited to, all causally related, reasonable and necessary nursing services, prescription medications, medicines, prosthetic devices, sick travel, pain management, medical, hospital, and other authorized treatment and care, including mileage.
9. Pursuant to Reg. 67-1205, Claimant's attorney is entitled to an attorney's fee of (33-1/3%) of Claimant's award of permanent and total disability.

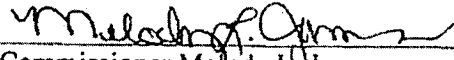
ORDER AND AWARD

IT IS THEREBY ORDERED that Claimant is entitled to a lump sum award of 500 weeks less previous payments by Defendants.

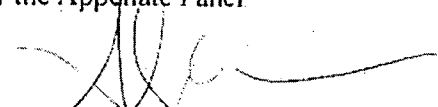
IT IS FURTHER ORDERED that pursuant to S.C. Code Ann. §42-15-60 Claimant is entitled to causally related medical treatment and lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers.

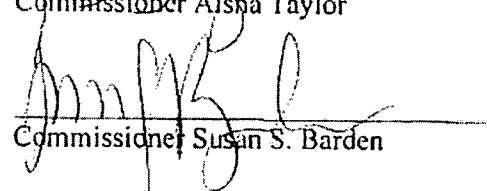
IT IS FURTHER ORDERED that the indemnity award July 26, 2016 equaled \$71,181.23 (commuted value of 385 weeks equals $337.8687 \times \$198.47$), and shall be allocated as follows: \$23,727.07 as attorney fees of 33-1/3% of the gross permanent disability award pursuant to written contract between the claimant/employee and his attorney; \$3,995.49 as costs and expenses pursuant to the same written contract; \$43,458.67 in compromise settlement of disputed lost earnings at the rate of \$62.44 per week, commencing on the date of the original Award and continuing thereafter for a period of 696 weeks. Utica-Mohawk v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); POMS 52001.555 (c) (4). However, it is noted that Claimant continued to receive weekly compensation in this claim through January 16, 2017. As of, January 16, 2017 Claimant received \$64,313.62 in weekly benefits over the course of 140 weeks since the date of his accident. Based upon the correct compensation rate of \$198.47, Claimant was only entitled to payment of \$27,785.81, resulting in an overpayment of weekly compensation totaling \$36,527.82. The commuted value of the total award for permanent and total disability as of January 16, 2017 equals \$66,711.37. After deducting Defendants' credit for overpaid weekly compensation, Claimant's total award equals \$30,183.55.

AND IT IS SO ORDERED by the Appellate Panel.


Commissioner Melody L. James
For the Appellate Panel

WE CONCUR:


Commissioner Aisha Taylor


Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on February 23, 2017

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



WCC File #: 1406130

Carrier File #: ~~1406130~~

Carrier Code #:

Employer FEIN #:

Billy Wayne Herndon

Claimant's Name

~~Walterboro, South Carolina~~

Walterboro, South Carolina 29488

Address City State Zip

Home Phone #

Benjamin Cruse

Preparer's Name

Work Phone #

McAngus Goudelock & Courie

Law Firm

G & G Logging, Inc.

Employer's Name

269 Rigby Road

Bowman, South Carolina 29018

Address City State Zip

Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc.

Insurance Carrier

843-576-2937

Phone Number

Date of Injury: 5/12/2014

A. Total Wages Paid

1. Check Applicable Method:

- ☐ Report of earnings of injured employee based on four completed quarters.
- ☒ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
- ☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire date:
- ☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just (attach documentation to show how average weekly wage and compensation rate were calculated).

2. List total wages paid as reported to the Employment Security Commission on the Employer Quarterly Contribution and Age Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	1/18/14 to 5/9/14	\$9,036.00
2nd		\$
3rd		\$
4th		\$
		Total Paid 2. \$9,035.00

- 3. List total value of other allowances of any character made in lieu of wages during four quarters above.** 3. \$0.00
- 4. Add lines 2 and 3.** **TOTAL WAGES PAID:** 4. \$
- 5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.** 5. 13

B. Average Weekly Wage

- 6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).**

AVERAGE WEEKLY WAGE: 6. \$695.00

C. Compensation Rate

- 7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate.** 7. \$463.36
- 8. The compensation rate is as follows (choose one):**
 - ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
 - ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
 - ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
 - ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8.
 - ☐ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. \$463.36

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED, THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

WCC Form # 20
 Rev. Date 3/97

20

STATEMENT OF EARNINGS
 OF INJURED EMPLOYEE

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



WCC File #: 1406130
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Billy W. Herndon Sr. SSN: 920-02-7417 Employer's Name: G&G Logging
Address: 600 Highway 230 Address: 269 Rigby Road
City: Walterboro State: SC Zip: 29488 City: Bowman State: SC Zip: _____
Home Phone: () Work Phone: () Insurance Carrier: Palmetto Timber Fund

Preparer's Name: John R. Hetrick Law Firm: Hetrick, Harvin & Bonds Preparer's Phone #: (843) 549 - 6432

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 5/12/14

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

1. The claimant sustained an injury to both shoulders, neck, back, chest, left hand (Part(s) of Body Injured) on 5/12/14 (Month/Day/Year) in Colleton county, state of SC.
2. Body part(s) affected are: same as above.
Briefly describe how the accident occurred. clmt. driving work truck when he was hit by another driver.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 5/12/14 (Month/Day/Year) in the following manner:
Orally advised immediately.

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: all injuries.

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Needs ttd benefits until reaches MMI and released from treatment.

☒ 9. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

9a. ☒ A determination of permanent disability is premature at this time.

☒ 10. Due to the injury, the claimant has a serious bodily disfigurement consisting of:
Reserved.

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

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

11. Further grounds or unusual aspects of claim:
Reserved.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Dr. Tompkins, Walterboro Family Practice, 107 Church Street, Walterboro, SC.

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

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

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

14. Estimated time needed for hearing: _____

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

☐ Mediation

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

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

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Palmetto Timber Fund, Walker, Hunter & Associates, Inc.
P.O. Box 212848, Columbia, SC 29221-2848 on the 28th day of May 2014, by ☐ first class postage ☒ certified mail ☐ personal service.

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

John R. Hetrick
Preparer's Signature

Atty for clmt.
Title

bh@pricker@yahoo.com
Email

06/19/14
Date

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

WCC Form # 50
Revised 7/13

50

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

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



WCC File #: 1406130
Carrier File #: ~~1406130~~
Carrier Code #:
Employer FEIN #:

Claimant's Name: Billy Wayne Herndon SSN ~~647-892-7247~~ Employer's Name: G & G Logging, Inc.
~~Walterboro, South Carolina 29488~~ Address: 269 Rigby Road
Walterboro, South Carolina 29488 Address: Bowman, South Carolina 29018
Home Phone: (843) 599-9931 Work Phone #
Date of Injury: 5/12/14 Insurance Carrier: Palmetto Timber S.I. Fund c/o Walker,
Hunter & Associates, Inc.
Preparer's Name: Benjamin T. Cruse Law Firm: McAngus Goudelock & Courie Preparer's Phone #: (843) 576-2937

Date of Injury or Illness: 5/12/14 Estimated time for hearing: 45 minutes

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

- It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Defendants admit the Claimant was involved in a work related accident on or about May 12, 2014, but deny and dispute the nature and extent of Claimant's injury as alleged and resulting disability, if any.
- It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
- It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
- It is ☒ Admitted ☐ Denied at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are:
- It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
- It is ☐ Admitted ☒ Denied the employee ☒ needs ☒ is entitled to additional medical care as a result of injury or illness. The reasons for denial are: Claimant has failed to present any evidence which would entitle him to additional causally related medical benefits under the Act, pending further investigation.
- It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: Claimant has failed to present evidence which would entitle him to temporary disability benefits under the Act, pending further investigation.
- It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
- It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
- It is contended that an average weekly wage of \$ Form 20 to be submitted applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are: Pre-existing condition; natural progression of a pre-existing condition; lack of causation; failure to carry burden of proof; S.C. Code Ann. §42-1-160; §42-9-35; Defendants reserve the right to raise additional defenses as this investigation continues, or in response to any evidence presented by Claimant.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67.1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

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

Preparer's Signature

Attorney for Employer/Carrier
Title ben.cruse@mgclaw.com
Email

August 7, 2014
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

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



WCC File #: **1406130**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Billy W. Herndon Sr. SSN: 21-0927477 Employer's Name: G&G Logging
Address: 269 Rigby Road Address: 269 Rigby Road
City: Walterboro State: SC Zip: 29488 City: Bowman State: SC Zip: _____
Home Phone: () - Work Phone: () - Insurance Carrier: Palmetto Timber Fund
Preparer's Name: John R. Hetrick Law Firm: Hetrick, Harvin & Bonds Preparer's Phone #: (843) 549 - 6432

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 5/12/14

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

1. The claimant sustained an injury to both shoulders, neck, back, chest, left upper extremity, left hand (Part(s) of Body Injured) on 5/12/14 (Month/Day/Year) in Colleton county, state of SC.
2. Body part(s) affected are: same as above.
Briefly describe how the accident occurred. Clmt. Involved in motor vehicle accident while driving work truck and hit by another driver.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 5/12/14 (Month/Day/Year) in the following manner:
Orally advised immediately.

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: Needs continuing treatment in future based on 14B, Dodge medicals and 42.15.60.

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TTD arbitrarily terminated without justification or excuse. Need to have TTD reinstated until Order of Commission and sanctions for unlawful termination.

☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☒ (3) Wage Loss

9a. ☐ A determination of permanent disability is premature at this time. 42.9.10

☒ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
Reserved.

10a. At the time of the injury, the Claimant was paid weekly wages of \$695.00, and demands accounting of days worked and wages earned as provided by law. Clmt. needs accounting of all ttd paid and of any currently due and payable.

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

11. Further grounds or unusual aspects of claim: Clmt. initially treated at ER and seen by Dr. Bryan Tompkins at Walterboro Family Practice in Walterboro. He believes that this medical treatment, although not previously authorized, is compensable and seeks payment of same.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Tompkins, Walterboro Family Practice, 107 Church Street, Walterboro, SC; Dr. Donald Johnson II, S.E. Spine, Mt Pleasant, SC; Dr. Artur Pacut, Charleston, SC

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

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

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

14. Estimated time needed for hearing: 45 minutes

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

☐ Mediation

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

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

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin T. Cruse, Esquire, McAngus Goudelock and Courie, LLC
735 Johnnie Dodds Blvd, Ste. 200, Mt. Pleasant, SC 29465 on the 14th day of August 2014, by ☒ first class postage ☐ certified mail ☐ personal service.

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

John R. Hetrick
Preparer's Signature

Atty for Clmt.
Title

bohetrick@yahoo.com
Email

9/30/2015
Date

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

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



WCC File #: 1406130
Carrier File #: 24-92-247
Carrier Code #:
Employer FEIN #:

Claimant's Name: Billy Wayne Herndon SSN: 097-92-7402 Employer's Name: G & G Logging, Inc.
Address: 10801 Highway 101, Walterboro, South Carolina 29488 Address: 269 Rigby Road, Bowman, South Carolina 29018
Home Phone: (843) 599-9931 Work Phone #:
Date of Injury: 5/12/14 Insurance Carrier: Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc.
Preparer's Name: Benjamin T. Cruse Law Firm: McAngus Goudelock & Courie Preparer's Phone #: (843) 576-2937

Date of Injury or Illness: 5/12/14 Estimated time for hearing: 45 minutes

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

1. It is ☒ **Admitted** ☐ **Denied** the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Inasmuch as Claimant was involved in a work related motor vehicle accident on May 12, 2015; however, the nature and extent of injuries and body parts involved are in dispute pending further investigation.
2. It is ☒ **Admitted** ☐ **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Nos. 1 and 11.
3. It is ☒ **Admitted** ☐ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: See Nos. 1 and 11.
4. It is ☒ **Admitted** ☐ **Denied** at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: See Nos. 1 and 11.
5. It is ☒ **Admitted** ☐ **Denied** notice of injury was given the employer. The reasons for denial are: See Nos. 1 and 11.
6. It is ☐ **Admitted** ☒ **Denied** the employee ☒ **needs** ☒ **is entitled to additional** medical care as a result of injury or illness. The reasons for denial are: Claimant is receiving all appropriate and causally related medical treatment pursuant to S.C. Code Ann. §42-15-60.
7. It is ☐ **Admitted** ☒ **Denied** the employee is entitled to temporary total disability for the period(s) of: Claimant reached MMI.
8. It is ☐ **Admitted** ☒ **Denied** the employee is permanently disabled. The reasons for denial are: See Nos. 1 and 11; no evidence of permanent disability.
9. It is ☐ **Admitted** ☒ **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 695.00 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Pre-existing condition; natural progression of a pre-existing condition; lack of causation; failure to carry burden of proof; S.C. Code Ann. §42-1-160; §42-9-35; §42-9-30; Defendants reserve the right to raise additional defenses as investigation continues or in response to any evidence presented by Claimant.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67.1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

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

Preparer's Signature

Attorney for Employer/Carrier ben.cruse@mcclaw.com
Title Email

October 9, 2015
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

South Carolina Workers' Compensation
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1406130
Carrier File #: 17-92-747A
Carrier Code #:
Employer FEIN #:

Claimant's Name: Billy Wayne Herndon SSN: 247-92-747A Employer's Name: G & G Logging, Inc.
Address: Walterboro, South Carolina 29488 Address: 269 Rigby Road
Bowman, South Carolina 29018
Home Phone: (843) 599-9931 Work Phone: Insurance Carrier: Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc.
Preparer's Name: Benjamin T. Cruse Law Firm: McAngus Goudelock & Courie Preparer's Phone Number: (843) 576-2937

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: May 12, 2014 (m/d/yyyy)

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

SEE ATTACHED

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John R. Hetrick, Esquire, Hetrick, Harvin & Bonds
Post Office Box 139 on
address Walterboro, South Carolina 29488 the 2nd day of August 20 16.
by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature: [Signature] Attorney for Employer/Carrier ben.cruse@mgclaw.com August 2, 2016
Title Email Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC FORM #30
Revised 7/13

30

REQUEST FOR COMMISSION REVIEW

GROUNDS FOR REVIEW

Billy Wayne Herndon v. G & G Logging, Inc. and Palmetto Timber S.I.
Fund c/o Walker, Hunter & Associates, Inc.
Date of Accident: May 12, 2014
WCC File No.: 1406130
Our File No.: 2069.14023
Claim No.: ~~2069.14023~~ 2069.14023

1. Did the Hearing Commissioner err in finding as fact that the average weekly wage and compensation rate as reflected on the Form 20 are correct when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
2. Did the Hearing Commissioner err in finding as fact that Claimant's alleged additional body parts including the left shoulder, left arm, left hand and fingers are causally related to his admitted work injury when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
3. Did the Hearing Commissioner err in finding as fact that greater weight was to be afforded to Dr. Johnson's report and little weight was afforded to Dr. Gee when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
4. Did the Hearing Commissioner err in finding as fact that there was no reason for Claimant to be rated by Dr. Gee in Sumter, South Carolina when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
5. Did the Hearing Commissioner err in finding as fact that greater weight was to be afforded to the vocational assessment of Dixon Pearsall, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
6. Did the Hearing Commissioner err in finding as fact that Claimant is totally and permanently disabled pursuant to §42-9-10(B) when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
7. Did the Hearing Commissioner err in finding as fact that Claimant is entitled to a lump sum award of 500 weeks less previous payments by the Defendants when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
8. Did the Hearing Commissioner err in finding as fact that the indemnity proceeds to August 1, 2016 of \$165,374.25 shall be allocated as follows: \$55,124.75 as attorney's fees of .(33-1/3%) of the permanent and total disability award pursuant to written contract between the Claimant/employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in

compromised settlement of disputed future loss earnings at the rate of \$152.66 per week, commencing on August 1, 2016, and continuing thereafter for a period of 696 weeks, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

9. Did the Hearing Commissioner err in finding as fact that the average weekly wage of \$695.00 and a corresponding compensation rate of \$463.33 are correct when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
10. Did the Hearing Commissioner err in Conclusion of Law No. 1 that pursuant to §42-1-160, Claimant sustained compensable injuries to his left shoulder, left arm, left hand and fingers when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
11. Did the Hearing Commissioner err in Conclusion of Law No. 4 that pursuant to §42-1-40, Claimant's compensation rate as determined in this Decision and Order is \$463.33, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
12. Did the Hearing Commissioner err in Conclusion of Law No. 5 that pursuant to §42-9-10(B), Claimant is totally and permanently disabled, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
13. Did the Hearing Commissioner err in Conclusion of Law No. 6 that pursuant to §42-9-301, Claimant is entitled to a lump sum award of 500 weeks less previous payments by the Defendants, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
14. Did the Hearing Commissioner err in Conclusion of Law No. 7 that pursuant to §42-15-60, Claimant is entitled to causally related medical treatment and as a result of being permanently and totally disabled, to causally related lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
15. Did the Hearing Commissioner err in Conclusion of Law No. 8 that pursuant to Reg. 67-1205, Claimant's attorney is entitled to an attorney fee of 33-1/3% of Claimant's award for permanent and total disability from the date of this Decision and Order, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

16. Did the Hearing Commissioner err in ordering that Claimant is entitled to a lump sum award of 500 weeks less previous payments by the Defendants, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
17. Did the Hearing Commissioner err in ordering that pursuant to §42-15-60 Claimant is entitled to causally related medical treatment and lifetime medical care and treatment for his neck, left shoulder, left arm, left hand and fingers, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?
18. Did the Hearing Commissioner err in ordering that the indemnity award to August 1, 2016 of \$165,374.25 shall be allocated as follows: \$55,124.75 as attorney's fees of (33-1/3%) of the gross settlement amount pursuant to written contract between Claimant/employee and his attorney; \$3,995.49 for costs pursuant to the same written contract; \$106,254.01 in compromised settlement of disputed future loss earnings at the rate of \$152.66 per week, commencing on the date of this award and continuing thereafter for a period of 696 weeks, when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1406130

BILLY W. HERNDON,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT</u>
G&G LOGGING,	)	
INCORPORATED,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
PALMETTO TIMBER FUND,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
10:35 A.M., TUESDAY, MAY 3, 2016, COUNTY COURTHOUSE
ANNEX, 102 COURTHOUSE DRIVE, SAINT MATTHEWS, SOUTH
CAROLINA 29135.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

JOHN R. HETRICK, ESQUIRE
 HETRICK, HARVIN & BONDS, LLC
 POST OFFICE BOX 139
 WALTERBORO, SOUTH CAROLINA 29488-0139
 843-549-6432

FOR THE DEFENDANT

BENJAMIN T. CRUSE, ESQUIRE
 McANGUS, GOUDELOCK & COURIE, LLC
 POST OFFICE BOX 650007
 MOUNT PLEASANT, SOUTH CAROLINA 29465
 843-576-2937

REPORTED BY

CORA ELLIS BRUTON
 COURT REPORTER
 131 BROWNING COURT
 LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

INDEX

WITNESS - DEBORAH HERNDON	
DIRECT EXAMINATION BY MR. HETRICK	.12
CROSS EXAMINATION BY MR. CRUSE.	.22
REDIRECT EXAMINATION BY MR. HETRICK	.24
WITNESS - BILLY W. HERNDON	
DIRECT EXAMINATION BY MR. HETRICK	.27
CROSS EXAMINATION BY MR. CRUSE.	.55
WITNESS - GEORGE PAGE	
DIRECT EXAMINATION BY MR. CRUSE	.69
CROSS EXAMINATION BY MR. HETRICK.	.86
REDIRECT EXAMINATION BY MR. CRUSE	.95
CERTIFICATE	.99

EXHIBITS

(No Exhibits Proffered)

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
 803-397-0189

1 THE COURT: Today's date is May 3rd, 2016. This
2 is South Carolina Workers' Compensation Case File
3 Number 1406130. This is the case of the Claimant
4 Billy W. Herndon represented by Attorney John R.
5 Hetrick. The Employer is G&G Logging, Incorporated.
6 The Carrier is Palmetto Timber Fund; both represented
7 by Attorney Benjamin Cruse.

8 The date of accident is May 12th, 2014. The
9 average weekly wage and corresponding compensation
10 rate are to be determined.

11 APAs have been submitted. Are there any
12 objections to APAs, Jurisdiction, venue or any other
13 items?

14 MR. HETRICK: None from the Claimant, Your Honor.

15 MR. CRUSE: None from the Defendants.

16 THE COURT: Without objection the Commission's
17 file becomes a part of the record with the exception
18 of self-serving declarations and unstipulated medical
19 reports.

20 Mr. Hetrick, we're here today on your Form 50, so
21 if you would please put your position on the record
22 for us and let us know exactly what you're seeking
23 here today, sir.

24 MR. HETRICK: Thank you Commissioner. The
25 Claimant in this case are seeking permanent and total

1 disability based on an admitted motor vehicle accident
2 and work-related accident on May 12 of 2014. At that
3 time the Claimant was driving the log truck of his
4 Employer. He was working within the course and scope
5 of his employment and the accident arose out of --
6 accident and injuries arose out of his employment. We
7 rely Commissioner, on Singleton v. Young Lumber
8 Company. And in the Singleton case it allows a
9 Claimant to bring a wage loss claim for general
10 disability based on an injury to one body part; in
11 this case the cervical spine or neck and if that body
12 part affects another body part. And in this case we
13 allege it affects his upper extremity -- his left
14 upper extremity with numbness into the left hand and
15 fingers, radiculopathy based upon the report of Dr.
16 Johnson. We would note Don Johnson -- we would note
17 87 through 89 of the APAs. Based on the wage loss
18 claim we have retained the services of Dr. Dixon
19 Pearsall who has provided both a vocational report and
20 a supplemental vocational report. We feel that the
21 factors which he considers are very significant in
22 this case, age, education and I won't go into that;
23 that's all in the record, but based upon the report of
24 Dr. Pearsall we feel that it sustains a basis for an
25 award of permanent -- total disability under Section

1 42-9-10 and as permitted by Singleton. Also we rely
2 on the case of McCollum v. Singer Company. That is
3 300 S.C. 103, 386 S.E.2d 471. It's a Court of
4 Appeals' decision in 1989 and we believe that the
5 standard is not permanent and total -- or abject
6 helplessness, but a limited services which are so
7 limiting in quality, dependability and quantity that
8 no reasonable market exists. We believe that in the
9 event that Claimant is entitled to permanent and total
10 disability then under Dodge and under 42-15-60 he
11 would likewise be entitled to future medical care and
12 Dr. Johnson documents future medical care in his
13 report. We also submit that the fact that an
14 individual draws social security retirement has no
15 bearing on a workers' compensation case and should not
16 be considered. Now, I will address briefly the -- the
17 issue of the average weekly wage and compensation
18 rate. Our position is that the average weekly wage is
19 \$695.00. The compensation rate is \$463.36. This was
20 never disputed by the Defendants and was only raised
21 as an issue when they filed their Prehearing Brief, I
22 think some month and ten days ago. We -- they
23 computed the Form 20 so certainly it is our position
24 that they're bound by the document that they
25 determined. Also there was an Order before

1 Commissioner Wilkerson that was consented to by both
2 the Claimant's counsel, myself, and Mr. Cruse,
3 Defendants' counsel. And there's a memo in the file
4 from Mr. Cruse to me, or an email as to -- to have the
5 wages calculated. And I understand the Court will
6 determine that at a future time, but I simply wanted
7 to put all this on the record.

8 THE COURT: All right.

9 MR. HETRICK: We have determined based upon all
10 this, Your Honor that the present value of the
11 permanent and total disability through the date of the
12 hearing, May 3, 2016. The accident occurred on May
13 12, 2014 through May 3rd, 2016, that would be today,
14 would be roughly 102 weeks. And subtract that from
15 500 you get 390 weeks -- 398 weeks, excuse me. The -
16 reducing that to net present value from the two
17 percent table comes out to 368.9687 weeks and if you
18 multiply 368.9687 weeks by a compensation rate of
19 \$463.33 you end up with or a resulting value of the
20 indemnity through today of \$170,954.26. That's all we
21 have, Your Honor.

22 THE COURT: All right. Thank you, Mr. Hetrick.
23 Mr. Cruse?

24 MR. CRUSE: Thank you, Commissioner. This claim
25 arises out of an admitted accident and it is the

1 Defendants' position that the claim is limited to the
2 neck or spine only. Claimant has failed to meet his
3 burden of proof to establish any other injuries
4 pursuant to the Colona Decision and there is
5 specifically no opinion from any physician, including
6 the IME physician that Claimant sustained an injury or
7 impairment to any other the body parts aside from the
8 neck. Claimant received appropriate causally related
9 medical treatment with Dr. Pacult who released the
10 Claimant at maximum medical improvement on April 27th,
11 2015 and a nine percent whole person impairment rating
12 was obtained by Dr. Gee as Dr. Pacult does not, in his
13 practice, provide medical impairment ratings of
14 workers' compensation claims. The Defendants'
15 position with regard to permanent disability is that
16 this is a neck injury only with a nine percent rating
17 from Dr. Gee which has been confirmed by Dr. Pacult in
18 his deposition. We have light duty restrictions and
19 pursuant to our vocational evaluation by George Page
20 Claimant is certainly capable of returning to gainful
21 employment, and the type and quality and quantity of
22 jobs which the Claimant is able to perform are not so
23 limited but to render him permanently and totally
24 disabled. With regards to the average weekly wage and
25 compensation rate issue Defendants submitted a

1 Memorandum of Law attached to the Amended Prehearing
2 Brief with case law cited which has been the decision
3 in the Curiel Decision. The original weekly wage in
4 this claim was calculated in December of 2014,
5 approximately three months or so after the date of
6 accident based upon actual earnings from the
7 Claimant's actual weeks worked. This equated to an
8 average weekly wage for a worker who has earned over a
9 \$36,000 salary in a given year. In February of 2016
10 during the vocational evaluation Defendants learned
11 that Claimant was receiving Social Security Retirement
12 and was never planning to work or earn wages in excess
13 of the Social Security Retirement cap which he
14 indicated was \$15,000. Pursuant to my own
15 investigation it's \$15,480 capped at 2014. Based upon
16 the two years after Claimant retired in January of
17 2012 and in 2013 Claimant earned \$7,000 roughly and
18 \$8,000 respectively while doing logging work in the
19 same exact industry he was working at the time of his
20 accident. During the 13 weeks he worked for us he
21 earned about \$9,000, so in the three weeks after his
22 retirement -- three years after his retirement while
23 drawing full Social Security Retirement benefits he
24 never earned greater than the cap of \$15,480 and
25 Defendants assert that establishes a pattern. He

1 continued to work and continued to earn wages and
2 there -- therefore should be -- limit his average
3 weekly wage to an average weekly wage based on \$15,480
4 which equates to \$297.69 for an average weekly wage
5 and compensation rate of \$198.47. Claimant's
6 position, and I've concluded from asserting this at
7 this late stage based upon information we learned
8 through the investigation process and that the
9 information was withheld or misrepresented by the
10 Claimant at the time of calculation of his average
11 weekly wage. Using these figures it is Defendants'
12 position there was a gross overpayment of benefits
13 from the date of the accident to the date of maximum
14 medical improvement and then certainly we would
15 request a credit from the date of maximum medical
16 improvement to the ultimate determination of
17 permanency based upon the Curiel Decision which the
18 Supreme Court has said -- indicates maximum medical
19 improvement indicates and temporary disability and
20 permanency is proper at that time. In short, after
21 the date of the hearing the credit Defendants are
22 seeking is \$37,802.58 in overpayments and would
23 request this Court agree and find Claimant's average
24 weekly wage to be \$297.69 with a compensation rate of
25 \$197.47 and calculate any permanent -- permanency

1 award on that -- on that average weekly wage and
2 compensation rate. Again, the -- the -- there's
3 extraordinary circumstances under the Act which allow
4 for alternative methods to be used in calculating the
5 average weekly wage and compensation rate and
6 certainly in this case Defendants submit those
7 circumstances are extraordinary to warrant deviation
8 from the standard method of calculations. And that
9 would be the Defendants' position in this matter.

10 THE COURT: Okay. Thank you Mr. Cruse. Mr.
11 Hetrick, anymore?

12 MR. HETRICK: Just briefly in rebuttal,
13 Commissioner. There is nothing in the record that
14 would indicate any kind of misrepresentation or
15 untruthfulness on the part of the Defendant -- or on
16 the part of the Claimant, I'm sorry. Defendants have
17 had ample opportunity throughout the course of this
18 proceeding to depose and they have deposed him on
19 several occasions. He's always been truthful as far
20 as any questions asked. So to come in at this late
21 date and -- and -- allege basically to have been
22 misrepresentations on his part we feel is unjustified.

23 THE COURT: Okay. All right sir. Mr. Cruse,
24 anything more?

25 MR. CRUSE: No, Commissioner. Thank you.

1 THE COURT: Okay. All right. Ms. Herndon, I
2 have a couple of quick things to run through with you.
3 If you would please speak up and speak clearly for us.
4 It's important that we all hear your responses to the
5 questions but most important that the court reporter
6 get them for the record. If you're asked a yes or no
7 question could you please give us a yes or no answer?
8 Try and stay away from things like uh-huh and huh-uh.
9 That's just too easily misunderstood for the record.
10 So if you could help us out with that we'd appreciate
11 it. Okay, please raise your right hand. Do you swear
12 or affirm that the testimony you are about to give is
13 the truth, the whole truth and nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: Okay. Please state and spell your
16 name for the record, ma'am.

17 THE WITNESS: Deborah Herndon, D-E-B-O-R-A-H and
18 H-E-R-N-D-O-N.

19 THE COURT: Thank you Ms. Herndon. Mr. Hetrick,
20 your witness.

21 MR. HETRICK: Thank you Commissioner.

22 Deborah Herndon,

23 Having first been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HETRICK:

1 Q Deborah, I'm going to stand over here
2 because I want you to address the answers to the
3 Commissioner here.

4 A Okay.

5 Q So he's the -- he's the one that makes the
6 decisions in these cases, not me. Again, your name is
7 Deborah Herndon. Do you go by Debbie?

8 A Yes, sir.

9 Q Okay. Well I'll call you Debbie if that's
10 all right. Where do you live, Debbie?

11 A I live in Walterboro, South Carolina. 783
12 Lemon Road.

13 Q And you're married to the Claimant in this
14 case, Wayne Herndon?

15 A Yes, sir.

16 Q How long have you and Wayne been married?

17 A Going on 46 years.

18 Q I guess in 46 years you've gotten to know
19 him pretty well?

20 A Yes, sir.

21 Q For better or for worse?

22 A Yes, sir.

23 Q Okay. Debbie, you're familiar, of course,
24 with the accident that he had in May of 2014 -- May
25 12th of 2014; is that correct?

1 A Yes, sir.

2 Q And I want you to tell the Commissioner a
3 little bit about your husband, the way he was, the
4 medical problems he had, his physical condition, his
5 mental condition prior to the date of accident and
6 then tell the Commissioner some of the problems that
7 he's having now.

8 A Okay. Up until he had the accident he
9 worked 12 to 15 hours a day. He'd come home, he'd do
10 things around the farm, because we live on a farm.
11 And he -- the only problem he had was he had his
12 diabetes which didn't really give him any problems
13 because he took a pill for it once a day and he was
14 good. He loves -- or he loved to deer hunt and fish
15 and we did quite a lot of that together, most -- in
16 February we would start fishing for bass and stuff,
17 but he hasn't done much of that now. The deer hunting
18 I guess, I'm the odd person out of the box, because I
19 always loved to see August come and hated to see
20 January because I knew at least on the weekends that
21 was my free time and I always enjoyed it. He always
22 helped with the plowing and planting every year up
23 until he had his accident and since he's had his
24 accident I've seen a totally different man.

25 Q Let me ask you one or two questions. With

1 respect to the time before he had the accident was he
2 in relatively good health?

3 A Yes, sir.

4 Q He had to get a CDL license I believe to
5 drive a truck; is that correct?

6 A Yes, sir. He had to have a CDL license. He
7 had to have a physical every year.

8 Q Okay. Did he get those physicals every
9 year?

10 A Yes, sir, he did.

11 Q And until the time of his accident did he --
12 did he qualify for the CDL?

13 A Yes, sir, he did.

14 Q Okay. He had diabetes, I think you said,
15 and I believe he had a heart attack at an earlier time
16 also; is that correct?

17 A He had a heart attack -- it's been -- I
18 don't remember the exact number of years, but it's
19 been quite a while, and we rushed him to the hospital,
20 they took care of him and he's never had another
21 problem with it.

22 Q He's driven trucks pretty much all his life?

23 A Yes, sir.

24 Q How much of that truck driving experience
25 has been in logging truck?

1 A The biggest majority of it. He only drove
2 commercial hauling produce and stuff for maybe a year
3 or two and then he moved containers for about maybe a
4 year, but the rest of it's been mostly logging truck.

5 Q Are you familiar with whether or not he's
6 ever done any what I'll call clerical work, cashier
7 work or --

8 A No, sir. He's never done anything like
9 that.

10 Q Has he ever done any work where he'd deal
11 with the public?

12 A No, sir and you wouldn't -- I don't know how
13 well he would deal with the public, honestly.

14 Q Well, I want to get into that. Have you
15 noticed a change in Wayne since this accident?

16 A There's been a big change in him since this
17 accident unfortunately; he's not the same person he
18 was.

19 Q I know this is hard on you too. I think
20 you've recently had some surgery; is that correct?

21 A I had back surgery two months ago.

22 Q Okay. Tell the Court, if you will, some of
23 the problems that you've observed with Wayne since
24 this accident has occurred.

25 A Since the accident he had a hard time

1 dealing with it. He --

2 Q Well let me digress a moment. Was it his
3 fault?

4 A No, sir. No, sir.

5 Q But it was a serious accident?

6 A Yes, a very serious accident. To me he's
7 lucky that he was able to walk away from the accident
8 at all.

9 Q Tell the Commission then about the problems
10 he's had.

11 A I was at work one day not long after the
12 accident and he called and I could tell there was
13 something wrong in his voice. And then he started to
14 almost cry. And I told him to come to work because I
15 couldn't leave right then. And I talked to him. I
16 worked at the high school which was about five minutes
17 from the house. He came in and I looked at him and I
18 knew something was very wrong, because this is a man
19 that does not cry. This has always been a hardnose,
20 you do this way, you do this, you do that. But as far
21 as tears I think in all the years we've been married
22 I've only seen him cry maybe three or four times and
23 it was due to a death then. He just said he didn't --
24 he didn't know what was wrong. He just felt
25 worthless. He couldn't do anything. He wasn't able

1 to do anything. He couldn't go back to work. He hurt
2 and he didn't know what he was going to do. And I
3 mean he broke down and cried. And I called his doctor
4 and I told her I thought she needed to see him, that
5 he was very depressed and that all he wants to do is
6 sleep.

7 Q Has that crying continued since that time?
8 This was right after the accident.

9 A It comes and goes. He'll have days that
10 he's like, you know, what good am I to you anymore? I
11 can't do anything. He loves to hunt and fish, like I
12 told you. The last two years he has not hunted very
13 much at all. I think we went fishing maybe four times
14 last year. And we have not been at all this year.

15 Q And he takes medication, some as a result of
16 the problems he's had in the accident and I guess some
17 because of diabetes --

18 A Yes, sir.

19 Q -- and as you said before. With respect to
20 the medications that he takes as a result of the
21 accident, let me just name a couple of them.
22 Gabapentin, did he ever take that before this
23 accident?

24 A He never took it before the accident. He
25 doesn't like to take it now, but he has to, but --

1 Q How about Metaxalone

2 A He takes that since the accident to help
3 with nerve -- the muscles and stuff.

4 Q How about Zoloft?

5 A That is the depression medicine that the
6 doctor has him on and he goes back to her and I think
7 she's going to have to increase it.

8 Q Did -- did he ever take any of those
9 medications before the accident?

10 A No, sir. The only thing he took was his
11 diabetic -- his Metformin and an aspirin, because he
12 doesn't care for those, and he doesn't like the
13 medicine that he's on now because it makes him sleepy
14 and he doesn't want to do anything. I mean he can get
15 up out of the bed and he comes in the chair and he
16 sits down and he goes to sleep.

17 Q Debbie, do you help him take his medicines?
18 I mean do you kind of keep a schedule or does he do
19 that himself?

20 A I keep all his medication in one spot so
21 that he knows when to take it and I usually watch to
22 make sure what he's taking.

23 Q Does he take medications throughout the day
24 or does he just take it one time?

25 A He takes it in the morning and then he takes

1 it at night and if he has pain during the day he has
2 to take an extra pain medication.

3 Q Okay. Now, when he takes his medications
4 what is the immediate effect on him? Let's say he
5 takes it at 8:00 in the morning or whenever he takes
6 it, what's the immediate effect on him?

7 A Drowsiness.

8 Q How long does the drowsiness last?

9 A Pretty much most of the day.

10 Q Out of a typical eight hour day if he went
11 from 8:00 in the morning until say 4:00 or 5:00 in the
12 afternoon how many hours do you think he'd relax or
13 what -- what does he do when he relaxes? Does he lie
14 down or sit in the recliner or what's he do?

15 A He sits in his recliner all day.

16 Q How many hours in a typical day do you think
17 he sits in the recliner?

18 A Well, let's see, he gets out of bed I can't
19 get him out of the bed before 11:00. When he gets up
20 I fix him something to eat, he sits in the recliner
21 and that's it. He doesn't want -- and he'll go back
22 to sleep.

23 Q How about aspects such as patience and
24 irritability. Can you address any of those issues?

25 A He has no patience. He doesn't like to be

1 around a lot of people. It gets on his nerves, even
2 the grandkids. They get to running and playing and
3 sometimes he just can't handle it and grouchiness,
4 he's -- I call him my grizzly bear.

5 Q Was he always like that or is it -- has it
6 been any changes that you've noticed?

7 A He wasn't always that way. He used to have
8 some patience. But now he doesn't have a lot of
9 patience. Sometimes now he loses patience with me but
10 I try to ignore him because I know he doesn't really
11 mean it, but it makes it hard.

12 Q Remembering things. Does he have any
13 problems with memory?

14 A Yes, sir. He doesn't remember as well as he
15 used to.

16 Q How about his ability to focus and
17 concentrate once he's taken his medication?

18 A If we're going somewhere and he's got to
19 drive, even if it's just like to Charleston and back,
20 he won't take some of it because it makes him sleepy.
21 He'll get to hurting but when he comes back home he'll
22 take it and it's not long he's back asleep. It's just
23 --

24 Q Have you noticed any change -- changes in
25 his driving habits?

1 A He drives a lot slower. He -- at times, if
2 a car is coming towards him he feels like it's not
3 going to stop. It -- I guess it's just from where he
4 had the accident because I've never seen him drive the
5 way he drives now, but he's just not the same person.
6 I don't know -- he's lost interest in life. That's
7 the best I can tell you.

8 Q I had one other -- he takes diabetic
9 medications. Do you know as far as going to the
10 bathroom does he have any difficulty or problems going
11 to the bathroom or any -- any frequency going to the
12 bathroom?

13 A He goes often.

14 Q How often do you anticipate he goes? This
15 is with urination.

16 A If we're going somewhere he always goes
17 before we leave and when we get where we're going he
18 has to go again and sometimes he'll have to make a
19 stop along the way. We haven't even been to see our
20 -- our son since he's moved to Oak Ridge, North
21 Carolina because he can't make the ride; he hurts.

22 Q Okay. Do you and Wayne do things together
23 such as go to church?

24 A Yes, sir.

25 Q How about visiting people? Does he have any

1 problem -- you said he doesn't like to --

2 A He doesn't go visit anyone, not even the
3 children.

4 Q I don't think I have any further questions.
5 Thank you.

6 THE COURT: Okay. Thank you.

7 MR. HETRICK: Opposing counsel probably has
8 questions.

9 THE COURT: Okay. Thank you, Mr. Hetrick. Mr.
10 Cruse?

11 MR. CRUSE: Thank you.

12 CROSS EXAMINATION

13 BY MR. CRUSE:

14 Q Ms. Herndon, I just have a couple in
15 follow-up. You mentioned Mr. Herndon, your husband,
16 was a -- a deer hunter and --

17 A Yes, sir.

18 Q Has he been deer hunting since his work
19 accident?

20 A I think he's been four or five times this
21 year.

22 Q Okay. You also mentioned that it doesn't
23 have his CDL anymore; is that correct?

24 A No, sir.

25 Q Do you know whether Mr. Herndon's taken the

1 test -- taken the test for the CDL?

2 A He took it when he first got his license.

3 Q Has he made any attempt since his work
4 accident to get his CDL recertified or up to date?

5 A He dropped his CDL when he renewed his
6 license because he said he couldn't take that bouncing
7 and jarring because he tried to do some work at the
8 farm on the tractor and he didn't last but a few
9 minutes because of the jarring on it.

10 Q Did -- so -- so that -- so my question was
11 did he make any attempt to recertify since his
12 accident? Is that a no?

13 A No, he did not.

14 Q Okay. And you mentioned his driving habits,
15 that he drives a little bit slower now than he did in
16 the past; is that correct?

17 A Yes, sir.

18 Q But he's still able to drive; is that
19 correct?

20 A Yes, sir, he drives. He just can't drive
21 any distance because. He does good to make it from
22 here to Charleston and back.

23 Q Okay. And here to Charleston and back is
24 about a two hour round trip?

25 A Depending on traffic it's about a two hour

1 trip.

2 MR. CRUSE: Nothing further.

3 THE COURT: Okay. Mr. Hetrick?

4 MR. HETRICK: Yeah, one or two quick questions.

5 REDIRECT EXAMINATION

6 BY MR. HETRICK:

7 Q Computer skills, do you have a computer in
8 the house?

9 A Yes, sir.

10 Q Do you use the computer?

11 A Yes, sir.

12 Q Does Wayne use the computer?

13 A He doesn't know how to turn it on.

14 Q Has he ever -- has he ever had any computer
15 training?

16 A No, sir.

17 Q Any courses in the computer?

18 A No, sir.

19 Q And I believe that -- do you know how far he
20 went in school?

21 A Eleventh grade I believe.

22 Q Okay. Have you ever noticed when he's
23 driving a car if it's difficult for him to turn and
24 look around?

25 A To turn his head and look?

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131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
803-397-0189

1 Q To turn his head?

2 A He has to more or less turn part of his body
3 with him, and he doesn't really get as clear a vision
4 as what he did when he wants to just turn his head and
5 look behind him or whatever. It's a little awkward
6 for him.

7 Q Since the accident do you feel as
8 comfortable riding with him as you did before? Is he
9 as good a driver in your opinion?

10 A No.

11 Q Thank you ma'am.

12 THE COURT: Mr. Cruse?

13 MR. CRUSE: Nothing, Your Honor.

14 THE COURT: Okay. Ma'am you can step down and
15 thank you very much for your testimony. If you will
16 have a seat next to your daughter.

17 MR. HETRICK: Call the next witness?

18 THE COURT: Yeah.

19 MR. HETRICK: Mr. Herndon.

20 THE COURT: Okay. If you can make yourself
21 comfortable right there.

22 THE WITNESS: All right, sir.

23 THE COURT: And I have a couple of quick
24 instructions for you.

25 THE WITNESS: All right, sir.

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131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
803-397-0189

1 THE COURT: If you would speak up and speak
2 clearly for us so we can all hear your responses to
3 the question.

4 THE WITNESS: I'll try to.

5 THE COURT: All right. If you're asked a yes or
6 no question please give us a verbal yes or no answer.
7 Try and stay away from things like uh-huh and huh-uh,
8 that's too easily misunderstood for the record.

9 THE WITNESS: Okay.

10 THE COURT: All right. Thank you sir. If you
11 could please raise your right hand. Do you swear or
12 affirm that the testimony you are about to give is the
13 truth, the whole truth and nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: Okay. Please state and spell your
16 name for the record sir.

17 THE WITNESS: Billy W. Herndon. B-I-L-L-Y,
18 H-E-R-N-D-O-N.

19 THE COURT: Thank you, Mr. Herndon. Mr. Hetrick,
20 your witness.

21 MR. HETRICK: Thank you, Commissioner.

22 Billy W. Herndon,
23 Having first been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HETRICK:

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131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
803-397-0189

1 Q Billy, you go by Wayne; is that correct?

2 A That's right. I go by Wayne.

3 Q I'm going to call you Wayne if that's all
4 right.

5 A Yes, sir.

6 Q Tell the Commissioner where you live.

7 A I live in Walterboro, South Carolina.

8 Q And what's your current address?

9 A ~~183 Lorton Road~~

10 Q How long have you lived there?

11 A Probably 30 years.

12 Q What's your date of birth?

13 A 12/11/49.

14 Q And how old are you now?

15 A I'm 66.

16 Q And how old are you -- or how old were you
17 when the wreck happened in this case? That would have
18 been 2014.

19 A 64.

20 Q And where were you born?

21 A Colleton County.

22 Q Are you married?

23 A Yes, sir, I am.

24 Q And who is your wife?

25 A Deborah.

1 Q She's in the courtroom with us here? This
2 lovely lady over here?

3 A Yes, sir. That's her. 46 years' worth.

4 Q Okay. That's correct. And is she working
5 or is she retired?

6 A She just retired in February.

7 Q Okay. You have -- along with Deborah you
8 have some children?

9 A Yes, sir. I have three.

10 Q Okay. And how old are they?

11 A My son is 43, daughter Anna that's in the
12 courtroom is 41 and my youngest daughter is 36.

13 Q And I believe Anna is the only one that
14 lives in Colleton County; is that correct?

15 A She's the only one that lives in the county.

16 Q But she has a separate household?

17 A Yes, sir. She does.

18 Q Does any -- does anybody live with you and
19 Debbie?

20 A No, sir.

21 Q Okay. How tall are you?

22 A 5'10".

23 Q And how much do you weigh, roughly?

24 A 220.

25 Q And are you right or left handed?

1 A Right handed.

2 Q Do you have a valid South Carolina driver's
3 license?

4 A Yes, sir, I do.

5 Q And do you drive or limit your driving.

6 A I limit my driving now.

7 Q Tell the Court if you will -- tell the
8 Commission if you will, why you limit your driving.

9 A The medicine that I'm taking because of the
10 accident that I was in makes me sleepy, groggy. I
11 just don't have the energy and I just don't feel safe
12 driving any long distance.

13 Q Okay. How long can you comfortably drive do
14 you feel like?

15 A I don't know, 30 minutes maybe.

16 Q Okay. After 30 minutes what happens?

17 A I got to get out and move around, do
18 something.

19 Q Okay.

20 A Wake up, revive myself.

21 Q Did you drive here today?

22 A No, sir, I did not.

23 Q How'd you get here?

24 A My daughter drove me.

25 Q That's Anna?

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803-397-0189

1 A Anna.

2 Q Okay. Let's talk a little bit about your
3 health. Prior to this accident -- do you recall when
4 this motor vehicle accident occurred?

5 A Yes, sir. It was May 12th, 2014.

6 Q Before that accident occurred, what kind of
7 health were you in? What kind of health problems did
8 you have?

9 A Well I'd had a heart attack a little over
10 ten years ago. They put a stent in my heart. I
11 haven't had any problems since. I'm doing good with
12 that. And I have diabetes.

13 Q Okay. You take shots for diabetes or
14 medicine?

15 A No, sir. I take medicine.

16 Q Okay. Had you had any prob -- prior
17 problems with your neck prior to this motor vehicle
18 accident?

19 A No, sir.

20 Q Okay. And I believe in the records it shows
21 that you had some problems in 2011 with your shoulder
22 and maybe your arm and -- and your left upper
23 extremity. Do you recall that?

24 A Yes, sir. That was a rotator cuff problem
25 that I had and it cleared up.

1 Q Okay. After the accident did you have
2 problems with your neck?

3 A Yes, sir.

4 Q Did you have problems with your left upper
5 extremity, and when we say upper extremity I'm going
6 to use layman's terms, in your left arm?

7 A Yes, sir.

8 Q Did you have problems in your left arm?

9 A Left arm, tingling in my hand.

10 Q Okay. Now let's talk a little bit about
11 your education and training, Wayne. What was the last
12 grade that you completed?

13 A Tenth grade.

14 Q You finished the tenth grade?

15 A Yes, sir.

16 Q Okay. And why did you leave school at that
17 time?

18 A I was in the eleventh grade and I got
19 married -- quit and got married.

20 Q Okay. Did you ever complete your GED?

21 A No, sir. I did not.

22 Q How about tech school or vocational school,
23 you ever go there?

24 A No, sir.

25 Q Any college?

1 A No, sir.

2 Q Military service; tell the Commission about
3 your military service.

4 A I was in the National Guard for six years
5 from 1969 to 1975.

6 Q And what was the highest rank you achieved?

7 A I got discharged as an E-5.

8 Q Okay.

9 A Which is a sergeant.

10 Q Did you get -- an honorable discharge?

11 A Honorable discharge. Yes, sir.

12 Q How about your ability to read and write?

13 A It's fair.

14 Q How about subtract, multiply, divide, math
15 skills?

16 A Yes, sir, fair.

17 Q And have you ever had any kind of computer
18 training, computer skills, worked on a computer or
19 actually ever used a computer?

20 A No, sir. If I do anything with a computer
21 my wife does it.

22 Q Let's talk then about some of your prior
23 employment. I want to look over your past relevant
24 work history. Tell the Commission if you will what
25 kind of work you've done in say over the past -- well

1 you tell me in your own words. Tell me who did you
2 work for and what are some of the job duties that
3 you've had to do?

4 A For G&G Logging which was the one I was
5 driving for when I got hurt. I worked for Bootle
6 Logging and I worked for them for probably 20 years.

7 Q Roughly from when to when? Do you know?

8 A In the early '90s until 2012 --

9 Q Okay.

10 A -- when I decided to retire.

11 Q What did you do for Bootle Logging Company?

12 A Drove a truck, run the lowboy, moved heavy
13 equipment, worked in the shop as a mechanic helping
14 the mechanic.

15 Q Okay.

16 A Serving truck, different things like that.

17 Q Before that where did you work?

18 A I done construction work, building houses.

19 Q Did you work at a company, Howell Logging
20 Company also?

21 A Yes, sir. I worked at Howell Logging
22 Company --

23 Q And how --

24 A -- for a few years.

25 Q Okay. And then you worked for Quality

1 Builders?

2 A Quality Builders is when I done the
3 construction work.

4 Q And what kind of construction work did you
5 do?

6 A We built houses from the ground up, outside
7 and in.

8 Q All right. Did you do finish work as well
9 as rough carpentry?

10 A Yes, sir. I done finish work inside.

11 Q Okay. And how about Kinard Logging. Did
12 you ever work there?

13 A Yes, sir. With -- driving a log truck.

14 Q Now, tell the Commission if you will, a
15 little bit about what the challenges, I guess is the
16 best way to put it of driving a log truck, is it -- is
17 it hard work --

18 A Well I --

19 Q -- or what some of --

20 A -- it's a dangerous job because you've got
21 to pay attention to everything around you. With
22 everything moving, skidders coming into a deck with
23 logs, loader moving logs, putting them on the truck,
24 people running chainsaws. Then you have to throw your
25 straps, bind your loads down, trim the loads up,

1 steady bouncing up and down in the truck once you
2 get in it. It's a lot of work; it's not an easy job.

3 Q As far as driving the truck itself, describe
4 how the roads are -- the logging roads.

5 A They're -- most of them is not a road. You
6 make a road.

7 Q Do they have suspension systems in there
8 that -- that keep you from bouncing around?

9 A No, sir. You still bounce around. They
10 haven't invented a truck that's not rough.

11 Q And I believe you said you had to bind the
12 loads and service the trucks?

13 A Yes, sir, you have to bind the load, pull
14 the straps and all tight.

15 Q Do you have to climb --

16 A Grease the trucks, under them checking the
17 brakes, joints and stuff, climbing in and out the
18 truck.

19 Q How about as far as just driving the truck
20 itself. I mean do -- do you have to -- do you have to
21 be able to turn?

22 A Yes, sir. You constantly watching your
23 mirrors trying to see what's around you because you --
24 you're talking about something 70 feet long and if the
25 logs is sticking out the back 20 feet you got 90 feet

1 of a space that you've got to take care of. So you're
2 constantly twisting and turning, looking in mirrors,
3 paying attention to what's going on.

4 Q And based on some 35 years, roughly, of
5 experience driving a log truck I want to ask you about
6 -- as an expert truck driver -- I think you qualify as
7 an expert, do you feel that you'd be able to drive a
8 log truck at this time after this accident?

9 A No, sir, I don't, because I'm not going to
10 be able to twist and turn and take the bouncing of the
11 rough truck.

12 Q You take medications also; is that correct?

13 A Yes, sir, I do.

14 Q Is it safe to drive the truck after taking
15 medication?

16 A No, sir, because a couple of them I take
17 make me sleepy. If I sit here 10 minutes right after
18 you say anything I'm going to go to sleep.

19 Q You had a CDL at one time?

20 A Yes, sir. I had one up until December when
21 I redone my license and because Dr. Johnson, which I
22 went and seen with the same injury, advised me not to
23 get back in a truck. He said he didn't think it would
24 be in my best interest to do so.

25 Q Do did you renew your CDL?

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1 A I didn't renew it. It wasn't no need to
2 have it if I wasn't going to use it.

3 Q But before this accident happened part of
4 the CDL process is you have to have a physical every
5 year; is that correct?

6 A Yes, sir, you take a physical every year.

7 Q And before this accident happened at least
8 you were able to pass the physical?

9 A Yes, sir. I passed the physical every year
10 with no problem.

11 Q Let's talk a little bit about your history
12 of working with G&G Logging Company. When did you
13 start working there?

14 A I started working for Mr. Gruber in January
15 2014.

16 Q Okay. And I think you talked about the
17 physical requirements, but I'll ask you to go down the
18 checklist I have here. The job as a truck driver with
19 Gruber you had to do a lot of lifting?

20 A Yes, sir.

21 Q Was it heavy, light, medium?

22 A Heavy lifting sometimes, moving stuff out
23 the road.

24 Q Walking. Did it require walking?

25 A Yes, sir. You had to walk to get out of the

1 way of equipment and stuff.

2 Q Standing. Did it require standing?

3 A Yes, sir. A period of time while you were
4 being loaded.

5 Q How about sitting?

6 A The whole time you was in the truck you was
7 sitting.

8 Q Bending, stooping, squatting? Did you have
9 to do any of that?

10 A Yes, sir. All of that trying to bind the
11 load down.

12 Q Climbing?

13 A Yes, sir. Climbing up in the truck,
14 climbing up on the truck, sometimes you cut limbs off
15 the top of the load that were sticking up.

16 Q Pushing and pulling?

17 A Yes, sir. With the chainsaw and straps.

18 Q Reaching?

19 A Yes, sir.

20 Q And twisting and turning?

21 A Yes, sir.

22 Q Now, tell us a little bit about when you
23 went to work for Gruber, a little bit about the hours
24 that you normally worked, the salary you made, how
25 many hours a week you worked, this kind of thing. How

1 were you paid?

2 A Well my average day was probably 12 to 15
3 hours a day. It was before daylight in the morning
4 sometimes all the way to dark in the evenings. Like I
5 said, 12 to 15 hours. I usually averaged 60 to 65
6 hours a week, and I got paid 30 percent of what the
7 truck made.

8 Q Typically how many loads would you be able
9 to take to the mill in a day?

10 A I'd haul normally four loads a day.

11 Q While you were working for G&G did you have
12 any other job, any side job?

13 A No, sir. I didn't.

14 Q You retired I believe in -- at an earlier
15 time. Do you recall --

16 A I retired in 2012 -- January 2012.

17 Q Why did you decide to retire then?

18 A I thought I'd be all right with money, but
19 it wasn't, I had to go back to work.

20 Q Okay.

21 A Just wasn't enough money to get by.

22 Q And that's why you went back to work?

23 A Yes, sir.

24 Q Okay. Why did you leave Bootle to go to
25 Gruber Logging?

1 A I'd still work with Bootle some off and
2 on after I retired in 2012. From 2012 to 2013 Bootle
3 would call me when he needed a driver and I would work
4 with him too.

5 Q Okay. But after the accident in 2014 you
6 haven't worked any --

7 A No, sir. I haven't worked anywhere since
8 the accident.

9 Q -- have you worked anywhere? It's an
10 admitted claim but I want you to tell the Commission
11 very briefly a little bit about what happened, the
12 seriousness of the claim and any impact the collision
13 had on you driving the truck.

14 A Okay. I had just unloaded my truck at the
15 mill which was only about a quarter of a mile from the
16 accident. Headed back south on 21 running
17 approximately 45 miles an hour I noticed a car come
18 across the center line, 75 yards some up the road, you
19 know, I don't know exactly how far. I said well she
20 swerved over there she's going to go back or he,
21 whoever it was, but they didn't. So I immediately
22 went to the side of the road all I could go. I'm off
23 the road applying the brakes, trying to miss this
24 vehicle coming. I couldn't avoid the accident. The
25 next move was in the ditch. I wasn't going out there

1 and wreck my truck and get (inaudible), so it was an
2 impact. She was probably running between 60 and 80
3 miles an hour when she hit the front of the truck.

4 Q What happened to the front of your truck?

5 A She hit it so hard that she knocked the
6 whole front axle out from under that truck. It's held
7 under there with four half inch U-bolts. She broke
8 them all. Knocked the whole axle out, steering box
9 out, busted the transmission, knocked a hole in the
10 fuel tank, with the steps gone and bent the rim and
11 the back tire on the tandems behind me.

12 Q Inside --

13 A And it spun her out.

14 Q -- inside the truck, how did the impact
15 affect your body?

16 A Oh, it threw me against the side glass and
17 then against the seatbelt.

18 Q Which side glass did it throw you against?

19 A The driver's side which was on my left side.
20 It threw me up against that with the impact and then
21 the next jolt was the seatbelt.

22 Q Were there any cracks in the windshield?

23 A The windshield was gone. It was nothing
24 left. The windshield was gone so.

25 Q Do you know if you hit the windshield?

1 A No, sir. I didn't hit the windshield. The
2 Seatbelt gladly stopped me. If it hadn't been for the
3 seatbelt I'd a went out of it I feel sure. It was
4 that hard an impact.

5 Q All right. And you reported that to your
6 supervisor; is that correct?

7 A I called him as soon as I got out the truck.

8 Q And he --

9 A The mud flap was on fire so I jumped out the
10 truck. I didn't have no steps, so I jumped out the
11 truck because I didn't know what was going on.

12 Q Did you go to the hospital?

13 A After I got to Walterboro I went to the
14 hospital, yes, sir.

15 Q And did you go by EMS?

16 A No, sir. My daughter come to the accident.
17 She heard it on her scanner. She used to work with
18 EMS and she come to the accident.

19 Q Did they treat you at the hospital?

20 A No, sir. I sit in the emergency room about
21 two hours, they hadn't seen me yet and I got up and
22 left.

23 Q Where did you go then?

24 A I went to Walterboro Family Practice to see
25 the doctor --

1 Q And did --

2 A -- Dr. Thompkins.

3 Q Dr. Thompkins, how did you have occasion to
4 go again. Did Mr. Gruber take you there or --

5 A No, sir. I went myself.

6 Q Is he your family doctor?

7 A Yes, sir. One of them.

8 Q There's a question also about a bill that
9 has not been paid. At some subsequent time after you
10 went to see Dr. Thompkins you had to go to the
11 hospital; is that correct?

12 A Yes, sir. In the middle of June I started
13 having chest pains, hurting in my chest. Since I had
14 a heart attack ten years ago I thought I was having
15 another one. So I went to the emergency room, they
16 checked me, they admitted me to the hospital, done a
17 stress test on me, echocardiogram, all this stuff,
18 couldn't find anything wrong with my heart. I told
19 the doctor -- it was the emergency room doctor that I
20 had been in this wreck would he give me an MRI and
21 maybe check my neck and see if something was going on
22 with my nerves or something, so he did. That's when
23 he found out my neck was all messed up with vertebra
24 and stuff was out of place. It was pinching a nerve
25 causing the pain in my chest.

1 Q All right. At some point in time you went
2 to see Dr. Pacult; is that correct?

3 A Yes, sir. Workman's comp finally contacted
4 me and told me to go see Dr. Pacult with my neck.

5 Q And then Dr. Pacult picked up the treatment
6 with your neck?

7 A Dr. Pacult picked up the treatment and done
8 my neck surgery in January.

9 Q Okay. And that was January of what year?

10 A 2015.

11 Q Okay. And Dr. Pacult released you sometime
12 last year; is that correct?

13 A Yes, sir. Dr. Pacult released me in a
14 couple of months -- two or three months after the
15 surgery.

16 Q Do you know if Dr. Pacult ever did an
17 impairment rating on you?

18 A No, sir, he did not. I asked him to and he
19 said he didn't do that.

20 Q And so you went to a Dr. Gee I believe; is
21 that correct?

22 A Seen Dr. Gee in Sumter.

23 Q Had you ever seen Dr. Gee before?

24 A No, sir, I hadn't.

25 Q How long did Dr. Gee examine you?

1 A Roughly an hour.

2 Q Okay. And after that time did he give you
3 an impairment rating?

4 A Yes, sir, he did.

5 Q At some point in time he sent you to Dr.
6 Johnson; is that correct?

7 A Yes sir, you did.

8 Q How many times did you see Dr. Johnson?

9 A I seen him one time too.

10 Q And did he give you an impairment rating
11 also?

12 A Yes, sir, he did.

13 Q Dr. Johnson, did he give you some
14 limitations?

15 A Yes, sir. He told me it was in my best
16 interest not to get back into a truck.

17 Q Based on the limitations that he's given you
18 have you not driven a truck anymore?

19 A No, sir. I have not been in one.

20 Q Now you also have some problems in -- you
21 have been having some problems with some pain since
22 the accident on 5/12 of 2014; is that correct?

23 A Yes, sir, I do.

24 Q And you -- your doctors have given you some
25 medications.

1 A Yes, sir. They give me medication, muscle
2 relaxers and pain pills.

3 Q Who were the doctors that give you the
4 medications now?

5 A Dr. Thompkins and my other family doctor,
6 Dr. Elisha Brownfield, --

7 Q Okay.

8 A MUSC.

9 Q Were those doctors ever -- did you see those
10 doctors at the request of workers' comp ever?

11 A Not at the request of worker's comp, no,
12 sir.

13 Q Has workers' comp ever sent you to any
14 doctors to monitor your medications?

15 A No, sir.

16 Q Okay. The medications that you take, and I
17 want to -- have you got your medications with you?

18 A Yes, sir, I've got them.

19 Q I don't need you to go through all of them
20 but if you will, tell us the ones that -- that -- that
21 have adverse side effects when you take them.

22 A Well this is Gabapentin 300 milligrams.
23 Take two capsules three times a day. They make me
24 sleepy.

25 Q Okay. When do you take them? You take them

1 three times a day?

2 A Yes, sir. I take them every morning, about
3 the middle of the afternoon and before I go to bed.

4 Q You said they make you sleepy after you take
5 them. How long do they make you sleepy for?

6 A Two or three hours.

7 Q Okay. What other medications you take?

8 A This is Metaxalone, 800 milligrams.

9 Q What is that for?

10 A It's a muscle relaxer. It also makes me
11 sleepy. I take it twice a day.

12 Q Okay. When do you take --

13 A I take it in between when I take the
14 Gabapentin. If I take the at 7:00 in the morning,
15 about 10:00 I'll take one of these.

16 Q And how does that affect you?

17 A It makes me sleepy and I don't want to do
18 anything, no energy.

19 Q All right. Any other medication?

20 A I was taking the Oxycodone and the
21 Hydrocodone and stuff, but I got off and just went to
22 plain Tylenol.

23 Q Why'd you do that?

24 A I didn't want to get hooked on that
25 Oxycodone.

1 Q You're smart.

2 A It's very habitual and I didn't want to be
3 hooked.

4 Q How about Zoloft? Do you take Zoloft?

5 A Yes, sir. I take them every day for
6 depression.

7 Q Okay. Now --

8 A 20 milligram pill that I take of it.

9 Q Let's talk a little bit about some of the
10 problems that you had after the accident. I know this
11 is hard on you and I'm not trying to embarrass you but
12 obviously it will have some effect on your ability to
13 work.

14 A Yes, sir, it does.

15 Q Have you been depressed to the extent that
16 you've had crying spells occasionally?

17 A Yes, sir, I do.

18 Q How --

19 A I don't know. Thinking about the wreck and
20 if I could have done anything different to avoid it.
21 It bothers me.

22 Q How often does that bother you, Wayne?

23 A At least once a week.

24 Q Okay. How long do they last and what brings
25 them on; anything in particular?

1 A Nothing in particular. Just me sitting
2 there. They just come on.

3 Q How about your patience and irritability?
4 Have you notice anything different?

5 A I don't have any. Before this wreck I, you
6 know, done a lot of different things with the
7 grandkids and now they get on my nerves. And I just
8 don't want to be around nobody. I'd rather be alone.

9 Q All right. How about your ability to focus
10 and concentrate when you take your medication?

11 A No, sir, I can't. I can't keep my mind on
12 what I'm going a lot of times.

13 Q Do you feel lethargic?

14 A Yes.

15 Q Do you have any interest in things?

16 A Not really.

17 Q Did you before this accident happened?

18 A Yes, sir. Yes, sir.

19 Q Do you ever feel jittery?

20 A I shake all the time.

21 Q How about going to the bathroom. Do you
22 have any problems with frequency of urination?

23 A I go frequently. At least once an hour.

24 Q Okay. I want to consider for just a moment
25 what I'll call functional capacities. We talked a

1 little bit about your ability to lift and do things
2 before this accident, but I want to talk about it now,
3 since this accident, right now. If I asked you to
4 stand up how long do you think you could stand up at
5 one time without being uncomfortable or having to sit
6 down?

7 A To stand up and be still and not move
8 around?

9 Q Right.

10 A Probably 10 minutes.

11 Q Okay. How about walking? How far can you
12 walk without having a problem?

13 A A couple of hundred yards.

14 Q Sitting. Does sitting bother you?

15 A Yes, sir. Sitting bothers me if I sit too
16 long; 30 minutes. I just -- I get to moving. I got
17 to move. I can't sit still.

18 Q Okay. Bending, stooping, squatting,
19 kneeling, can you do any of that?

20 A Yes, sir. Some.

21 Q How much can you do? And compare it to
22 before the accident.

23 A Not even half of what I used to could do,
24 especially with the bending and the stooping.

25 Q Okay. How about lifting. How much do you

1 think you can lift and carry?

2 A With my left arm, ten pounds.

3 Q Okay. Reaching. Does reaching bother you?

4 A About there is the extent of my left arm
5 going up without hurting. I can make it go on up, but
6 it starts to pull in my neck and shoulder.

7 Q Twisting and pulling, do you have any
8 problem with that?

9 A Yes, sir. It's hard to do that.

10 Q And particularly twisting and turning of
11 your neck. Do you have any problems --

12 A I have to turn -- I can go so far and then I
13 have to turn my body.

14 Q Okay. I just have a couple of more areas I
15 want to discuss briefly. Based on the side effects of
16 the medications that you talked about -- you -- you
17 discussed earlier, do you think they reasonably affect
18 or impair your ability to operate equipment?

19 A Yes, sir. I think they do.

20 Q How about your ability to drive a truck?

21 A Yes, sir. I know they do that.

22 Q Okay. You think you can safely take these
23 medications and operate a truck?

24 A No, sir.

25 Q How about even driving a car or any type of

1 vehicle?

2 A I have to be careful doing that.

3 Q How about your ability to deal with the
4 public?

5 A No sir. Because I -- I got no patience with
6 anybody. I could probably do it for a short period of
7 time and I would get irritable and it wouldn't be
8 good.

9 Q How about taking these medications, your
10 ability to focus and concentrate on a task?

11 A No, sir. Because I can't keep my
12 concentration now.

13 Q All right. Now let's talk a little bit
14 about your typical day. What time do you get up in
15 the morning?

16 A It varies. From 6:00 in the morning until
17 10:00 in the morning.

18 Q Why do you get up so late?

19 A I don't feel like getting up. I'm just
20 hurting.

21 Q What time do you typically go to bed at
22 night?

23 A 10:00.

24 Q Okay. Do you go to sleep when you go to bed
25 or do you just lie there?

1 A I take sleeping pills or I don't sleep.

2 Q Okay. How many times do you get up during
3 the night?

4 A A couple to go to the bathroom.

5 Q When you are around the house during the
6 day, and Debbie, I believe is retired at this time; is
7 that correct?

8 A Yes, sir. She retired in February.

9 Q Do you help her do things?

10 A I try to.

11 Q What are some of the things you help her do?

12 A Just general stuff in the house. Cleaning
13 and stuff. I'll do a little bit and then have to go
14 sit down.

15 Q All right. Do you cook?

16 A No, sir. I don't cook.

17 Q How about sweeping?

18 A No, sir.

19 Q How about vacuuming?

20 A No, sir.

21 Q How about mopping?

22 A No, sir.

23 Q What are some of the things you do and --
24 and how long do you do at one time?

25 A I help her pick up clothes and stuff. Take

1 out the trash or something.

2 Q Okay. You do any yard -- you do any yard
3 work?

4 A There again, I try to, but I don't last long
5 and have to go sit down.

6 Q Do you read books?

7 A No, sir.

8 Q You read the paper?

9 A I try to read the newspaper once a week.

10 Q You watch television?

11 A I watch a lot of television.

12 Q Out of a typical day, let's say an eight
13 hour day, how many hours do you anticipate that you
14 would either lie down in your bed or sit in the
15 recliner with your feet elevated?

16 A Five or six out of eight.

17 Q So most of your day is off your feet?

18 A Yes, sir.

19 Q Does it help you?

20 A Yes, sir.

21 MR. HETRICK: I don't have anything further.

22 Please answer any questions Mr. Cruse may have.

23 A All right.

24 THE COURT: Mr. Cruse?

25 MR. CRUSE: Thank you Commissioner.

CROSS EXAMINATION

BY MR. CRUSE:

Q Mr. Herndon, it's good to see you again.

A Good to see you.

Q My name is Ben Cruse and I represent G&G and their workers' compensation carrier in your claim. I have a few questions for you just in follow-up. And just to reiterate for points of clarification you -- you completed the tenth grade; is that correct?

A Yes, sir. That's correct.

Q And you have six years in the National Guard?

A Yes, sir.

Q And you were honorably discharged as a Sergeant?

A Yes.

Q Okay. And you mentioned in your prior work history, you have some construction work as a finisher; is that correct?

A Yes, sir. I do.

Q And did you do that for about six or seven years?

A Yes, sir.

Q You also worked for Bootle Logging driving a truck for approximately 20 years; is that correct?

1 A Yes.

2 Q And in this job did it require you to load
3 and unload your own truck?

4 A Yes, sir. Sometimes I would.

5 Q Did it require you to load and unload your
6 own truck though? Did you have to actually put the
7 stuff on the truck and load it and unload it?

8 A Sometimes I would run the loader and load
9 the logs on the truck, yes, sir.

10 Q And is that --

11 A And it wasn't an everyday thing. They had a
12 loader operator, but most of the time you just backed
13 under the loader, got out the way and they loaded the
14 truck.

15 Q Okay. So you backed the truck up and someone
16 else would put the load on?

17 A Yes.

18 Q And is that done with a machine?

19 A Yes, sir, it's done with a machine.

20 Q Okay. And you'd get back in the truck and
21 take -- take it to the location?

22 A Throw your straps, tighten them down, trim
23 the load and then you'd go to the mill. Now when I
24 was running the low boy for Bootle Logging I had to
25 load and unload the equipment on the low boy myself.

1 Q Okay. But as far as just driving the truck
2 goes generally you wouldn't be responsible for loading
3 and unloading the truck; is that fair to say?

4 A Not with the logs it wouldn't be, but with
5 the equipment it was.

6 Q Okay. And you voluntarily retired from the
7 position with Bootle Logging January 2012?

8 A Yes, I did. Yes, sir.

9 Q And then at that point you began receiving
10 Social Security Retirement; is that right?

11 A Yes, sir.

12 Q Okay. And after your retirement in January
13 of 2012 you continued to work part-time for Bootle
14 Logging?

15 A Yes, sir, I did.

16 Q And during -- when you went back to work and
17 while you were receiving Social Security Retirement
18 Benefits were you aware of the limit on how much
19 Social Security Retirement will allow you to make
20 before it starts reducing your retirement benefits.

21 A Yes, sir, I was.

22 Q And are you aware of how much that limit was
23 per year?

24 A No, sir. Not right off I'm not.

25 Q Do you have any guess as far as to your

1 knowledge what that limit on earning wages would be?

2 A No, sir.

3 Q If I said \$15,000 does that sound like
4 something that you may have said to somebody at some
5 point in this claim?

6 A I could have.

7 Q And in 2012 while working for Bootle Logging
8 you earned about \$7,700; does that sound correct?

9 A Yes, sir.

10 Q Okay. And you continued working part-time
11 in 2013 for Bootle and you made about \$8,800; does
12 that sound accurate?

13 A I guess.

14 Q Okay. And I have W-2s from these employers
15 that would indicate that. That's where I'm getting
16 those numbers.

17 A Okay.

18 Q I'm not making them up, I assure you.

19 A I can't recall them in my head.

20 Q The way that was reported on your W-2, does
21 that accurately reflect the wages that you made?

22 A Right. Okay. Yeah.

23 Q Okay. In those two years with Bootle
24 Logging in 2012 and 2013, so it was after your
25 retirement, was it your intention not to work or not

1 to exceed that threshold?

2 A No, sir. I just worked, you know, when he
3 needed somebody to work. It wasn't really no limit on
4 what I was going to work.

5 Q So you never had a plan or an idea not to
6 exceed that \$15,000 threshold?

7 A No. Whatever he needed after I decided I
8 had to go back to work was, you know, what I was going
9 to work.

10 Q You then went to work for G&G in 2014; is
11 that correct?

12 A Yes, sir. I did.

13 Q And you worked approximately 13 weeks or so?

14 A Yes, sir, until the accident in May.

15 Q Okay. And -- and during that time period
16 while you were working for G&G you earned about
17 \$9,285; does that sound right?

18 A Yes, sir. That's close.

19 Q And was it your intention in 2014 then to
20 earn as much as you could without reducing your
21 retirement benefits?

22 A Yes, sir.

23 Q And did you tell that information to George
24 Page during your vocational evaluation?

25 A I don't remember whether I did or I didn't.

1 Q Okay. If he put it in his report do you
2 have any reason to believe that he made that up or
3 would that have been sometime you may have talked
4 about?

5 A No, we may have talked about it. I just --
6 I don't remember for sure.

7 Q Did you discuss that arrangement with Greg
8 Gruber?

9 A Me and Greg talked about what I could make
10 and then what we would do after I made that. We would
11 make that decision when we got to that point.

12 Q Okay. So y'all had a discussion about
13 giving you work up to a certain point and that was
14 about \$15,000?

15 A And then we would discuss what we was going
16 to do from then on.

17 Q To your knowledge have your retirement
18 benefits ever been reduced based upon the amount of
19 money you brought in outside of the retirement benefit
20 plan?

21 A No, sir.

22 Q And you've been receiving weekly checks from
23 the insurance company since you've been out of work
24 for this accident?

25 A Yes, sir. I have.

1 Q And have you been receiving benefits at a
2 rate of --

3 A \$463.36.

4 Q Thank you. \$463.36 a week?

5 A Yes, sir.

6 Q Okay. Thank you. And since you've been
7 receiving those benefits have your retirement benefits
8 been reduced at all?

9 A No, sir. They told me that was not earned
10 income and I didn't have to turn it in.

11 Q Okay. And you've had your CDL prior to your
12 work accident?

13 A Yes, sir. I did.

14 Q Since your work accident your CDL license
15 expired?

16 A Well when I redone my license on my birthday
17 last December I just took them off.

18 Q And have you -- you mentioned you were able
19 to pass the physical prior to your work accident --

20 A Yes, sir.

21 Q -- for the CDL. Have you had a physical --
22 CDL physical since your work accident?

23 A Yes, sir.

24 Q Okay. Did you pass that physical?

25 A Yes, sir. I did.

1 Q Okay.

2 A Got the medical card in my pocket.

3 Q Okay. Have you sat down and taken a test to
4 -- to renew the CDL?

5 A No, sir.

6 Q Okay. So you passed the physical, you just
7 haven't taken the actual test?

8 A I didn't want the CDL. I had it and all I
9 had to do was, you know, redo it. And I decided not
10 to after Dr. Johnson told me he didn't think it was in
11 my best interest to get back in a truck.

12 Q Okay.

13 A If I wasn't going to drive I didn't need it.

14 Q And let's talk about the Dr. Johnson
15 evaluation. Have you ever seen Dr. Johnson prior to
16 that one time evaluation?

17 A Just that one time.

18 Q Okay. And where did that evaluation occur?

19 A Mt. Pleasant.

20 Q Okay. How far of a drive is it from
21 Walterboro to Mt. Pleasant to see Dr. Johnson?

22 A Probably 65 or 70 miles.

23 Q 65 or 70, so a little bit over an hour's
24 drive?

25 A Yes, sir.

1 Q Okay. And this is the doctor that your
2 attorney found for --

3 A Yeah.

4 Q -- you just to go see?

5 A Yes, sir.

6 Q Okay. And how long did that evaluation
7 last?

8 A About an hour.

9 Q And during that hour was Dr. Johnson present
10 the whole time or did you see a physician's assistant?

11 A No, sir. He was there the whole time.

12 Q Okay. Did Dr. Johnson examine the x-rays or
13 MRIs?

14 A Yes, sir. He had the MRIs that I had done
15 that I mentioned that I got in Colleton County --

16 Q Did he get any --

17 A -- when I thought I was having a heart
18 attack.

19 Q Okay. Did he get any new images of you that
20 day?

21 A No, sir. He just used the one that I had
22 from that. The same thing that Dr. Pacult had looked
23 at when he done my surgery.

24 Q Okay. Did Dr. Johnson perform a physical
25 examination of you that day?

1 A Yes, sir. He did.

2 Q Tell me about that. What did he do? Did
3 he put his hands on you?

4 A Yes, sir. He just checked my neck, made me
5 push and pull his arms, squeeze his hands, lift my
6 legs, turn my head and stuff like that.

7 Q And how long did that portion of the
8 examination last?

9 A Probably 20 minutes.

10 Q Okay. Have any of your doctors in this
11 claim provided any standing restrictions for you?

12 A Standing?

13 Q Correct?

14 A No, not really.

15 Q Are you on any walking restrictions?

16 A No, sir.

17 Q Are you on any sitting restrictions?

18 A No, sir.

19 Q How about bending stooping, squatting? Some
20 of the things your attorney went over with you, has
21 any doctor said that you're permanently restricted
22 from doing that type of work?

23 A Not permanently restricted. Just have to
24 limit it.

25 Q Okay. And since your work accident you've

1 had pain in your neck?

2 A Yes, sir.

3 Q And tingling and numbness of your left arm
4 and hand?

5 A Yes, sir.

6 Q Okay. And I understand you enjoy hunting
7 and fishing; is that correct?

8 A I do.

9 Q And you went deer hunting this year?

10 A Yes, sir. A couple of times.

11 Q And you were actually able to have a
12 successful hunt and you managed to shoot some deer,
13 didn't you?

14 A Well, I hunted very, very little. Compared
15 to what I normally hunt --

16 Q I understand. You were an avid hunter
17 before but you're a little limited now?

18 A Yes, sir, I'm limited a bunch to now.

19 Q Okay. Tell me about the hunting trip that
20 you went on. Was it just one or was it more since
21 your -- since your accident?

22 A Just a couple. Listening to the dogs run
23 mostly.

24 Q Okay. What do you do on those hunting
25 trips? How long does a typical hunting trip last?

1 A Well, it can last all day but mine now are
2 limited to about an hour. I get to hurting and I come
3 home.

4 Q So you were out there about an hour?

5 A Yes, sir.

6 Q Okay. Did you actually shoot the gun?

7 A Yes, sir.

8 Q And did you -- did you help clean the deer?

9 A No, sir.

10 Q How'd you get the deer out from the -- from
11 the field?

12 A Other people.

13 Q Okay. Did you go turkey hunting this year
14 as well?

15 A Yes, sir, I did, turkey.

16 Q How many times have you been turkey hunting?

17 A Twice.

18 Q How many turkeys have you gotten this year?

19 A Twice.

20 Q Is that the limit or can you get more?

21 A No, you can kill three. I just haven't felt
22 like going.

23 Q How long does a turkey hunt trip last
24 normally?

25 A That can vary too. Between 15 minutes and

1 an hour, two hours.

2 Q And where do you go hunting?

3 A Right behind my house for turkey.

4 Q If there was work available within the
5 restrictions that your doctors have provided would you
6 be willing to go back to work?

7 A If there was something I could do without
8 hurting and having patience to deal with people, yes.

9 Q So then -- is it your intention to go back
10 to work and find work at some point?

11 A It depends on how I feel and how this thing
12 gets.

13 Q Have you looked for any jobs?

14 A No, sir. I have not.

15 Q Have you applied anywhere?

16 A No, sir.

17 Q Have you looked in the newspaper or anything
18 like that for any work that you could do?

19 A No, sir. But like I say I don't know of a
20 whole lot that I could do that I have done before.

21 MR. CRUSE: Those are all the questions I have.
22 Thank you for your time. I appreciate it.

23 THE COURT: Mr. Hetrick?

24 MR. HETRICK: Just one second, Commissioner.

25 THE COURT: Sure. Take your time.

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
803 387 0100

1 MR. HETRICK: I don't have anything further.

2 THE COURT: Okay. All right. And, sir you can
3 step down and thank you for your testimony.
4 Appreciate it.

5 A Yes, sir.

6 MR. CRUSE: I've got Mr. Page.

7 THE COURT: Sure. Good to see you. You can just
8 sit right there and make yourself comfortable.

9 MR. CRUSE: This is George Page.

10 THE COURT: Good to see you Mr. Page. Yes, sir.
11 If you could just make yourself comfortable and I have
12 just a couple of brief instructions. If you would
13 please speak up and speak clearly for us so we can all
14 hear your responses to the questions and get them for
15 the record. If you're asked a yes or no question
16 please give us a verbal yes or no answer. And try and
17 stay away from things like uh-huh and huh-uh. That's
18 just too easily misunderstood. So if you could do
19 that we'd appreciate it. Please raise your right
20 hand. Do you swear or affirm that the testimony you
21 are about to give is the truth, the whole truth and
22 nothing but the truth?

23 THE WITNESS: Yes.

24 THE COURT: Okay. If you could please state and
25 spell your name for the record, sir.

1 THE WITNESS: George Henry Page. The last name
2 is Page, P-A-G-E.

3 THE COURT: All right. Thank you sir.
4 Appreciate it. Mr. Cruse, your witness.

5 MR. CRUSE: Thank you Commissioner.

6 George Henry Page,
7 Having first been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CRUSE:

10 Q Mr. Page, I'm going to stay up here but if
11 you could direct your answers to the Commissioner that
12 would be appreciated. Just to make sure that
13 everyone's clear on your answers and can hear you
14 perfectly. You stated your name for the record.
15 Could you please describe some of your education and
16 your work or experience as a vocational evaluator?

17 A I've been the owner of Page Rehabilitation
18 for the last 18 years. I began in 1988. The business
19 is run by me and owned by me. My wife is my business
20 manager. I have three employees that work as
21 consultants and associates in North Carolina. The
22 vast majority of our work is workers' compensation in
23 North and South Carolina. Prior to owning this I
24 worked for a company out of Virginia called VPS Case
25 Management. I managed North and South Carolina as a

1 case management company. Prior to that I worked for a
2 company called ConserveCo out of Louisiana. Again at
3 the case management company I was the supervisor in
4 northern Louisiana. I have multiple certifications,
5 including Certified Vocation Evaluator, Certified
6 Disability Management Specialist, Certified Case
7 Manager and Professional Vocation Evaluator. All
8 these are national certifications. All are current,
9 all require continuing education on a rotating basis.
10 I believe the PVE requires that I get enough hours
11 every four years, the rest of them are required every
12 five years. I have a Master's Degree in
13 rehabilitation education from the University of
14 Tennessee and an undergraduate degree, Bachelors in
15 History from Duke University.

16 THE COURT: Thank you, sir.

17 Q And how long have you been doing vocational
18 evaluations?

19 A I graduated from Tennessee in 1982. I
20 believe I got the job in April of that year right
21 after graduation. And I've been in the business ever
22 since.

23 Q And can you estimate for the Court how many
24 evaluations you've performed over your career?

25 A Hundreds.

1 Q Okay. And Commissioner we'll be submitting
2 Mr. Page's testimony as an expert in his field with
3 regard to vocational evaluation.

4 THE COURT: Okay.

5 Q Is there a ratio of Defense oriented work or
6 is it Plaintiff's oriented work that you do? How many
7 -- how many of one type of case work over the other do
8 you normally do?

9 A Currently I believe I have about five or six
10 Plaintiffs' cases and probably 15 to 18 Defense cases
11 and that's about average I would say 70 to 80 percent
12 of my work comes from Defense and then 20 -- 20 to 30
13 percent comes from Plaintiff's.

14 Q Okay. And you've had an opportunity in this
15 matter to provide a vocational assessment for Mr.
16 Herndon; is that correct?

17 A Yes.

18 Q And that evaluation took place January 22nd
19 of 2016?

20 A That's correct.

21 Q And did you have a chance to review the
22 medical records that were provided at that time?

23 A I did. I list them on page 2 of my report.

24 Q Okay. And did you have Dr. Pacult's
25 records?

1 A As listed on my report, yes.

2 Q Okay. Have you had a chance to see Dr.
3 Johnson's IME?

4 A Correct.

5 Q And the -- and the medical report from Dr.
6 Gee as well?

7 A Yes, sir.

8 Q Okay. And what was your conclusion
9 regarding Mr. Herndon's return to work capability?

10 A Based on the assessment I did it was my
11 conclusion that he had the opportunity to return to
12 either sedentary or light type of work and the wages
13 would be between \$9 and \$10 an hour.

14 Q And then what type of consideration go into
15 making such a conclusion?

16 A You look at an individual's medical history,
17 you look at the individual's biographical information
18 as provided in the interviews, work history,
19 education, interests, hobbies, and you combine
20 information and try to come up with ideas as to what
21 the work given that Mr. Herndon has a neck injury and
22 -- and was given specific restrictions, he was not
23 able to go back to truck driving and therefore I would
24 do alternative options.

25 Q Okay. In your experience is age a key

1 factor in an individual's return to work capability?

2 A Not in my experience. No, sir.

3 Q And what has your experience been with
4 regard to age and people getting back into the work
5 force?

6 A My experience has been when I talk to
7 employers and visit with them, age is a minimal factor
8 if -- if one at all. Most employers tell me they
9 prefer to hire someone with some age on them because
10 they feel that they can count on them. They have a
11 work ethic and they understand that. If anything it's
12 just the opposite that the younger a person is the
13 more difficult it might be for them to find jobs. So
14 I feel like motivation is a key there. An individual
15 who wants to return to work who has the opportunity to
16 and presented to them in a proper way has that option.

17 Q And you're aware Mr. Herndon has a tenth
18 grade education, correct?

19 A Yes, sir.

20 Q He also served in the National Guard for six
21 years; is that your -- what you understand?

22 A Yes, sir.

23 Q And what is the significance of that,
24 serving in the National Guard for six years?

25 A In my independent job search activities a

1 lot of people look for a high school diploma or GED.
2 Often if a person has military service they will allow
3 that to substitute for one of those two degrees.

4 Q So the fact that Mr. Herndon reached the
5 level of Sergeant in the National Guard it's your
6 experience that an employer would view that as GED
7 equivalent or high school diploma?

8 A I don't if they would view it as GED
9 equivalent, but they look at it as a positive sign and
10 a definition an individual has a good foundation and
11 academic foundation.

12 Q Okay. What -- what medical information that
13 you reviewed was important to you in reaching your
14 determination?

15 A You mentioned earlier three different
16 physicians, and those were the most important aspects
17 to me of Doctors Johnson, Gee and Pacult had each
18 given some specific restrictions for definition of
19 what they call Mr. Herndon was capable of.

20 Q And what were the -- what were the
21 restrictions provided by the authorized treating
22 physician?

23 A I don't recall that he gave specific
24 restrictions. His statement was in a report, patient
25 unable to return to work as a result of subjective

1 complaints of pain; otherwise, he'd be able. I
2 believe he deferred restrictions and rating out to
3 other physicians.

4 Q Okay. And what's your understanding of Dr.
5 Johnson's restrictions which was the independent
6 medical evaluation obtained by the Claimant?

7 A I'll just quote what I have. "And the
8 patient has decreased function of use left arm
9 secondary to radiculopathy with residual numbness and
10 weakness of the left arm and hand. In regards to work
11 the patient may not return to his previous vocation.
12 Work restrictions would involve no work from the
13 shoulder level above with limited extension of his
14 neck and no lifting from shoulder level above greater
15 than 15 to 20 pounds."

16 Q So was it your understanding Dr. Johnson
17 provided a 20 pound lift restriction for Mr. Herndon?

18 A Yes.

19 Q And using that medical information from Dr.
20 Pacult, Dr. Gee and Dr. Johnson where does that place
21 Mr. Herndon's ability or level of work?

22 A Utilizing the Department of Labor's
23 definitions it would be light duty or sedentary.

24 Q Okay. And you quoted the Department of
25 Labor's light duty classification in your report, did

1 you not?

2 A Yes, I did. In the supplemental report, I
3 didn't quote it in the original report.

4 Q Okay. And if you would tell the
5 Commissioner what light duty means according to the
6 Department of Labor?

7 A Essentially light duty means lifting up to
8 20 pounds on an occasional basis and ten pounds on a
9 more frequent basis. And if the job requires standing
10 and walking to a significant degree it could also be
11 light duty. I could read the technical definition if
12 you want the whole definition.

13 THE COURT: That's okay. I'll let the report
14 speak for itself. Thank you, sir.

15 Q And are there -- are there -- we've talked
16 about that definition. Are there standards of --
17 regular standards used by vocational evaluation --
18 evaluators during the course of evaluation?

19 A Yes.

20 Q Okay. And what -- explain that to me. What
21 are some of the standard measures and standard
22 processes associated with that providing vocational
23 assessment?

24 A The assessment itself is a combination of
25 activities, including the interview, testing and work

1 history. The work history itself helps identify
2 specifically what a person's skills and academics are
3 as required by the job itself. We take those into
4 consideration and attempt to break it down so that the
5 different levels of work traits that can be identified
6 that can help assist in identifying new options.

7 Q How does Mr. Herndon's work -- prior work
8 experience factor into your analysis and decision
9 making?

10 A It's significant. It's -- he was a truck
11 driver the vast majority of his life and also a
12 carpenter.

13 Q And what's the significance of him -- his
14 carpentry work?

15 A Well the carpentry work, according to Mr.
16 Herndon he -- he did skilled labor. He did form work,
17 he did finish work, he did trim work. He did it for
18 several years and he learned it on the job. The
19 significance of that is it's a -- it's a skilled
20 position.

21 Q And -- and what type of skills would be used
22 as carpenter specifically?

23 A Well he can use -- he understands math and
24 particularly rulers to a sixteenth of an inch. With
25 regards to the type of carpentry work he did he would

1 know how to determine amounts of materials necessary,
2 cost of materials, and he'd read blueprints which is a
3 reasonably technical skill to do.

4 Q Is it your opinion Mr. Herndon has acquired
5 the skill through his work history and his education
6 that would be transferrable to the open market and --
7 and jobs available within his restrictions?

8 A Yes.

9 Q And during the course of your evaluation did
10 you have a chance to personally observe Mr. Herndon?

11 A I did.

12 Q And what are some of your personal
13 observations that affect your opinion?

14 A He was a pleasant individual. He answered
15 my questions without any hesitancy, he sat throughout
16 the interview with some -- some movement back and
17 forth. He did have a tremor in one of his hands. He
18 said he'd had that for about a year. I didn't see any
19 out of the ordinary pain behaviors such as grimacing
20 or perspiring or shortness of breath or that kind of
21 thing.

22 Q Was Mr. Herndon able to walk? Was there
23 anything wrong with his gait or his pattern of walking
24 that you evaluated?

25 A I only was able to observe him walk a few

1 steps so I -- I don't know.

2 Q And were you aware that Mr. Herndon likes to
3 hunt?

4 A Yes.

5 Q And what, if anything, did Mr. Herndon tell
6 you about his hunting during your vocational
7 evaluation?

8 A He stated that he had killed four deer that
9 year and I asked him if he turkey hunted and he said
10 yes, and he planned to turkey hunt.

11 Q You also conducted a labor market survey or
12 search recently; is that correct?

13 A Yes.

14 Q And when did -- when did you do that?

15 A April 22nd.

16 Q And how long did you look in the market for
17 jobs that would fit Mr. Herndon's restrictions?

18 A You had requested a report fairly quick so
19 it was fairly short time, probably less than an hour.

20 Q Okay. And were you able to find jobs that
21 were available in that hour that would fit Mr.
22 Herndon's restrictions?

23 A Yes and no.

24 Q And are those jobs -- the jobs that you
25 found would Mr. Herndon be capable of performing

1 within his physical restrictions?

2 A I believe so, yes.

3 Q And did Mr. Herndon have a conversation
4 during your evaluation regarding his retirement
5 status?

6 A Yes.

7 Q And what did Mr. Herndon say about his
8 retirement benefits and his plan to earn wages?

9 A In our conversation he indicated he had
10 retired at age 62 and that he -- he needed to work and
11 that he could make up to \$15,000 a year without being
12 penalized.

13 Q And was this -- was it relayed to you that
14 that was his plan?

15 MR. HETRICK: Object to the form of question
16 Commissioner, leading.

17 THE COURT: Can you please rephrase?

18 Q I'll rephrase. Did Mr. Herndon discuss his
19 current situation -- current employment situation with
20 you with G&G Logging?

21 A Yes.

22 Q Did Mr. Herndon have any plan for working
23 for G&G Logging with regard to the restrictions -- I'm
24 sorry, the limitation on earnings?

25 A Yes.

1 Q And what is your understanding based on your
2 conversation with Mr. Herndon as to his plan while
3 working for G&G Logging?

4 A On page 3 of my report I -- I'll just read
5 what I said. "Mr. Herndon retired at age 62 and began
6 working part-time and revealed he could make up to
7 \$15,000 per year. He noted he would work until he
8 reached \$15,000 and not work the rest of the year. He
9 noted G&G Logging was aware."

10 Q And did you have an opportunity to review
11 Mr. Pearsall's vocational assessment?

12 A Yes.

13 Q And do you agree with Mr. Pearsall's
14 conclusion?

15 A No.

16 Q And can you explain to the Commission why
17 you disagree with Mr. Pearsall's conclusion?

18 A It -- it appears to me most of Mr.
19 Pearsall's information is based on objective evidence.
20 He quotes a lot of information from the Department of
21 Labor. With regards to his comments about my report
22 he was just inaccurate, he was wrong on some of the
23 comments he made. And we just have a disagreement of
24 what Mr. Herndon's capabilities are.

25 Q And Mr. Pearsall provided an amended report

1 after reviewing your initial assessment; is that
2 accurate?

3 A Yes.

4 Q And then you provided an amended report to
5 -- to answer some of those concerns; is that correct?

6 A Correct.

7 Q Okay. One of the concerns that Mr. Pearsall
8 raised was the notion that you indicated age was not
9 an issue in employment -- in finding employment. Can
10 you -- can you talk to the Commissioner about what Mr.
11 Pearsall had to say and your -- your response?

12 A Well Mr. Pearsall and I'll quote from his
13 report, it is -- he says, "That I'm factually in error
14 with my statement, it has been my experience that age
15 is not an issue with regard to employment. As
16 employers are more interested in the individual's work
17 ethics, appearance, positive motivation for returning
18 to work. It is my opinion Mr. Herndon is currently
19 employable for a wage of \$9 to \$10 an hour." That's
20 been my experience. Mr. Pearsall has never been with
21 me on a job search outing, he's never been with me
22 when I'm going telephonic or internet job search. He
23 has no idea what my experience is. So that's just
24 factually incorrect. He doesn't know what my
25 experiences are.

1 Q There's also a note about an SVP. What does
2 SVP stand for?

3 A Specific Vocational Preparation.

4 Q Okay. And explain to me Mr. Pearsall's
5 reference to the SVP in this case.

6 A A little background. The SVP is also a
7 Department of Labor measurement. It helps determine
8 an individual's ability from the job they do. Dr.
9 Pearsall basically said that Mr. Herndon's work had
10 been unskilled. A truck driver is semi-skilled. It's
11 not unskilled and a carpenter's work is skilled. Dr.
12 Pearsall said that I was overestimating disability.
13 I believe Dr. Pearsall underestimated disability.
14 When you look at an individual who was the carpenter
15 he was his SVP level was that of a seven and we're
16 looking at mapping between one and ten, the higher the
17 number the better. "Would you place to a year or up
18 to two years of activity of performing a job?"
19 "Correct?" As -- as a one would be just short term
20 assessment and a ten would be probably ten to twelve
21 years of activity such as a physician or something.
22 So it's -- it's -- it's my opinion that Mr. Herndon
23 had a skilled background, particularly with the
24 carpentry work.

25 Q Towards the end of Mr. Pearsall's report

1 there was sort of a statement made as far as
2 competitive work and the ability to perform
3 competitive work. Do you agree with that statement?

4 MR. HETRICK: Which statement is it? I believe
5 --

6 MR. CRUSE: I -- I was going to ask him to refer
7 to it.

8 A Sure..

9 MR. CRUSE: It's Exhibit D, I believe. Bo, this
10 is on your -- it's the Amended 4. This is,
11 Commissioner, APA page 128 and then 129.

12 THE COURT: Thank you.

13 BY MR. CRUSE:

14 Q And Mr. Page this is the April 5th, 2016
15 updated vocational report by Mr. Pearsall. And it's a
16 statement -- I'll try to direct your attention to is
17 bullet point number 3 on page 6 of that report. And
18 then his comment that I'm directing your attention to
19 is on page 7 at the top of that page.

20 A I have it.

21 Q Okay. And what is -- what is your
22 understanding -- what is Mr. Pearsall saying in that
23 bullet point 3 there?

24 A I'll just read his comment.

25 Q Sure.

1 A "Regardless of cost or consideration if an
2 individual does not fully make normal and expected
3 standards of competitive employment they are unable to
4 work. This is precisely the standard utilized in most
5 vocational assessments disability determination and
6 work capacity assessment. Mr. Herndon does not meet
7 the minimum standards of competitive employment. The
8 Page Rehabilitation Services does not address this
9 basic and often determinative issue."

10 Q And what are your -- what is your thought on
11 that statement?

12 A I reject it wholeheartedly.

13 Q And if you could tell the Commissioner your
14 basis for wholeheartedly rejecting that particular --
15 that statement?

16 A Well, in my report page 4 I basically state
17 I reject this -- I wholeheartedly disagree with that
18 statement. It basically flies in the face of what
19 vocational rehabilitation is all about. And I point
20 to some specifics in the following paragraph.

21 Everybody has their shortcomings. It doesn't matter
22 who you are, whether you have disability or not you
23 have shortcomings. And according to Dr. Pearsall in
24 this statement if you've got any kind of shortcomings
25 you can't work. I disagree with that. The purpose of

1 vocational rehabilitation is to try and identify what
2 the shortcomings are and then assist in overcoming
3 them. And that explains why you see people who are in
4 their 60s and 70s working, why you see people with
5 Down syndrome working, why you see people in
6 wheelchairs working. They don't meet the minimum
7 requirements according to Dr. Pearsall so they
8 shouldn't be working, but they are.

9 Q And as we sit here today is it still your
10 opinion Mr. Herndon's capable of returning to gainful
11 employment at this time?

12 A Yes.

13 Q And do you stand by your report of February
14 2nd, 2016 and then your updated report on April 22nd,
15 2016?

16 A Yes.

17 MR. CRUSE: I don't believe I have any further
18 questions for you. Thank you.

19 THE COURT: Thank you Mr. Cruse. Mr. Hetrick?

20 MR. HETRICK: Thank you, Commissioner.

21 CROSS EXAMINATION

22 BY MR. HETRICK:

23 Q Mr. Page, I've just got a couple of
24 questions to ask you. Age is an important factor
25 Social Security Disability takes into account, is it

1 not, in -- in their criteria?

2 A I believe it is. I don't do social
3 security.

4 Q Okay. Education would be another important
5 vocational factor; is that correct?

6 A Yes, sir.

7 Q Transferability of skills would be another
8 factor; is that correct?

9 A Yes, sir.

10 Q Transferability skills for someone that has
11 been a truck driver for 30 plus years, a log truck
12 driver, what kind of skills would transfer to a
13 similar job would you say?

14 A Well, I'm assuming as a truck driver he
15 would have kept a log and kept daily records of his
16 activities. Those type things would be transferable.
17 He has a CDL, had to pass the test and they would be
18 transferable.

19 Q You wouldn't agree or would you agree that
20 someone with a tenth grade education, completed the
21 tenth grade, 66 years of age would have a more
22 difficult time than another individual, a younger
23 individual obtaining employment?

24 A It would depend on the circumstances.

25 Q So it's your testimony then that basically

1 someone with a tenth grade education, 66 years of age,
2 worked as a log truck driver for 30 some odd years
3 would easily transfer into other types of employment
4 you list in your -- your statement; is that correct?

5 A When you take into consideration he's an
6 honorably discharged veteran and was in the National
7 Guard and also had skills from carpentry, yes.

8 Q Now, I believe you testified that you worked
9 80 percent or 80 percent of the work you did was for
10 Defendants; is that correct?

11 A That's approximate, yes, sir.

12 Q So you've go about five or six cases that
13 you are working on for Claimants or Plaintiffs at this
14 time?

15 A Yes, sir.

16 Q Are they all in the workers' comp area?

17 A No.

18 Q What types of areas are they -- they in?

19 A Let's see, I've got a couple of workers'
20 comp and I think three or four personal injury.

21 Q Okay. Are they from around the low country
22 or -- or which areas are they in?

23 A Let's see. I believe Hilton Head,
24 Greenville, Columbia. They're from around the state.
25 I can't recall from some of them.

1 Q Would you agree, Mr. Page, if I had hired
2 you to represent the Claimant in this case you would
3 also make an argument that he was totally disabled
4 based upon his age, based upon his education, based
5 upon his past relevant work experience? You could
6 make an argument the other way also, could you not?

7 A Not based on those factors, no.

8 Q If you had had an individual that because of
9 the medication he takes, some of the medications being
10 Gabapentin, one of the medications being Metaxalone,
11 and one of the medications being Zoloft, because of
12 the medications that he takes makes him sleepy and
13 drowsy such that he would be incapacitated two or
14 three hours out of a typical work day; would he be
15 able to do any job at all?

16 A If those were the restrictions, yes, I would
17 agree that would be a problem.

18 Q Okay. Would he be able to drive a truck?

19 A Doubtful.

20 Q Would he be able to drive to --

21 A A tractor-trailer?

22 Q Tractor-trailer.

23 A I -- I agree, he would not be able to.

24 Q And you agree in this case he wouldn't be
25 able to go back and drive a tractor-trailer; is that

1 correct?

2 A Yes, sir.

3 Q If you have an individual that because of a
4 change in his life after a traumatic accident doesn't
5 like to be around people, has no patience, is
6 irritable and has crying spells, would he be able to
7 do the job that you've proffered?

8 A It would depend on the severity.

9 Q Well let's say he has -- is irritable to the
10 extent that it occurs two to three times a day. Would
11 an individual like that -- let's see what you -- what
12 are -- what are some of the jobs you've -- I believe --
13 I'm surprised you didn't put Wal-Mart greeter here,
14 did you?

15 A No, sir.

16 Q But you do have a night auditor position, so
17 that would be dealing with the public; is that
18 correct?

19 A Yes, sir.

20 Q And a customer service representative I
21 said, but I think you came in and even said that
22 because they prefer a high school diploma equivalent
23 that might be a problem; is that -- is that right?

24 A I said that -- are you looking at my labor
25 market research?

1 Q That's correct.

2 A Okay. I believe what I said was two to
3 three did say they did want either a high school
4 equivalency or a GED.

5 Q Okay. So there'd be a preference here that
6 certainly somebody with a high school equivalency or
7 GED; is that correct?

8 A Yes, sir.

9 Q Okay. And Mr. Herndon doesn't have that?

10 A No, sir.

11 Q So if we look down the list we've got night
12 auditor position. That deals with the public; is that
13 -- that a fair statement?

14 A That's fair.

15 Q And a customer representative -- service
16 representative. They deal with the public wouldn't
17 they?

18 A They would.

19 Q And cashier would deal with the public; is
20 that correct?

21 A Yes, sir.

22 Q And a security guard probably would not deal
23 with -- well, a security guard at a medical center
24 probably would deal with the public too, wouldn't he?

25 A I would guess so. Yes, sir.

1 Q And it would certainly be desirable for a
2 person to have patience, not be irritable, to -- to
3 like to be around people and like to be around the
4 public. That would be desirable in a job such as
5 that; is that correct?

6 A Yes, sir.

7 Q In fact, if somebody didn't want to be
8 around people and wanted to stay by themselves and
9 wasn't able to focus and concentrate and remember
10 things, they wouldn't be able to do any of those jobs
11 would they?

12 A If that was the case, yes.

13 Q Okay. And a vehicle operator, I believe in
14 Yemassee if an individual were taking medication then
15 they probably shouldn't be operating a vehicle at all
16 is that correct?

17 A This was a short labor market research. I
18 did not make contact with them. So it didn't have any
19 information with regards to the medications.

20 Q Okay. Gabapentin or narcotic medications --
21 if somebody's taking a narcotic medication or
22 Gabapentin that makes them sleepy, should they drive
23 at all?

24 A I think generally what happens is the
25 physicians tell the person to take their medicine and

1 see what their reactions are. And the reaction should
2 determine whether or not they should be driving.

3 Q Well, it's against the law to take certain
4 narcotics and drive is it not?

5 A I don't know.

6 Q Okay. Finally, if you have an individual
7 whose medications make them drowsy, sleepy to the
8 extent that they rest three or four hours out of a
9 typical day because of those medications, are they
10 able to do any kind of competitive work in the -- in
11 the national or state workplace?

12 A Would you repeat please?

13 Q An individual, because of the medications
14 they take, they are sleepy, drowsy, lethargic for
15 three to four hours out of the typical workday. In
16 other words, they can only work three to four hours or
17 so. They wouldn't be able to do any of those jobs
18 would they?

19 A If that was the case that would be
20 difficult.

21 Q They wouldn't be able to get any competitive
22 employment, correct?

23 A It would be difficult, yes.

24 Q And if an individual, by virtue of the
25 medicines that they have to take, after they take the

1 medicine are unable to -- hypothetical individual
2 based on the medicines they take are unable to focus,
3 concentrate and are sleepy and drowsy say for even an
4 hour after they take the medication, say they lose one
5 to two hours a day right after they take the
6 medication; they have to take the medication a couple
7 of times during the day. Would they be able to
8 compete in a competitive workplace?

9 A If that was the -- if that was identified it
10 would be difficult.

11 Q How much do you charge to testify today?

12 A My workers' comp rate is \$91 an hour.

13 Q Okay. And that is for testimony time, as
14 well as travel time, as well as -

15 A Preparation time.

16 Q -- preparation time?

17 A Yes, sir.

18 Q So as far as the -- the -- your appearance
19 today, can you give us an idea of what -- what that
20 costs?

21 A Just for the appearance here today?

22 Q And the report that you wrote --
23 supplemental report. Well you told -- you told --

24 A I -- I -- I -- let's see it's a three and a
25 half hour round trip, so there's three and a half

1 hours. I waited for about an hour. I'll be here at
2 least two hours. So there's another two hours so.

3 MR. CRUSE: I object to the relevancy of that
4 question.

5 A Five or six hours of work may be provided.

6 MR. HETRICK: I'm going to wrap it up. I think
7 that's all I have. Thank you, sir.

8 THE COURT: Thank you, sir. Mr. Cruse?

9 REDIRECT EXAMINATION

10 BY MR. CRUSE:

11 Q Just a couple of quick points, Mr. Page.
12 You were asked about concerns dealing with the public.
13 Claimant's counsel brought up dealing with the public
14 as a potential limiting factor to somebody's
15 employability. Are there any mentions from the
16 doctors or the medical records or the prescriptions
17 that would limit, to your knowledge in the records
18 that you reviewed, that would limit Mr. Herndon's
19 ability to deal with the public?

20 A No, sir.

21 Q In other words, have any doctor said Mr.
22 Herndon should avoid the public at all cost because of
23 -- due to this work accident?

24 A No, sir.

25 Q You were also asked about an individual -- a

1 hypothetical about an individual who apparently was
2 drowsy and could only work three hours a day or so
3 due to sleepiness and that effect on somebody's
4 employability. Are there any records that you've
5 reviewed where any doctor has limited Mr. Herndon to
6 three hours only of work due to sleepiness?

7 A No, sir.

8 Q So that whole line of questioning about
9 dealing with the public, drowsiness, sleepiness, those
10 are simply hypothetical and according to your reviews,
11 not applicable to the present case?

12 A I didn't see any documentation of that fact.

13 Q Thank you.

14 THE COURT: Mr. Hetrick, anything more?

15 MR. HETRICK: I am -- I don't have anything
16 further, Your Honor.

17 THE COURT: Okay. All right. Thank you. Sir
18 you can step down. Thank you for your testimony and
19 being here today. And that's it, right?

20 MR. HETRICK: That's it.

21 THE COURT: All right. There being nothing
22 further that concludes this proceeding.

23 (The hearing concluded at 12:47 p.m.)

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
 COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
 FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 96
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
 OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 8TH DAY OF JUNE,
 2016.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES DECEMBER 31, 2024

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA
 803-397-0189

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1406130

Billy Herndon,
Claimant,
v.
G&G Logging, Inc.
Employer,
and
Palmetto Timber,
Carrier/Defendants.

COPY

FULL COMMISSION PANEL HEARING

Tuesday, October 18, 2016
10:27 a.m. - 10:51 a.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 18th day of October, 2016 before Barbara S. Ham, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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Melody James
Aisha Taylor

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INDEX

PAGE

Certificate 25



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1 COMMISSIONER BARDEN: All right. Let's call the
2 case.

3 COURT REPORTER: Today is October 18th, 2016. This
4 is South Carolina Workers' Compensation Case
5 Number 1406130. This is the case of Billy
6 Herndon, Claimant vs. G&G Logging, Inc.,
7 Employer and Palmetto Timber, Carrier. The
8 Appellant is the Claimant/Defendant represented
9 by Benjamin T. Cruse. The Respondent is
10 represented by John R. Hetrick. Each side is
11 allowed ten minutes for oral argument and the
12 Appellant three minutes in reply. You are
13 requested to argue the grounds of exception and
14 stay within the record.

15 COMMISSIONER BARDEN: All right. Mr. Cruse, for the
16 Defendants.

17 MR. CRUSE: Thank you, Commissioners. The purpose
18 of the appeal today is to attempt to reach a
19 fair and just result to both parties. The
20 defense has appealed the order on two primary
21 grounds. The first and foremost grounds for
22 appeal is achieving a fair and just wage
23 calculation. And the second is the ultimate
24 award for permanent and total disability. With
25 regard to the correct calculation for



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1 Claimant's average weekly wage and compensation
2 rate. Claimant earned 13 weeks of wages with
3 G&G Logging who is the employer in this case
4 prior to his accident. Due to the short of
5 amount of time worked prior to his accident the
6 Claimant's average weekly wage was calculated
7 using the actual number of weeks worked divided
8 by or the total earned divided by the actual
9 number of weeks worked and this resulted in an
10 average weekly wage of \$695.00 and a
11 compensation rate of \$463.36. The Claimant
12 received temporary total disability benefits at
13 that rate since the date of his accident.
14 During the course of discovery defense learned
15 that Claimant had voluntarily retired in
16 January of 2012 at the age of 62 and began
17 receiving social security retirement benefits.
18 Defendants obtained wage records from his prior
19 employer, Bootle Logging, which indicated that
20 following his retirement while receiving
21 retirement benefits the Claimant worked on a
22 part time basis to supplement his income and
23 earned about \$7,000.00 in 2012 and \$8,000.00 in
24 2013 while working for Bootle Logging. In 2014
25 Claimant came to work part time for G&G Logging



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1 and out of the 19 weeks since his hire date
2 Claimant earned wages in 13 of those weeks in
3 total earning just over \$9,000.00. Defendants
4 learned in a vocational report from George Page
5 that Claimant told Mr. Page since his
6 retirement at age 62 he began working part time
7 and knew he would make up to \$15,000.00 per
8 year prior to his retirement benefits reducing.
9 The actual amount set by the Social Security
10 Administration for 2014 is \$15,480.00 which is
11 a cap they put on income prior to reducing the
12 retirement benefits. Claimant reported to Mr.
13 Page that it was his plan to work until he
14 reached \$15,000.00 and then it was his plan not
15 to work the rest of the year. Finally,
16 Claimant told Mr. Page that his employer, G&G
17 Logging, was aware of this plan. During the
18 course of the hearing the Claimant himself
19 testified and confirmed that it was his planned
20 intention in 2014 while working for G&G Logging
21 to earn as much as he could without reducing
22 his retirement benefits. In fairness to both
23 parties and just outcome are mandated by
24 Section 421-40 when calculating an average
25 weekly wage based upon wages for less than 52



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1 weeks. Defendants assert that an average
2 weekly wage originally calculated in this claim
3 is not fair and just based upon Claimants own
4 admission regarding his plan to cap his income
5 at \$15,000.00 to avoid the retirement offset
6 and furthermore rewards Claimant for his part
7 time work by artificially inflating his
8 compensation and punishes the employer for
9 hiring a part time worker.

10 **COMMISSIONER BARDEN:** And what do you think those
11 figures should be?

12 **MR. CRUSE:** His average weekly wage should be based
13 upon the full \$15,480.00 cap that, you know, he
14 testified was his own plan to work. I mean he
15 had only earned \$9,000.00 at the time but the
16 year hadn't ended so I think it would be unfair
17 and unjust to cap his benefits at \$9,000.00 and
18 we would give him the benefit of believing him.

19 **COMMISSIONER BARDEN:** And what would the calculations
20 be if we based it on the \$15,480.00?

21 **MR. CRUSE:** The average weekly wage would be
22 \$297.69. The compensation rate would be
23 \$198.47. Claimant's average weekly wage as
24 calculated initially in this claim results in
25 a full time yearly salary totaling over



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1 \$36,000.00 which is more than double what he
2 admitted he was going to cap his own income and
3 earnings at in 2014. It is more than four
4 times of what he had earned in any year since
5 his retirement. If we take Claimant at his
6 word as he reported to Mr. Page and testified
7 before the Hearing Commissioner that he was
8 planning to earn \$15,000.00 in 2014 it is plain
9 to see his average weekly wage was grossly
10 overinflated and does not accurately represent
11 his loss of earnings. Nor is that calculation
12 fair and just to both parties as the act
13 requires. This argument is not a novel
14 argument it is supported in full by the Bennett
15 case which was heard by the Supreme Court which
16 is essentially identical to the facts before
17 you. Bennett retired at the age of 62 and
18 continued working part time while receiving
19 social security retirement. Bennett did not
20 exceed the income cap so as to avoid the offset
21 in his retirement. Bennett was hurt on the job
22 and his average weekly wage was calculated in
23 the same method as it was in this claim
24 initially using the number of weeks worked
25 divided by the total earnings. The average



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1 weekly wage calculated for Bennett in that case
2 was again nearly double what he had earned in
3 any year prior. The Supreme Court held this
4 calculation was unfair to the employer as it
5 reflected income more than twice of what he had
6 worked in the past while receiving retirement
7 benefits. Respondents argue in their brief
8 that to apply Bennett to the facts of this case
9 is in error as it would require speculation on
10 how much Claimant may have worked in the
11 future. Appellant asserts this argument fails
12 as the best evidence for probable future
13 earnings or Claimant's prior earnings and
14 pattern of earnings as well as his direct
15 testimony. If Respondent's position is
16 affirmed any claimant working part time would
17 be free to argue they are planning to earn more
18 or work more in the future, any claimant
19 working in a part time capacity could tell the
20 Commission he is planning to work full time the
21 next year after his accident and without more
22 which there is no more in this case aside from
23 that assertion they would win if the
24 Respondents position was affirmed. Respondents
25 state speculation to cap income despite the



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1 Claimant's testimony however then it goes on to
2 speculate regarding the specific arrangement in
3 the Bennett case between Bennett and his
4 employer. Respondents, "Bennett may have
5 controlled the employment relationship and
6 dictated the terms of his employment." "One
7 can surmise Bennett was a skilled carpenter and
8 a valued employee." None of these speculative
9 statements are supported by the holding of
10 Bennett or discussed at all by the court.
11 While it's true Bennett capped his income for
12 nine years after his retirement and Claimant
13 capped his income for three years after his
14 retirement, that discrepancy alone does not
15 distinguish the Bennett decision from the case
16 at hand. The court found a pattern and a plan
17 of employment which was when an income based on
18 the social security offset. As the Defendant's
19 position that a three year pattern of capping
20 income together with testimony from the
21 Claimant confirming the plan to cap his income
22 is more than sufficient to support a
23 recalculation of the average weekly wage.
24 Claimant then speculates further in the
25 Respondent's brief in an attempt to establish



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1 his future earning capacity saying that "his
2 employer likely controlled the employment
3 relationship." "He may have needed to work
4 more just to keep his job" and "maybe Claimant
5 left Bootle to earn more money." Again none of
6 these statements are supported by the record or
7 testimony and are pure speculation. Respondent
8 then asked this Commission to take Claimant at
9 his word that he would work when he was needed
10 as support for his higher average weekly wage.
11 However, Claimant testified during the course
12 of the hearing that he would work as needed for
13 Bootle in 2012 and '13 and again only earned
14 \$7,000.00 to \$8,000.00 in those years. The
15 lone assertion that Claimant would work as
16 needed is not support for a higher average
17 weekly wage in light of the testimony and
18 pattern of this claim. Was that my time?

19 COMMISSIONER BARDEN: No.

20 MR. CRUSE: Okay.

21 COMMISSIONER BARDEN: You can keep going.

22 MR. CRUSE: Okay. Respondent's then go over some of
23 the social security regulations which he admits
24 are complicated and lists numerous potential
25 outcomes with regard to future withholdings,



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1 deferred benefits and ultimately arrives at the
2 final question in this claim which is what is
3 a fair projection of Claimant's probable future
4 earning loss. Respondent's answer which he
5 would have this Commission adopt is that a fair
6 projection of Claimant's lost earnings is
7 "clearly the amount of earnings which Claimant
8 could earn working full time." That is on page
9 25 of Respondent's brief. Claimant was not
10 working full time for the Appellants. Claimant
11 had not worked full time since his retirement
12 but now at this time and the Respondent's find
13 the fair assessment of the Claimant's average
14 weekly wage is to assign him full duty -- full
15 time salary and paid compensation based upon an
16 artificially inflated full time salary. Again
17 this calculation is grossly unfair and unjust
18 to the Appellants and the Appellants assert a
19 recalculation as required to achieve a fair and
20 just result as the act requires. Again that
21 fair and just result is basing an average
22 weekly wage on the social security income cap
23 which is \$15,480.00 resulting in an average
24 weekly wage of \$297.69. That calculation is
25 supported again by Claimant's testimony, the



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1 testimony of George Page at the hearing, the
2 vocational report and evidence in the record as
3 well as the wages submitted from his prior
4 employment. The Hearing Commission in a 26
5 page order made one finding of fact and one
6 conclusion of law regarding Claimant's average
7 weekly wage and compensation rate. The finding
8 of fact ---

9 COMMISSIONER BARDEN: Are you referring to the Form
10 20?

11 MR. CRUSE: I'm sorry.

12 COMMISSIONER BARDEN: Are you just referring to the
13 Form 20?

14 MR. CRUSE: That's correct. That's correct. The
15 Form 20, I'm sorry, finding of fact 18 states
16 the Form 20 is correct and conclusion of law
17 number four states the compensation rate is
18 \$463.33. No other findings of fact or
19 conclusions were made in support of these two
20 findings. Appellants will request that those
21 two findings be reversed to find an average
22 weekly wage calculated based upon earnings of
23 \$15,480.00 per year. Secondly, the Respondents
24 assert the Claimant is not permanently and
25 totally disabled as a preponderance of the



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1 evidence and the record does not support the
2 notion that Claimant has completely lost the
3 ability to earn wages.

4 COMMISSIONER BARDEN: Okay. And you will have three
5 minutes to rebut.

6 MR. CRUSE: Thank you.

7 COMMISSIONER BARDEN: Thank you.

8 MR. HETRICK: Thank you, Commissioners.

9 COMMISSIONER BARDEN: Yes, sir.

10 MR. HETRICK: May it please the Commission. Bennett
11 can be distinguished on its facts. Colonna is
12 distinguishable on the law and a 26 percent
13 category four whole person impairment rating
14 based on an injury to the Claimant's neck in
15 this case with radiculopathy into the left arm
16 of a 60 year old -- 64 year old log truck driver
17 with a 10th grade education and no transferrable
18 skills, we believe that speaks for itself. That
19 being said I want to address since the
20 Defendants spent the bulk of their time going
21 over the Bennett case I'll spend some time
22 addressing that also. First of all the
23 Defendants talk about fairness. They filed the
24 Form 20 and then sat on it two years before this
25 issue ever came up. That being said however I



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1 think its very significant in the *Bennett* case
2 that *Bennett* had worked for Smith Builders for
3 16 to 18 years before he began drawing his
4 social security at 62. He then continued to
5 work for nine years after that and continued to
6 draw a reduced amount of \$2,500.00. Now
7 assuming at that time that he could have drawn
8 full social security at 65, I think it was at 65
9 at that time, earlier time, and there wouldn't
10 have been any kind of penalty offset. He still
11 continued to draw the \$2,500.00 for six years
12 until he is injured at age 71. This case is
13 different. It's different although our Claimant
14 in this case, Mr. Herndon, likewise retired at
15 age 62. He found that he wasn't able to make
16 ends meet in his words at that time and he went
17 back to work. He works two years at Bootle and
18 the Defendants are correct he made I think
19 \$7,000.00 one year and \$8,000.00 one year and
20 then he left Bootle. Now the Defendants want
21 you to speculate that -- they want the
22 Commission to speculate that it was his
23 intention all along to just draw these
24 \$7,000.00, \$8,000.00, \$9,000.00 dollars or what
25 have you and that's not what the testimony says.

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1 The testimony says he planned to work as much
2 work as they would give him. It is entirely
3 plausible that he left Bootle to go G&G where he
4 was eventually injured because he couldn't get
5 enough work. Maybe he wanted to work more than
6 \$7,000.00 and \$8,000.00 a year which Bootle
7 provided and that's the reason he left to go to
8 G&G. That's -- they said well that may be
9 speculation. Well it may be speculation but
10 they are asking you by the same token to
11 speculate that the Defendant or the Claimant in
12 this case was not going to work more than the
13 social security penalty cut off at that time
14 which was \$15,400.00. Now I want to look at the
15 testimony, his testimony, and I will cite the
16 transcript of the hearing. This is on page 58
17 of the hearing and basically on cross-
18 examination by Mr. Cruse. The way that was
19 reported on your W-2 does that accurately
20 reflect the wages that you made. Right. Okay,
21 yeah. Okay and those two years with Bootle
22 Logging, 2012, 2013, so it was after your
23 retirement was it your intention not to work or
24 not to exceed that threshold. No sir. Answer,
25 no sir I just work you know when he needed



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1 somebody to work. It wasn't really no limit on
2 what I was going to work. Question by Mr. Cruse
3 so you never had a plan or an idea of not to
4 exceed the \$15,000.00 threshold. Answer, no
5 whatever he needed after I decided I had to go
6 back to work was you know what I was going to
7 work. Question, and then you went to work for
8 G&G in 2014, is that correct. Yes, sir I did.
9 And you worked approximately 13 weeks or so.
10 Yes, sir until the accident in May. Question,
11 okay and during that period of time while you
12 were working for G&G you earned about \$9,285.00
13 does that sound right. Yes, sir that's close.
14 And was it your intention in 2014 then to earn
15 as much as you could without reducing your
16 retirement benefits. Yes, sir. And did you
17 tell that information to George Page during your
18 vocational evaluation. I don't remember whether
19 I did or I didn't. Okay. And if he put in his
20 report do you have any reason to believe that he
21 made it up or you would have been sometime you
22 may have talked about it. No, we may have
23 talked about it I just don't remember. Did you
24 discuss that arrangement with Greg Gruber and of
25 course that was with G&G? Me and Greg talked



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1 about what I could make and then what we would
2 do after I made that. We would make that
3 decision when we got to that point. Okay so
4 y'all had a discussion about giving up work up
5 to a certain or giving you work up to a certain
6 point and that was about \$15,000.00 and then we
7 would discuss what we were going to do from then
8 on. So that decision, Commissioner, had not
9 been made at that time. They are asking you to
10 speculate that you know he would quit. I want
11 to look at the *Bennett* case also from the
12 standpoint of the language in the *Bennett* case
13 and what the purpose of the law is. The purpose
14 of the law is to make a determination as to what
15 are Claimant's probable future earnings. Even
16 if you assume that the law creates what I call
17 a donut hole and I put that in the brief. That
18 just basically would affect him in the year of
19 2014. In the year of 2015 he would turn 66 and
20 at that time the threshold -- the penalty
21 threshold would have been \$41,000.00. He was
22 making less than \$41,000.00 anyway so he would
23 have been to make his full earnings at \$695.00
24 a week if he worked full time and then after of
25 course he was 66 he could continue to earn that.



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1 So the Defendants want you to based on primarily
2 the testimony -- the hearsay testimony of Dr.
3 Page or Mr. Page what supposedly the Claimant
4 told him. They want you to make a determination
5 or to speculate that the Claimant would have
6 quit working when he earned \$15,400.00 and that
7 is just not there. That's not the case.

8 **COMMISSIONER JAMES:** And Page actually came and
9 testified in this case.

10 **MR. HETRICK:** He did come testify. That's correct.

11 **COMMISSIONER JAMES:** Is there anything in the
12 transcript with regards to -- I didn't see it in
13 the report with regards to his testimony as to
14 what Mr. Herndon said?

15 **MR. HETRICK:** I don't think there is much in there or
16 I'm not aware of that. There may be something.
17 If there is I didn't pick it up.

18 **COMMISSIONER BARDEN:** Okay. Thank you.

19 **MR. HETRICK:** I think there is a clear distinction
20 here -- a clear factual distinction in that
21 there's no question about *Bennett*. All right.
22 There's no question about *Bennett* continuing to
23 work after he was 65 and for a long time after
24 he was 65. He clearly showed that that was his
25 intention.



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1 COMMISSIONER JAMES: Yes, sir.

2 MR. HETRICK: Also I point out and I think it's
3 important Smith Builders needed Bennett he was
4 a skilled carpenter. Certainly the argument can
5 be maybe made that Bennett continued to work or
6 they allowed him to continue to work for
7 \$2,500.00 a year and make that because they were
8 glad to have him. That wasn't the case with
9 G&G. He worked there 13 weeks. It may very
10 well have been the case that he had to continue
11 to work to keep his job at G&G. And so the
12 fairway in this case is what has been done.
13 What the Defendants did in their Form 20 and
14 that was to divide the earnings by the weeks he
15 worked and come up with that. I want to speak
16 briefly about the decision itself. Dr. Johnson
17 gave the Defendant or gave the Defendant or gave
18 Claimant the 26 percent impairment rating to the
19 whole person based on the neck injury and the
20 subsequent surgery by Dr. Pacult. It's also
21 significant that in this case after Dr. Pacult's
22 surgery, after his neck surgery, he continued to
23 have radiculopathy affecting another body part,
24 the left arm. The single Commissioner made a
25 determination that Dr. Johnson's 26 percent



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1 rating was much more credible than Dr. Gee's
2 nine percent rating. And he states that clearly
3 in his findings of fact. That would be finding
4 of fact in the decision and order. See finding
5 of fact eleven and that's decision and order
6 page 22. It's also important that with respect
7 to the vocational experts Dr. --- is that ...

8 **COMMISSIONER BARDEN:** You can finish your thought.

9 **MR. HETRICK:** Well let's see. The vocational
10 experts, Mr. Page and Dr. Pearsall that the
11 single Commissioner gave much more credible or
12 much greater credence to Dr. Pearsall's report
13 as opposed to Mr. Page's report.

14 **COMMISSIONER BARDEN:** All right.

15 **MR. HETRICK:** I would simply like to say with respect
16 to the Colonna argument and I think we've gone
17 into great detail and I would ask you to simply
18 look at the brief on that. Thank you.

19 **COMMISSIONER BARDEN:** All right. Thank you so much,
20 Mr. Hetrick. Did you have a question?

21 **COMMISSIONER JAMES:** No.

22 **COMMISSIONER BARDEN:** Okay. Mr. Cruse?

23 **MR. CRUSE:** Thank you, Commissioners. Just a couple
24 of points of clarification. The fact that
25 Appellants are asking for speculation is really



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1 not an issue. There was a bunch of the
2 transcript which was read just now and there was
3 a very specific question and a very specific
4 answer to that question. The specific question
5 was was it your intention to limit your income
6 in 2014 while working for G&G Logging. The
7 specific answer was yes. I think that is what
8 it boils down to whether or not you need to
9 speculate on whether or not you would have
10 worked more or would have worked less. His
11 specific answer was he was planning to limit his
12 income to \$15,000.00 to avoid the social
13 security offset. With regard to the vocational
14 evidence and I know I'm limited on time so I
15 will avoid going through all the medical
16 evidence and the fact that it is a single member
17 injury to the neck with a symptom that affects
18 the arm and they are intertwined to the fact
19 that an injury affects another member of the
20 body is not alone sufficient. You need an
21 impairment or you need a separate injury to that
22 body pursuant to *Singleton* and *Colonna*. If you
23 have a shoulder injury clearly your hand and
24 your arm and your elbow are going to be
25 affected. Those are additional body parts. You



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1 have to have more than just a simple affect or
2 a mere affect to a body part to have a second
3 injury as is clear in this case. The vocational
4 evidence which was touched on briefly that the
5 Hearing Commissioner found that Dr. Pearsall's
6 report I guess more credible than Dr. Pages. Of
7 particular note in Dr. Pearsall's report, the
8 standard that he is using for vocational
9 evidence although he does note that Claimant
10 possesses viable vocational and occupational
11 skills and has transferrable vocational and
12 occupational skills he concludes claimant is
13 completely incapable of returning to work as he
14 did not have the capacity for "substantial
15 gainful employment." Dr. Pearsall defines
16 substantial gainful employment as only those
17 individuals who have the capability of working
18 eight hours per day for 40 hours per week. This
19 standard was refuted in whole by George Page at
20 the hearing and in his report as completely
21 incongruous to the purpose of vocational
22 rehabilitation and if this idea of employability
23 is affirmed essentially anybody that is limited
24 to part time work or any limited work at all
25 would be supported as evidence for permanent and

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1 total disability. His defense of that is just
2 completely not supported by the record and again
3 incongruous with vocational rehabilitation and
4 employability. Mr. Page did testify at the
5 hearing regarding his conversation that he had
6 with the Claimant. It's in the transcript. I
7 do not have any of that cited but it's certainly
8 in the hearing transcript regarding that
9 specific conversation and I believe the Claimant
10 himself even admitted that if it was in the
11 report that that conversation did take place as
12 it was reported so I don't think there's any
13 question of whether or not that conversation
14 took place based upon the testimony, the reports
15 and the Claimant's assertions. I believe that
16 is all that I have at this point. I appreciate
17 y'all's time.

18 **COMMISSIONER BARDEN:** Thank you so much. That
19 concludes this proceeding.

20 **MR. HETRICK:** Thank you, Commissioners.

21 **COMMISSIONER BARDEN:** I hope everyone has a good rest
22 of the day.

23 **MR. CRUSE:** Thank you. I have a copy of that case if
24 y'all want to have it.

25 **COMMISSIONER BARDEN:** Commissioner James has already



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1 pulled it up.

2 COMMISSIONER JAMES: We got it.

3 MR. CRUSE: You've got it.

4 COMMISSIONER BARDEN: They're ??? and I'm not. Thank
5 you so much.

6 (There being no further questions, the hearing
7 concluded at 10:51 a.m.)
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CERTIFICATE

This is to certify that the hearing consisting of twenty-five (25) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 18, 2016.

Barbara S. Ham

Barbara S. Ham
Court Reporter

Notary Public for South Carolina
My Commission Expires: April 13, 2026



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06-17-15; 09:03AM;

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Columbia, South Carolina 29202-1715
(803) 737-5723

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7/ 7

Physician's Statement

Claimant's Name: Billy Wayne Herndon Employer's Name: _____
Physician's Name: JAMES GEE Insurance Carrier: WALK, LUTER & ASSO.
Practice/Clinic: _____ SCWCC File No: _____
Preparer's Name: INDUSTRIAL MEDICINE
750 WEST WESMARK BLVD
SUMTER, SC 29150
Phone: 803.774.8862

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§ 42-15-60, 42-1-1/2 or 42-11-10.

Date of Injury or Illness: 5-12-2014

Date of first office visit: N/A Date of last visit: 4-27-2015 Dr. Pacult

Diagnosis or nature of Injury or Illness: Radiculopathy

Body part(s) injured: Cervical Body part(s) affected: _____

Date of Maximum Medical Improvement: 4-27-2015

Based on the AMA Guidelines, the claimant has sustained a 9 % medical impairment to whole person injured body part(s) and a _____ % medical impairment to other affected body part(s).

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

☒ The claimant is able to return to work with the following restrictions:

limit "heavy" work or strain

☐ The claimant is unable to return to work at his or her current employment.

☐ Claimant possesses retained hardware casually related to this injury.

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

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

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

no further care anticipated for
accident of 5-12-2014

Dr. Pacult / James Gee
Treating Physician

6-11-15
Date

7
E/7



TUOMEY

MEDICAL PROFESSIONALS

250 W. Venable Blvd., Suite 100
Sumter, South Carolina 29130

INDUSTRIAL MEDICINE AND WILDERNESS
COMMUNITY HEALTH INITIATIVES

TEL: 803.774.0077 FAX: 803.774.0077
KAM@tuomey.com

133-77-72-203

Tuomey witnessed the claim and Wellness
Also Assessment and Medical Evaluation for this date for additional information

PERMANENT IMPAIRMENT RATING

Elly Wayne Hamilton
Date: June 11, 2015

Elly Wayne Hamilton was seen today, 6/11/2015, for a permanent impairment rating concerning his cervical
injury.

On 6/12/2014 while driving for G & G Logging, the patient was in a "head-on" motor vehicle accident. Later that
same evening, he saw his family doctor and was prescribed over a period of time medications and physical
therapy. The patient did not improve and apparently experienced reflexive pain of the chest and arm and was
referred to Dr. Paccini, a "spine specialist."

After continued and appropriate care and evaluation, the patient underwent cervical discectomy and
decompression of C6-C7 (it appears that the date was January 13, 2014).

After appropriate follow-up and physical therapy, the patient was discharged by Dr. Paccini on April 27, 2014, at
which time, Dr. Paccini felt the patient had reached "maximum medical improvement."

The patient did not return to his job as a truck driver and chose to retire. He based a significant amount of his
decision on the fact that he could not even drive his private vehicles without having significant neck discomfort.
He indicated at times that the "vacation" when driving causes cervical pain.

The pain that the patient is experiencing now is certainly an improvement from his preoperative situation. He
does not have reflexive pain or paresthesias in the left arm as he did prior to surgery. He now describes an
"aching pain" involving the entire cervical area with some radiation like the posterior part of his head and some
down into the left strap shoulder muscles.

Although this pain is aggravated by certain motions, he does relate at times he has an aching discomfort for
"an obvious reason." He indicates that the most painful motion is left rotation. Right rotation is very mildly
painful. Flexion and extension are not as painful as left rotation but more painful than right rotation. He has
some difficulty lifting or standing and he feels he has some residual weakness. He takes naproxen 800 mg
three times per day and Flexcil twice per day. This is prescribed by his family physician.

On examination, I find that the patient has decreased range of motion. The evaluation is a little inconsistent
with command movements compared with voluntary movements that are noticed during the examination.

The patient's motion is 30-45 degrees and is painful. Extension varies from 20-40 degrees and is painful.
Rotation left and right are 40-45 degrees with the left rotation being more painful than right. Spurling's sign is
not present. Deep tendon reflexes are equal. Motor, sensory, and vascular examinations of the upper
extremities are essentially equal. The patient has a fine grip strength deficit on the left but he is a right handed
individual and I think the difference is acceptable. Other muscle groups are intact. Allen's test is normal. There
is no sensory deficit and deep tendon reflexes are essentially equal.

The patient has neck tenderness at C6-C7. He is also tender over a large area of the supraspinatus of the
posterior left shoulder. The supraspinatus and infraspinatus areas and the motion of his left shoulder is
slightly decreased. I think this is from trauma and adhesive capsulitis and is improving with therapy.

133-77-72-203

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Based on the above plus my many years of orthopedic experience and with use of the Reference Guides, I feel that the X-ray based impairment and the range of motion impairment correlate quite well. It is my opinion that the patient has a 5% permanent impairment of the whole person. I cannot differentiate whole person from spine.

If there are questions or if this report does not meet your needs, please let us advise.

James F. Gee, M.D.
JEG:alm DWZ 6/17/15



Medical University of South Carolina
Charleston, SC
843-792-2123

PP Outpatient Note

Patient: HERNDON, BILLY

MRN: 001417354

Attending:

Date: 8/13/03 12:00 AM

Status: INITIAL

Date: 08/13/03: Herndon, Billy: 1417354

Title: UDC Private

Providers: EB

Major Problem: Hypertension

Other Problem: Peripheral Neuropathy

Chief Complaint: The bottom of my feet have been going numb

HPI: Mr. Herndon is a 63 year old man with a history of hypertension that is relatively new in onset who comes to see me as a new patient today. The patient has been having numbness of the bottom of his feet for greater than a year. His toes also hurt at night. The patient reports his toenails are brittle and hard, but he has not noticed any other problems with his feet. He describes the numbness as a sensation of pins and needles as though his feet have gone to sleep and are just waking up. When he went to see his local doctor concerning this, he discovered the high BP. The patient has been taking medication since then and reports that he has good results. He has had some blood work done by his local doctor as well, but does not have these results today.

Past Medical History: None, including no surgery.

Medications: _____ HCTZ once a day.

Allergy: NKDA

Family History: The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

Social History: The patient is married and lives with his wife. He drives a truck, but reports that he comes home every day. He quit smoking cigarettes in 1986 and smoked 2 1/2 packs per day for approximately 30 years before then. He also quit drinking alcohol ten years ago and reports that he just thought it was time to quit.

Health Maintenance: The patient is sedentary with no regular exercise. He does eat fruits and vegetables and reports he does not eat out on a regular basis. His weight has been stable for ten years. His last DT booster was approximately 4-5 years ago. He has never had the flu shot. He has not had any colon cancer screening. He has had his cholesterol tested and reports that it was high. The patient does not wear his seatbelts. He hunts regularly and has a gun. He is aware of gun safety.

Review of Systems: The patient does have snoring and often wakes up feeling as though he has not had rested sleep. He falls asleep at times when he is not meaning to and has had headaches. The remainder of the review of systems is negative.

Physical Exam: Weight 240, temp 97.7, pulse 96, BP 129/82. In general, this is a healthy appearing man in no apparent distress. HEENT exam: head is normocephalic, atraumatic, PERRLA, EOMs were intact. Sclerae non-icteric. Nose is without discharge. Oropharynx is normal. The dentition is poor. Neck is supple with no adenopathy. The thyroid is non-palpable. Ears - TMs are normal bilaterally. Lungs are clear to auscultation. Cardiac exam - regular rate and rhythm with a 2/6 systolic murmur heard best at the lower left sternal border and radiating to the apex. Abdomen is obese, soft, non-tender with positive bowel sounds. No HSM or masses. Extremities - there is no edema. Skin - the patient has thickened, yellow

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Page1



Medical University of South Carolina
Charleston, SC
843-792-2123

PP Outpatient Note

Patient: HERNDON, BILLY

MRN: 001417354

Attending:

Date: 8/13/03 12:00 AM

Status: INITIAL

toenails. He has maceration of the skin between his toes bilaterally. Neuro exam - the patient is awake, alert and oriented times three. Cranial nerves 2-12 were intact. Sensation - the patient has decreased light touch, pinprick, vibration sensation over the toes and anteriorly to the ankles bilaterally. On the plantar surface the patient has decreased sensation in these modalities to the mid foot. The patient has intact temperature sensation. His proprioception is abnormal on the right, but not on the left. Strength is 5/5 in all extremities in all muscle groups. DTRs are normal throughout. Toes are downgoing bilaterally. Gait is normal.

A and Plan: (1) Peripheral neuropathy - the patient reports he has had some elevated glucoses, but has never had a history of diabetes. Differential diagnosis at this point would include diabetic neuropathy, neuropathy secondary to thyroid disease, B12 deficiency, folate deficiency. He may also have a problem with radiculopathy giving him the altered sensation in his feet. HIV disease can also do this. The patient has no risk factors for this. We will start with blood work to look for any of these abnormalities. If this is all within normal limits, then I will send the patient for NCVs. If I am still unable to find an etiology, I would consider Neurology referral. (2) Tinea pedis - the patient has onychomycosis and tinea pedis. We will use OTC fungal creams to treat this. (3) Probable sleep apnea - the patient does have multiple symptoms of sleep apnea and has elevated BP as well. He does not want to do a sleep study at this point, but would like to defer until we have discovered an answer about his peripheral neuropathy. (4) Hypercholesterolemia - will check the patient's fasting lipid profile. (5) Hypertension - the patient's BP is under good control today and he will continue his present medications. (6) Health maintenance - the patient needs to have colon cancer screening and exercise and weight loss. I have counseled him about the use of seatbelts today. I will plan to see the patient back in three months or sooner if warranted according to his test results.

Dictated By: Elisha L. Brownfield, M.D.

ELB/ndh

SIGNED BY ELISHA BROWNFIELD, M.D. (EB) 09/03/03

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Page2

5



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Charleston, SC

843-792-2123

PP Outpatient Note

Patient: HERNDON, BILLY

MRN: 001417354

Attending:

Date: 11/12/03 12:00 AM

Status: INITIAL

Date: 11/12/03; Herndon, Billy: 1417354

Title: UDC Private

Providers: EB

Major Problem: Diabetes Mellitus

Major Problem: Dyslipidemia

Major Problem: Hypertension

Major Problem: Peripheral Neuropathy

S: Mr. Herndon is a 53 year old man with the above medical problems who returns for follow-up today. The patient reports that overall he has been doing well. He had one episode of a low glucose measuring 85 and did have some symptoms of hypoglycemia related to this. Otherwise his blood sugars have been running between 110 and up into the 140s. He denies any polyuria or polydipsia. He continues to lose weight and is very adherent to the diabetic diet. He continues to have the pain and numbness in his feet. The patient did try the Lipitor again after he had quit because of the right shoulder pain. He noticed a resumption of the right shoulder pain, so he has stopped it completely. The patient refuses the flu shot. The patient reports he had his NCVs two weeks ago.

O: Weight 230.3 pounds which is down from 232 on last visit, BP 107/70, temp 97.8, pulse 65. In general, healthy appearing man in no apparent distress.

On 10/21/03 the patient's cholesterol was 224, triglycerides 244, HDL 32, LDL 143. Liver function tests were normal. His NCVs on 10/21/03 showed a predominantly demyelinating sensory, motor polyneuropathy. The sensory modes were more involved than motor and showed mild axonal involvement. There was a focal median neuropathy of the right wrist and no evidence for polyradiculopathy.

A and Plan: (1) Diabetes mellitus - the patient is doing an excellent job in caring for his diabetes and his glucoses have fallen dramatically. I will check the patient's hemoglobin A1C when he comes back to see me in approximately three months. (2) Neuropathy - the patient's NCVs seem to be consistent with a diabetic neuropathy. I have discussed this with the patient and told him that we could try medication if this is bothersome to him, or else we can see if it improves as his blood sugars improve. He does not want medical treatment at this time and so we will follow his symptoms. The patient has been educated on foot care. (3) Dyslipidemia - the patient does need treatment for his high LDL. I have put him on Zocor 20mg qhs. When he returns in 2-3 months, I will check his fasting lipids as well as his liver panel. His LDL goal would be less than 100. We will watch for any symptoms of the left shoulder pain on the Zocor. The patient will continue to follow-up with diabetic teaching as noted.

Dictated By: Elisha L. Brownfield, M.D.

ELB/ndh

Rx: ZOCOR 20MG 1 TAB QHS, 30, Ref: 2

SIGNED BY ELISHA BROWNFIELD, M.D. (EB) 01/27/04

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Page1



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Charleston, SC
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PP Outpatient Note

Patient: HERNDON, BILLY

MRN: 001417354

Attending:

Date: 3/21/06 4:12 PM

Status: INITIAL

Date: 03/21/06 : 04:12pm

Title: UNIVERSITY INTERNAL MEDICINE

MEDICAL UNIVERSITY OF SOUTH CAROLINA

Providers: eb:ksd

BILLY HERNDON

56 Year old male

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

ACTIVE PROBLEM LIST:

CAD

HYPERTENSION

PERIPHERAL NEUROPA

DIABETES MELLITUS

HYPERCHOLESTEROLEM

CHIEF COMPLAINT: Right wrist pain

HISTORY OF PRESENT ILLNESS: 56 Year male with problems as noted here today for episodic visit. He was seen 4 days ago by his primary care physician and reported some right wrist pain. He was also having some numbness in the hand at night and it was thought to be due to carpal tunnel syndrome. He works as a mechanic. The pain however has persisted despite getting a splint. He awoke this morning with increased pain, swelling of right wrist. He has been taking motrin 400 mg q2-4hrs. He has continued stiffness. No known trauma. No prior hx of gout or hx of great toe pain. Hx of diabetes mellitus.

ROS - as per HPI and all others negative.

FAMILY HISTORY: The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

SOCIAL HISTORY:

Patient continues to live with his wife and is not smoking.

CURRENT MEDICATIONS:

Rx: ASPIRIN EC 81MG 1 TAB QD - days, 30, Ref: 5

Rx: GLUCOSE STRIPS USE UD - days, 1 BOTTLE, Ref: 11

Rx: LANCETS USE UD - days, 1 BOX, Ref: 11

Rx: ELAVIL 25MG 1 TAB HS - days, 90, Ref: 3

Rx: GLUCOPHAGE 500 MG 1 tid - days, 90, Ref: 11

Rx: LAMISIL 250MG 1 TAB QD - days, 30, Ref: 2

Rx: UNIRETIC 12.5/15 1 TAB QD - days, 30, Ref: 11

Rx: CIALIS 20 MG 1 PRN - days, 24, Ref: 6

Rx: PLAVIX 75MG 1 TAB QD - days, 30, Ref: 2

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Page1



Medical University of South Carolina

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PP Outpatient Note

Patient: HERNDON, BILLY

MRN: 001417354

Attending:

Date: 3/21/06 4:12 PM

Status: INITIAL

Rx: ZOCOR 40MG 1 TAB QHS - days, 90, Ref: 3

Rx: ATENOLOL 25 MG 1 TAB QD 30 days, 30 TAB, Ref: 0

Rx: FLU VACCINE 1 days, , Ref: 0

ALLERGIES: Allergies:

NKDA

PHYSICAL EXAM:

Temp: 97.8, Weight: 234

Bp: 126/69, Pulse: 70

GENERAL: Patient is a WDWN 55 Year old male appearing stated age in mild discomfort.

EXTREMITIES: right wrist with swelling but no erythema. Tender with palpation over the joint.

LABS REVIEWED:

DIABETIC LABS:

HGBA1C: 6.5 on 11/04/2005

MICROALBUMIN URINE: <2.0 on 09/09/2003

ASSESSMENT/PLAN: 1. Right wrist pain-suspect gout vs traumatic arthritis. Will send for x-ray of wrist. Schedule motrin 600 mg tid and given oxycodone 5 mg q4-6hr prn. F/u in 1 week after x-rays.

ROUTINE HEALTH MAINTENANCE STATUS:

INFLUENZA: 11/21/05

Return to clinic in 3 months.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Rx: MOTRIN 600mg 1 three times a day for 30 days, 90, Ref: 0

Rx: OXYCODONE HCL 5 MG 1 TAB every four hours prn, 60, Ref: 0

SIGNED BY KIMBERLY S DAVIS, MD (KSD) 03/21/2006 04:21PM

CO-SIGNED BY ELISHA BROWNFIELD, M.D. (EB) 04/25/2006 09:35AM

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

ed by: PELZER, CHERISE
Printed: 12/22/2014

Page2



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 0014-17354
DOB: 12/11/1949, Sex: M
Enc. Date: 07/02/08

PP - Progress Note signed by Elisha L. Brownfield, MD at 7/2/2008 11:12 AM (continued)

LUNGS: Clear to auscultation and percussion with normal respiratory effort.

CHST: tender along the right lower ribs laterally and anterior

ABDOMEN: bowel sounds present, soft, no masses, without hepatosplenomegaly. Mild tenderness along the right lower ribs/upper quadrant

EXTREMITIES: No edema.

Neuro: non-focal

LABS PERSONALLY REVIEWED BY ME INCLUDE:

ASSESSMENT/PLAN: 1. Rib fractures - Patient healing well. I did refill the Lortab until patient returns to Workman's comp doctor.
2. Liver bruising - No signs of internal bleeding. Minimal tenderness on palpation of liver area. Has appt in 6 days for recheck and repeat CT planned. Advised patient that CBC and LFT's would likely be helpful.
3. AODM - Glucose has been elevated. Will check A1C and cholesterol since this is due. Advised carefully watching diet and walking twice a day in the cool of the evening.

Follow up with me in 4-6 weeks.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Rx: LORTAB 5 MG/500 MG 1 TABLET EVERY 6 HOURS AS NEEDED for 10 days, 14, Ref: 0

Rx: ZEPHA 10 MG 1 CAPSULE DAILY, 30, Ref: 11

Rx: UNIRETIC GENERIC 12.5/15 1 TAB QD, 90, Ref: 3

Rx: LANCETS USB UD, 1 BOX, Ref: 11

Rx: GLUCOSE STRIPS USB UD, 1 BOTTLE, Ref: 11

Extended sig exists; see Medication List

Rx: OLUCOPHAGE 500 MG, 270, Ref: 4

Extended sig exists; see Medication List

Rx: ATENOLOL 25 MG 1 TABLET DAILY, 90, Ref: 4

SIGNED BY ELISHA BROWNFIELD, M.D. (ATTENDING) (HB) 07/02/2008 11:12AM

Electronically signed by Elisha L. Brownfield, MD on 7/2/2008 11:12 AM

CSN
30935728

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM

Author: (See Notes) Historical
Filed: 7/28/2012 2:11 AM

Service: (none)
Note Time: 4/22/2010 9:45 AM

Author Type: Resource
Note Type: Practice Partner -
Nursing/Messages

Status: Signed
Trans ID:
001417354_TYPE_8_20100422004
500_IMPHONEMESSAGEASHLEY
Trans Time:

Editor: Transcription Conversion Interface
Trans Status: Available
Dictation Time: 4/22/2010 9:45 AM
Trans Doc Type: PP -
Nursing/Messages

ID: 04/22/10 : 09:45am

T: IM PHONE MESSAGE - ASHLEY

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 5



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 07/02/08

PP - Progress Note signed by Elisha L. Brownfield, MD at 7/2/2008 11:12 AM (continued)

HISTORY OF PRESENT ILLNESS - 58 year old male presents today with elevated glucose and BP after trauma on 5/29/08. Patient fell off his truck fracturing right ribs and bruising the liver. He is being followed by a doctor for workman's comp and will be seen there in 6 days - repeat CT planned. He has been having pain in the right, anterior lower rib cage which is intermittent and improving. Patient has about 4/10 pain most of the time worsened with reaching, lifting. Has been given Lortab and takes about 2 per day. No other abdominal pain, pain with eating, alteration in BM's. Patient has been out of work since the accident with little physical activity. Glucoses have been elevated - he is having polyuria and polydipsia, but no vision change. Random glucose yesterday was 140.

ROS - as per HPI and all others negative.

PAST MEDICAL HISTORY -

AODM, HTN, High cholesterol

SOCIAL HISTORY -
12/15/06

Patient continues to live with his wife and is not smoking.

FAMILY HISTORY -

The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

CURRENT MEDICATIONS:

Rx: AMBIEN CR 12.5 MG 1 TAB at night before bed
Rx: ASPIRIN EC 81MG 1 TAB QD
Rx: CLALIS 20 MG 1 PRN
Rx: ATENOLOL 25 MG 1 TABLET DAILY
Rx: GLUCOPHAGE 500 MG
Rx: GLUCOSE STRIPS USE UD
Rx: LANCETS USE UD
Rx: UNIRETIC GENERIC 12.5/15 1 TAB QD
Rx: ZITHIA 10 MG 1 CAPSULE DAILY
Rx: LORTAB 5 MG/500 MG 1 TABLET EVERY 6 HOURS AS NEEDED

ALLERGIES:

NKA, NKDA

PHYSICAL EXAM:

Bp: 116/70, Pulse: 66
Temperature: 98.3 F, Weight: 108.9 kg

BP retaken by provider:

V1: Syst. BP 134 : Diast. BP 78 : P.

GENERAL: Patient is a WDMW 58 year old male appearing stated age in no acute distress.

HEENT: Normocephalic atraumatic. Pupils equal, round. Extraocular movements intact. Anicteric, noninjected sclerae.

NECK: Supple,

HEART: Regular rate and rhythm, no murmur, rub or gallop. Non-displaced PMI.

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 4



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 07/02/08

CSN
30935794

Practice Partner - Nursing/Messages signed by Ellsha L. Brownfield, MD at 7/28/2012 2:11 AM

Author: Ellsha L. Brownfield, MD
Filed: 7/28/2012 2:11-AM

Service: (none)
Note Time: 7/2/2008 8:39 AM

Author Type: Physician
Note Type: Practice Partner -
Nursing/Messages

Status: Signed

Editor: Ellsha L. Brownfield, MD (Physician)

Trans ID:

Trans Status: Available

Dictation Time: 7/2/2008 8:39 AM

001417354_TYPE_B_20080702083
900_NURSEINTAKENOTEUNIVER
SITYINTERNALMEDICINERA

Trans Time:

Trans Doc Type: PP -
Nursing/Messages

.D: 07/02/08 : 08:39am

T: NURSE INTAKE NOTE UNIVERSITY INTERNAL MEDICINE Rapid Access Center
MEDICAL UNIVERSITY OF SOUTH CAROLINA

BILLY HERNDON
58 year old male

ANNUAL SCREEN DONE:
12/08/06

CHIEF COMPLAINT/REASON FOR VISIT: Rx two his and bruised his liver.

PAIN SCREENING: Currently in pain, would like to discuss with provider today.

L: PAIN SCORE TODAY: 4

Pain Score determined by MUSC Pain Scale 0= no pain, 10=extreme pain

Patient educated on use of pain scale.

Location of pain: Ribs

Quality: constant

Medication taken for pain? yes

Lortab

Is pain satisfactorily controlled now? yes

Notified Brownfield MD, Ellsha

CHANGES SINCE LAST VISIT: none

V2: T 98.3F ; HL : Wt. 108.9 Kg

L2: 07/02/08 08:39 AM: WRIGHT IN LBS: 240.0 lbs

V1: Syst. BP 116 ; Diast. BP 70 ; P. 65

CURRENT MEDICATIONS (Prescribed, Herbal or OTC):

Rx: AMBLEN CR 12.5 MG 1 TAB at night before bed

Rx: ASPIRIN EC 81 MG 1 TAB QD

Rx: CIALIS 20 MG 1 PRN

Rx: ATENOLOL 25 MG 1 TABLET DAILY

Rx: GLUCOPHAGE 500 MG 1 tid

Rx: GLUCOSE STRIPS USE UD

Rx: LANCETS USE UD

Rx: LYRICA 150mg 1 TABLET twice a day

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HIM ROI Notes Report

Page 2



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 07/02/08

Practice Partner - Nursing/Messages signed by Elisha L. Brownfield, MD at 7/28/2012 2:11 AM (continued)

Rx: UNIRBIC GENERIC 12.5/5.1 TAB QD
Rx: ZETIA 10 MG-1 CAPSULE DAILY

Patient reports taking the following additional medications: Lortab 7.5mg
Medication Reconciliation: reconciled per patient report.

KNOWN ALLERGIES:
NKA, NKDA

Any NEW allergies to medicines, foods, herbals or latex? no

PRIMARY PROVIDER: BROWNFIELD MD, BLIS PRIMARY CLINIC: UNIV INTERNAL MED

SIGNED BY SHARON R. SMITH, PCA (091) 07/02/2008 08:43 AM

Electronically signed by Elisha L. Brownfield, MD on 7/28/2012 2:11 AM

CSN
30935791

PP - Progress Note signed by Elisha L. Brownfield, MD at 7/2/2008 11:12 AM

Author: Elisha L. Brownfield, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 7/2/2008 11:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: Elisha L. Brownfield, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 7/2/2008 11:00 AM
001417354_TYPE_0_20080702110		
000_INTERNALMEDICINERAPID		
COESSCENTER		
Trans Time:	Trans Doc Type: PP - Progress Note	

.D: 07/02/08 : 11:00am

.T: INTERNAL MEDICINE - RAPID ACCESS CENTER
MEDICAL UNIVERSITY OF SOUTH CAROLINA
.PV: eb

BILLY HERNDON
58 year old male

PRIMARY PROVIDER: BROWNFIELD MD, BLIS PRIMARY CLINIC: UNIV INTERNAL MED

ACTIVE PROBLEM LIST -
CAD
HYPERTENSION
PERIPHERAL NEUROPA
DIABETES MELLITUS
HYPERCHOLESTEROLEM

CHIEF COMPLAINT- Pain after trauma

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 3





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/22/10

PP - Progress Note signed by at 4/22/2010 3:47 PM (continued)

General: Patient is a W/DWN 60 year old male appearing stated age in no acute distress.

Skin: circumferential erythema surrounding erythematous and scabbed central bite site
Head: normocephalic, atraumatic

Eyes: conjunctiva clear, sclera non-icteric, ROM intact,

Mouth: Mucous membranes moist, no mucosal lesions.

Pharynx: mucosa non-inflamed, no tonsillar hypertrophy or exudate

Neck: supple, without lesions, or adenopathy, thyroid non-enlarged and non-tender

Heart: no cardiomegaly or thrills; regular rate and rhythm, no murmur or gallop.

Lungs: clear to auscultation with normal expansion bilaterally

Extremities: no amputations or deformities, cyanosis, edema or varicosities,

Musculoskeletal: Normal gait and station. No misalignment, asymmetry, crepitation, defects, tenderness, masses, effusions, decreased range of motion, instability, atrophy or abnormal strength or tone in the head, neck, spine, ribs, pelvis or extremities.

Neurologic: non-focal

LABS PERSONALLY REVIEWED BY ME INCLUDE:

ASSESSMENT/PLAN:

1. Lyme disease- prescribed doxycycline 100mg po bid x 7 days, zofran 4mg po q 8 hours prn nausea; recommend ibuprofen 600mg po q 6 hours with food prn pain and tylenol 1g po q 8 hours prn pain. recommend wearing long sleeves and pants with a hat in addition to sunscreen to avoid sun exposure while taking antibiotics.
2. reflux- prescribed pepcid 20mg po q hs. recommend sitting upright 3 hours after meal, avoiding acidic food and drink, sleeping on left side.

Return to clinic pm.

Follow up with primary care provider as needed/scheduled.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

SIGNED BY LISA ROBERGE, PA C (LR4) 04/22/2010 03:47PM
REVISED BY LISA ROBERGE, PA C (LR4) 04/22/2010 03:48PM
CO-SIGNED BY E BEN CLYBURN, M.D. (ATTENDING) (RBC) 04/22/2010 05:48PM
SIGNED BY ELISHA BROWNFIELD, M.D. (ATTENDING) (RB) 05/18/2010 10:52AM

CSN
30935666

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM

Author: Elisha L. Brownfield, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 2/4/2011 3:42 PM	Note Type: PP - Progress Note
Status: Signed	Editor: Elisha L. Brownfield, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 2/4/2011 3:42 PM
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Trans Time:	Trans Doc Type: PP - Progress	
	Note	

D: 02/04/11 : 03:42pm

T: UNIVERSITY INTERNAL MEDICINE

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 11





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 348
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/22/10

PP - Progress Note signed by at 4/22/2010 3:47 PM (continued)

ACTIVE PROBLEM LIST -

CAD
HYPERTENSION
PERIPHERAL NEUROPA
DIABETES MELLITUS
HYPERCHOLESTEROLEM

CHIEF COMPLAINT - "body ache, fatigue, nausea/vomiting, tired, feel bad"

HISTORY OF PRESENT ILLNESS - 60 year old male presents today with a one week history of body aches, fatigue, nausea, vomiting, malaise and ill feeling after being bitten by a tick on his left hip one week ago. He immediately developed a red circumferential rash surrounding the tick bite site. He denies current fever. He presented the offending tick which he had immediately removed from his skin upon discovery; it is a deer tick. He states he has a prior history of "tick fever" from a tick bite. He is a logger and works in the woods. He also has been experiencing acid reflux after meals. He takes metformin for T2DM, atenolol and uretief for HTN, aspirin for CAD, pravastatin for HPL, and prozac for depression.

ROS - as per HPI and all others negative.

PAST MEDICAL HISTORY - T2DM, CAD (MI s/p stent x 1 2005), HTN, depression, hyperlipidemia

SOCIAL HISTORY -

12/15/06

lives in Walterboro with his wife; quit smoking cigarettes in 1987 (former 3ppd x 25 yrs), rare EtOH currently (2 beers in 10 years).

FAMILY HISTORY -

The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

CURRENT MEDICATIONS:

Rx: ASPIRIN EC 81MG 1 TAB QD
Rx: ATENOLOL 25 MG 1 TABLET DAILY
Rx: CIALIS 20 MG 1 PRN
Rx: GLUCOPHAGE 500 MG
Rx: UNIRETIC GENERIC 12.5/15 1 TAB QD
Rx: PRAVACHOL 20 MG 1 TABLET at night before bed
Rx: FLUOXETINE HCL 20 MG 1 daily
Rx: GLUCOSE STRIPS USE UD
Rx: LANCETS USE UD
Rx: DOXYCYCLINE HYCLATE 100MG 1 CAPSULE twice a day
Rx: PEPCID 20MG 1 TAB at bedtime
Rx: ZOFRAN 4 MG 1 three times daily PRN

ALLERGIES:

NKA, NKDA

PHYSICAL EXAM:

BP: 142/74 P: 60

TEMP: 97.9 F

Weight: 111.9 kg

WEIGHT IN LBS: 246.9 lbs on 04/22/2010





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/22/10

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

MEDICAL UNIVERSITY OF SOUTH CAROLINA

PV:

TIME CALL RECEIVED: 09:45 AM

PATIENT:

BILLY HERNDON

60 year old male

DOB: 12/11/49

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

CALLER'S NAME: DEBORAH

RELATION TO PATIENT: Spouse

WHERE CALLER CAN BE REACHED: Home: (843) 538-2584

*****REASON FOR CALL: PT WIFE WOULD LIKE TO SPEAK WITH A NURSE, PT HAS HEADACHE AND FEVER, CONGESTION AND ALSO HE WAS BITTEN BY A SPIDER. PLS CALL PT ASAP.

LAST VISIT IN THIS CLINIC: 2.12.2010

NEXT APPOINTMENT SCHEDULED IN THIS CLINIC: 5.14.2010

called x 2--left message no answer--Hopefully patient is in the ER close to their home

SIGNED BY LASAINA JOHNSON (863) 04/22/2010 09:47AM
CO-SIGNED BY BEVERLY BARRINEAU, RN (S3C) 04/22/2010 10:50AM

CSN
30935725

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM

Author: (See Notes) Historical
Filed: 7/28/2012 2:11 AM

Service: (none)
Note Time: 4/22/2010 12:11 PM

Author Type: Resource
Note Type: Practice Partner -
Nursing/Messages

Status: Signed
Trans ID:
001417354_TYPE_8_20100422121
100_IMPHONEMESSAGE/ASHLEY
Trans Time:

Editor: Transcription Conversion Interface
Trans Status: Available
Dictation Time: 4/22/2010 12:11 PM

Trans Doc Type: PP -
Nursing/Messages

D: 04/22/10 12:11pm

T: IM PHONE MESSAGE - ASHLEY
MEDICAL UNIVERSITY OF SOUTH CAROLINA

PV:

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 6



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/22/10

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

TIME CALL RECEIVED: 12:11 PM

PATIENT:
BILLY HERNDON
60 year old male
DOB: 12/11/49

PRIMARY PROVIDER: BROWNFIELD MD, BLIS

CALLER'S NAME: DEBORAH

RELATION TO PATIENT: Self

WHERE CALLER CAN BE REACHED: Home: (843) 538-5142

*****REASON FOR CALL: RETURNED NURSE CALL IS AT HOME

LAST VISIT IN THIS CLINIC: 2/12/10
NEXT APPOINTMENT SCHEDULED IN THIS CLINIC: 5/14/10

Email from patient:

On Apr 22, 2010, at 9:55 AM, Debbie Herndon wrote

Dr. Brownfield I called to let you know that Wayne come home from work he was wasn't feeling well. He said he had thrown up, has a headache, indigestion. He was also bitten by a spotted tick last Wednesday. It has left a knot with a red mark all the way around it. I called and left a message for you a little while ago. I didn't know if he needed to be seen or what. You can call me at work or send me an email back I will keep checking it. 843-538-2904.

Hello Ms. Herndon,

He definitely needs to be seen and put on antibiotics. I will be leaving the country, and am not at work, but I copied Beverly so that she could help us to make arrangements. What he needs is Doxycycline, but since he could become very ill with a tick bite, someone should evaluate him.

Elisha

NURSE RESPONSE - UNIVERSITY INTERNAL MEDICINE
MEDICAL UNIVERSITY OF SOUTH CAROLINA

CALL RETURNED AT: 1328

COMMENTS: Have tried calling patient at number left prior to this message and emailed patient. Appt made for today in RAC. Pt and wife aware and confirmed appt.

L: IM RESPONSE: 04/22/10





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1940, Sex: M
Enc. Date: 04/22/10

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

- # SIGNED BY MONICA PINCKNEY (SCHEDULER) (AST) 04/22/2010 12:12PM
- # CO-SIGNED BY BEVERLY BARRINEAU, RN (S3C) 04/22/2010 01:30PM
- # REVISED BY BEVERLY BARRINEAU, RN (S3C) 04/22/2010 01:32PM

CSN
30935722

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM

Author: (See Notes) Historical	Service: (none)	Author Type: Resource
Filed: 7/28/2012 2:11 AM	Note Time: 4/22/2010 3:07 PM	Note Type: Practice Partner - Nursing/Messages
Status: Signed	Editor: Transcription Conversion Interface	Dictation Time: 4/22/2010 3:07 PM
Trans ID: 001417354_TYPE 0_20100422150	Trans Status: Available	
700_NURSEINTAKEUNIVERSITY INTERNALMEDICINERAPID		
Trans Time:	Trans Doc Type: PP - Nursing/Messages	

D: 04/22/10 : 03:07pm

T: NURSE INTAKE - UNIVERSITY INTERNAL MEDICINE Rapid Access Center
MEDICAL UNIVERSITY OF SOUTH CAROLINA

BILLY HERNDON
60 year old male

CHIEF COMPLAINT/REASON FOR VISIT: tick bite

V2: T 97.9 : Height : Weight 111.9 Kg

L: WEIGHT IN LBS: 246.9 lbs

V1: Syst. BP 142 : Diast. BP 74 : P. 60

L: BP Method: Machine

L: BP Side: left

L: BP Location Taken: arm

L: BP Cuff Size: Large Adult

L: BP Position: sitting

L: BP Activity: Calm

CURRENT MEDICATIONS:

Rx: ASPIRIN EC 81MG 1 TAB QD

Rx: ATENOLOL 25 MG 1 TABLET DAILY

Rx: CIALIS 20 MG 1 PRN

Rx: GLUCOPHAGE 500 MG

Rx: UNIRETIC GENERIC 12.5/15 1 TAB QD

Rx: PRAVACHOL 20 MG 1 TABLET at night before bed

Rx: FLUOXETINE HCL 20 MG 1 daily



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/22/10

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

Rx: GLUCOSE STRIPS USB UD
Rx: LANCETS USB UD

Patient reports this is correct.

Medication Reconciliation: Medication list to be reconciled by authorized provider.

KNOWN ALLERGIES: NKA, NKDA

Any NEW allergies to medicines, foods, herbs or latex? no

ABUSE/NEGLECT: No suspicion of abuse or neglect

SMOKING/TOBACCO SCREEN: Patient currently does not use tobacco, however has in the past for 23 years

.L: USES TOBACCO NOW: NO

.L: SMOKING SCREEN: 04/22/10

IS PATIENT HAVING PAIN? No

.CE: PAIN MANAGEABLE: No pain

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

PRIMARY CLINIC: UNIV INTERNAL MED

SIGNED BY EMILY BROWN, LPN (L12) 04/22/2010 03:11PM

CSN
30935719

PP - Progress Note signed by at 4/22/2010 3:47 PM

Author: Lisa Robarge

Filed: 7/28/2012 2:11 AM

Status: Signed

Trans ID:

001417354_TYPE_0_20100422153

600_INTERNALMEDICINERAPIDA

ACCESSCENTER

Trans Time:

Service: (none)

Note Time: 4/22/2010 3:36 PM

Editor: Transcription Conversion Interface

Trans Status: Available

Trans Doc Type: PP - Progress Note

Author Type: Physician Assistant

Note Type: PP - Progress Note

Dictation Time: 4/22/2010 3:36 PM

D: 04/22/10 : 03:36pm

T: INTERNAL MEDICINE - RAPID ACCESS CENTER

MEDICAL UNIVERSITY OF SOUTH CAROLINA

PV: BB

BILLY HERNDON

60 year old male

PRIMARY PROVIDER: BROWNFIELD MD, ELIS PRIMARY CLINIC: UNIV INTERNAL MED



MEDICAL RECORDS
169 Ashley Ave Suite 209
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elissa L. Brownfield, MD at 3/1/2011 12:33 PM (continued)

MEDICAL UNIVERSITY OF SOUTH CAROLINA

PV: BB

BILLY HERNDON

61 year old male

PRIMARY PROVIDER: BROWNFIELD MD, BLIS

PRIMARY CLINIC: UNIV INTERNAL MED

ACTIVE PROBLEM LIST:

CAD

HYPERTENSION

PERIPHERAL NEUROPA

DIABETES MELLITUS

HYPERCHOLESTEROLEM

CHIEF COMPLAINT: "My shoulder hurts."

HISTORY OF PRESENT ILLNESS: 61 year male with problems as noted here today for scheduled visit. Mr. Herndon returns for a FU today. His left shoulder has been bothering him since his last visit and has been getting worse. It hurts all of the time even at night. If he lifts the arm up in front he does not have as much pain, but if he tries to lift it out to the side it is very painful and radiates even over to the other shoulder. He states he has not had any radiation down into the hand and the tingling he was having at one time is gone. Otherwise, he reports he has lost weight and is eating better. He cut back on fried foods. He feels like his sugar is under better control.

REVIEW OF SYSTEMS as above, otherwise negative.

PAST MEDICAL HISTORY -

I2DM, CAD (MI s/p stent x 1 2005), HTN, depression, hyperlipidemia

SOCIAL HISTORY -

12/15/06

lives in Walterboro with his wife; quit smoking cigarettes in 1987 (former 3ppd x25 yrs), rare EtOH currently (2 beers in 10 years).

FAMILY HISTORY -

The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

CURRENT MEDICATIONS:

Rx: ASPRIN EC 81MG 1 TAB QD

Rx: ATENOLOL 25 MG 1 TABLT DAILY

Rx: FLUOXETINE HCL 20MG 1 daily

Rx: GLUCOPHAGE 1000 MG 1 twice daily

Rx: GLUCOSE STRIPS USH UD

Rx: LANCETS USH UD

Rx: OMEPRAZOLE 20MG 1 CAP daily

Rx: PRAVACHOL 20 MG 1 TABLT at night before bed

Rx: UNIRHTIC GENERIC 12.5/15 1 TAB QD

Rx: CIALIS 2.5mg 1 qd



MEDICAL RECORDS
169 Ashley Ave. Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM (continued)

ALLERGIES:

NKA, NKDA

PHYSICAL EXAM:

Syst BP 119; Diast BP 68; Pulse 76
Weight 236.8 lbs Height 172 cm on 02/04/2011
BMI:

General: Patient is a WDM 61 year old male appearing stated age in no acute distress.

Head: Normocephalic, atraumatic

Eyes: conjunctiva clear, sclera non-icteric, extra-ocular movement intact.

Heart: no cardiomegaly or thrills; regular rate and rhythm, no murmur or gallop

Lungs: clear to auscultation with normal excursion bilaterally

Extremities: no amputations or deformities, cyanosis, edema or varicosities. He has a tender ARC of the left arm from 90 degrees to about 160 degrees. He can lift it with passive motion. Internal and external rotation are essentially normal. He has some tenderness in the subacromial area and also at the AC joint on palpation.

Neurologic: non-focal

Procedure: Injection of left subacromial bursa: After informed consent was obtained the area was cleaned with Betadine and 4 cc of 1% Lidocaine with 20 mg Depo-Medrol was injected into the subacromial space. He had no real change in pain at the time of the procedure with no complications.

LABS REVIEWED:

CBC: WBC: 8.050 on 03/24/2006

RBC: 4.71 on 03/24/2006

HEMOGLOBIN: 14.4 on 03/24/2006

HEMATOCRIT: 42.50 on 03/24/2006

PLATELET COUNT: 204 on 03/24/2006

BMP: SODIUM: 139.0 on 11/19/2010

POTASSIUM: 4.50 on 11/19/2010

CHLORIDE-SERUM: 103.0 on 11/19/2010

CO2: 27 on 11/19/2010

BUN: 16.0 on 11/19/2010

CREATININE: 1.0 on 11/19/2010

GLUCOSE-SERUM: 159.0 on 11/19/2010

CALCIUM: 9.4 on 11/19/2010

LFT: AST: 30.0 on 11/19/2010

ALKALINE PHOS: 71.0 on 11/19/2010

ALBUMIN, SERUM: 3.9 on 11/19/2010

BILIRUBIN TOTAL: 0.7 on 11/19/2010

BILIRUBIN DIRECT: 0.1 on 01/26/2007

DIABETIC LABS: POC HGBA1C: 7.9% on 02/04/2011 HGBA1C: 8.7 on 08/20/2010

MICROALBUMIN URINE: <2.0 on 09/09/2003

MICROALB/CREAT RAT: COMMENT on 09/09/2003

THYROID LABS: TSH: 1.41 on 09/18/2009

LIPIDS: CHOLESTEROL: 230.0 on 11/19/2010

TRIGLYCERIDES: 364.0 on 11/19/2010

HDL-CHOLESTEROL: 33 on 11/19/2010

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HIM ROI Notes Report

Page 13

20



MEDICAL RECORDS
160 Ashley Ave Suite 269
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Charleston, SC 29425-3490
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HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM (continued)
LDL CHOLESTEROL: 124 on 11/19/2010

Is your patient a smoker? no

ASSESSMENT/PLAN: 1) Shoulder pain. I have told him he may have bursitis, partial rotator cuff tear, AC tendonitis plus arthritis or any combination of the above. I would like to do PT after injection today. This is very difficult given his work schedule. He does have some exercises left over from right shoulder injury and will pull these out to try to use them. If he doesn't get any relief then probably Orthopedics and MRI is the next step.

2) Adult onset diabetes. His Hgb A1C is much improved today at 7.9%. I have encouraged him to continue the changes he has made to his diet and to also try to get regular exercise.

3) Dyslipidemia. His D. LDL is down to 119. Again we will continue dietary changes.

4) HTN. His BP is under excellent control. I will plan to see him back in 3-4 months. He will call me about his shoulder.

ROUTINE HEALTH MAINTENANCE STATUS:

PNEUMADULT: 11/19/10

INFLUENZA: 11/19/10

Td: 12/08/06

Return to clinic

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Report dictated by: Elisha Brownfield, M.D.
EB/dm

SIGNED BY ELISHA BROWNFIELD, M.D. (ATTENDING) (EB) 03/01/2011 12:33PM

Electronically signed by Elisha L. Brownfield, MD on 3/1/2011 12:33 PM

CSN
30935653

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM

Author: James A. Amlicke, MD

Service: (none)

Author Type: Physician

Filed: 7/28/2012 2:11 AM

Note Time: 3/11/2011 12:00 AM

Note Type: PP - Progress Note

Status: Signed

Editor: James A. Amlicke, MD (Physician)

Trans ID:

Trans Status: Available

Dictation Time: 3/11/2011 12:00 AM

001417354_TYPE_Q_20110311000

000_MUSCORTHOPAEDICSINITI

ALNOTEMPLEASANT

Trans Time:

Trans Doc Type: PP - Progress
Note

D: 03/11/11 : 00:00am

T: MUSC ORTHOPAEDICS INITIAL NOTE - MT PLEASANT

PV: SC7

CC: EB

REFERRING PHYSICIAN: Dr. Elisha L. Brownfield, 171 Ashley Avenue, 803 CSB MUSC Medical Center, Charleston, SC 29425

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HIM ROI Notes Report

Page 14

21



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

Practice Partner - Orders signed by James A. Amlicke, MD at 3/14/2011 11:39 AM (continued)

CLINICAL INDICATION (Signs & Symptoms): ROTATOR CUFF TEAR

HISTORY: 61 year old male with

REQUESTING PROVIDER: AMLICKE, JAMES MD
Beeper: 60058

ATTENDING PHYSICIAN: Same

PATIENT INFORMATION:

Isolation Precautions:

Contrasted Study:

CREATININE: 1.0 on 11/19/2010

ALLERGIES:

NKA, NKDA

Contrast Allergy:

Premedication Ordered:

SIGNED BY MEGAN SIEG, CMA (773) 03/11/2011 02:03PM
SIGNED BY JAMES A AMLICKE, MD (ATTENDING) (5C7) 03/14/2011 11:39AM

Electronically signed by James A. Amlicke, MD on 3/14/2011 11:39 AM

CSN
30935642

PP - Progress Note signed by James A. Amlicke, MD at 4/1/2011 4:15 PM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 4/1/2011 12:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 4/1/2011 12:00 AM
001417354_TYPE_0_20110401000		
000_MUSCORTHOPAEDICSFOLL		
OWUPNOTEMTPLEASANT		
Trans Time:	Trans Doc Type: PP - Progress	Note

.D: 04/01/11 : 00:00am

.T: MUSC ORTHOPAEDICS FOLLOW-UP NOTE - MT PLEASANT

PV: 5C7

Patient is back today having undergone the MRI of his left shoulder. He is right-handed.

The MRI does show some tearing but incomplete of the supraspinatus. Study was done at Coastal MR Imaging LLC in Savannah, Georgia. This did show a high grade partial versus full thickness tear of the supraspinatus tendon. There was no tendon retraction. No impingement on the supraspinatus tendon was demonstrated. There was no large effusion.

I did review the study myself from the disc.

Examination of the patient today reveals excellent range of motion but certainly signs of some impingement. He does have slight

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HIM ROI Notes Report

Page 18

22



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169 Ashley Ave Suite 269
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HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM (continued)

Dear Dr. Brownfield:

I saw your patient Billy Herndon in the office today, and I appreciate your referral of this 61-year-old Caucasian male trucker who is in the logging business and comes in with a lot of pain in his left shoulder.

HISTORY OF PRESENT ILLNESS: He has had the problem for six months and does not recall any specific injuries. He does have to throw the ties over the log in the bed of his 18-wheeler, but he does that with his right arm, and so he is really not incapacitated with his work because it is the left shoulder that is the problem area. He has been taking some Advil, and after a while he noted he could barely raise his arm up. This is primarily if he tries to raise his arm up in the lateral point of the coronal plane. Dr. Brownfield did a steroid injection, and that gave him considerable relief then, so that now he is able to raise his arm up at least to 90 degrees slightly above. It is in the, once again, abducted position. He states that the pain actually started in about October of last year. Spontaneous onset. Pain is gradually getting a bit worse. The weakness ensued shortly after the onset of the pain. The pain is over the shoulder cap region as well as just to the anterior aspect of the same.

PAST MEDICAL HISTORY: His past medical history includes a prior heart attack, MI in October 2005. He is diabetic, has hypertension and hypercholesterolemia.

PAST SURGICAL HISTORY: Previous operative procedure, stent to one of his coronary vessels in October 2005.

SOCIAL HISTORY: Truck driver already commented upon, married, three kids, nonsmoker, and nondrinker.

FAMILY HISTORY: Hypertension, cancer, heart attack, diabetes.

MEDICATIONS: Omeprazole, Lexapro, hydrochlorothiazide, atenolol, pravastatin, metformin, fluoxetine and aspirin.

ALLERGIES: None listed.

REVIEW OF SYSTEMS: Pain down left arm and numbness in hand when his shoulder problem began. He uses glasses for reading. History of hypertension with previous heart attacks and indigestion problems.

PHYSICAL EXAMINATION: Weight 239 pounds, pulse 80, blood pressure 157/85, height 70.5 inches.

Examination of his right shoulder is completely normal. Examination of the left shoulder is normal from the standpoint of passive range of motion. With active range of motion he can only abduct the left arm to about 90 to 100 degrees, but he can elevate it in the sagittal plane up to overhead positioning. He is able to get his hand behind his back, has good lift-off, but on checking for supraspinatus and infraspinatus strength, both diminished of about 3 to 4/5 in each. Biceps functioning seems to be normal. Yergason test negative. Hawkins test negative. Apley's positive.

RADIOGRAPHIC IMAGING: X-rays of his left shoulder some calcification noted at the greater tuberosity with type 1 acromion. These are fairly normal looking x-rays.

IMPRESSION: Rotator cuff tear, left shoulder. This is associated with some impingement.

RECOMMENDATIONS: Recommendation will be to have the patient undergo an MRI to look at the severity of the rotator cuff tear to see if operative intervention will be necessary. It is important for this man to have good use of his left arm in light of his work. We will see him back here after that study is done and make some determination after that.

James Amlicke, MD
Assistant Professor
Department of Orthopaedic Surgery
Medical University of South Carolina
96 Jonathan Lucas Street, Suite C5B 708
Charleston, SC 29425

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Page 15

23



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
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HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1940, Sex: M
Enc. Date: 03/11/11

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM (continued)

Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:2410
3614490

cc: Dr. Blisha L. Brownfield, 171 Ashley Avenue, 803 CSB MUSC Medical Center, Charleston, SC 29425

SIGNED BY JAMES A. AMLICHE, MD (ATTENDING) (5C7) 03/21/2011 05:17 PM

Electronically signed by James A. Amlicke, MD on 3/21/2011 5:17 PM

CSN
30935651

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM

Author: (See Notes) Historical
Filed: 7/28/2012 2:11 AM

Service: (none)
Note Time: 3/11/2011 1:40 PM

Author Type: Resource
Note Type: Practice Partner -
Nursing/Messages

Status: Signed
Trans ID:
001417354_TYPE_8_20110311134
000_NURSEINTAKEORTHOPAEDI
CSEC

Editor: Transcription Conversion Interface
Trans Status: Available

Dictation Time: 3/11/2011 1:40 PM

Trans Time:

Trans Doc Type: PP -
Nursing/Messages

D: 03/11/11 : 01:40pm

T: NURSE INTAKE - ORTHOPAEDICS - EC
MEDICAL UNIVERSITY OF SOUTH CAROLINA

BILLY HERNDON
61 year old male

Patient is up-to-date with 2010/11 Seasonal Influenza immunization.

.CB: 2010/11 FLU Screen Stamp: N/A

Most recent POC HGBA1C: 7.9% on 02/04/2011 HGBA1C: 8.7 on 08/20/2010

CHIEF COMPLAINT/REASON FOR VISIT: SHOULDER PAIN

V2: T: Height 70.5 in : Weight

.L: WEIGHT IN LBS: 239.8 lbs

V1: Syst. BP 167 : Diast. BP 85 : P. 80

.L: BP Method: Machine

.L: BP Side: left

.L: BP Location Taken: arm

.L: BP Cuff Size: Adult

.L: BP Position: sitting

.L: BP Activity: Calm

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HIM ROI Notes Report

Page 16

24



MEDICAL RECORDS
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Charleston, SC 29425-3490
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HERNDON, BILLY W.
MRN: 001417354
DOB: 12/11/1949, Sex: M.
Enc. Date: 03/11/11

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

KNOWN ALLERGIES: NKA, NKDA

Any NEW allergies to medicines, foods, herbs or latex? NO
ALR: 03/11/11

ABUSE/NEGLECT: No suspicion of abuse or neglect
SMOKING/TOBACCO SCREEN: Patient does not use tobacco products
L: USBS TOBACCO NOW: NO
L: SMOKING SCREEN: 03/11/11

Patient reported PAIN NOT MANAGEABLE on 02/04/2011 and was instructed to discuss with provider.
IS PATIENT HAVING PAIN? YES
IS PAIN MANAGEABLE? NO - Patient instructed to discuss pain with provider.
CE: PAIN MANAGEABLE: PAIN NOT MANAGEABLE

EDUCATION DOCUMENTATION

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

PRIMARY CLINIC: UNIV INTERNAL MED

SIGNED BY MEGAN SIEG, CMA (77G) 03/11/2011 01:41PM

CSN
30935849

Practice Partner - Orders signed by James A. Amlicke, MD at 3/14/2011 11:39 AM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 3/11/2011 2:02 PM	Note Type: Practice Partner - Orders
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 3/11/2011 2:02 PM
001417354_TYPE_39_2011031114		
0200_ORDERMRIREQUEST		
Trans Time:	Trans Doc Type: PP - Orders	

D: 03/11/11 : 02:02pm

T: ORDER - MRI REQUEST
PV: 5C7
BILLY HERNDON

Modality of choice: MRI
Phone: 2-9729
Outpt Fax: 2-9364

Desired Schedule: 1st Available

EXAM ORDERED: MRI LEFT SHOULDER

Sedation Needed: no

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HIM ROI Notes Report

Page 17

25



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
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HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1940, Sex: M
Enc. Date: 04/01/11

PP - Progress Note signed by James A. Amlicke, MD at 4/4/2011 4:15 PM (continued)

weakness in supraspinatus functioning with slight weakness in elevation in the abducted position; that is in the coronal plane. He easily gets his hand behind his back and has good lift off and good salute position.

Impression is that of partial rotator cuff tear, supraspinatus, left shoulder associated with impingement bursitis.

Recommendations: Will be to have the patient undergo subacromial steroid injections to reduce some of the swelling; not only in the bursal tissue, but the tendon to reduce the effective impingement.

Procedure: With the patient sitting, arm dangling free, Betadine prep done over the posterior lateral aspect of the acromion, I then injected 1% Lidocaine after the Betadine is dry. Inject down to the subacromial space and with the second needle, inject 60 mg of Kenalog along with 2 ccs of 1/2% Marcaine into the subacromial space. This goes uneventfully. Patient tolerated well. I moved the shoulder around to get the fluid disseminated throughout the bursal area.

I want to see him back in 6 weeks to see how things are progressing. I want him to go a lot of shoulder ranging to try to maintain his function. I told him that I would reinject it in 6 weeks if he doesn't feel that much better and if he doesn't respond to that, then we will look at having him undergo an acromioplasty.

James Amlicke, MD
Assistant Professor
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Medical University of South Carolina
96 Jonathan Lucas Street, Suite CSB-708
Charleston, SC 29425
Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:247 3709990

SIGNED BY JAMES A. AMLICK, MD (ATTENDING) (SC7) 04/04/2011 04:15PM

Electronically signed by James A. Amlicke, MD on 4/4/2011 4:15 PM

CSN
30935636

PP - Progress Note signed by James A. Amlicke, MD at 5/17/2011 6:44 AM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 5/13/2011 12:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 5/13/2011 12:00 AM
001417354_TYPE_0_20110513000		
000_MUSCORTHOPAEDICSFOLL		
OWUPNOTEMPLEASANT		
Trans Time:	Trans Doc Type: PP - Progress Note	

.D: 05/13/11 : 00:00am

.T: MUSC ORTHOPAEDICS FOLLOW-UP NOTE - MT PLBASANT

.PV: SC7

Gentleman back today for left shoulder check. Injured it 10/10/2010 throwing a strap to seal down a load on the back of a truck. That was with his left arm. Now he does it with his right arm and he is getting better.

The injection helped him quite a bit and that was performed on the 04/01/2011 of this year and he says he is 90% improved.

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HIM ROI Notes Report

Page 19

26



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169 Ashley Ave Suite 269
MSC 349
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HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 05/13/11

PP - Progress Note signed by James A. Amlicke, MD at 5/17/2011 6:44 AM (continued)

Examination of his left shoulder today reveals excellent range of motion actively. He has good lift off. Holds the slough position quite well; even against good force so that his infraspinatus is fine. The subscapularis is good. He has slight weakness in the supraspinatus which was partially torn.

I did a steroid injection to the subacromial space and that is what has given him a lot of comfort and reduced some of the impingement. So, he knows about not doing that same maneuver that caused him to injure the shoulder to begin with back in October.

I told him to come on back and see us if he needs us.

Diagnosis: supraspinatus tear, partial thickness, left shoulder with associated impingement bursitis; the latter much improved following steroid injections subacromial space.

This actually occurred on the job but he didn't report it to his boss and is not being covered under worker's comp.

James Amlicke, MD
Assistant Professor
Department of Orthopaedic Surgery
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96 Jonathan Lucas Street, Suite CSB 708
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Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:247
3902328

cc:

SIGNED BY JAMES A. AMLICK, MD (ATTENDING) (SC7) 05/17/2011 06:44AM

Electronically signed by James A. Amlicke, MD on 5/17/2011 6:44 AM

CSN
35889107

Progress Notes by Ellisha L. Brownfield, MD at 6/3/2012 6:25 PM

Author: Ellisha L. Brownfield, MD	Service: (none)	Author Type: Physician
Filed: 6/3/2012 6:39 PM	Note Time: 6/3/2012 6:25 PM	Note Type: Progress Notes
Status: Signed	Editor: Ellisha L. Brownfield, MD (Physician)	

UNIVERSITY INTERNAL MEDICINE

Billy Herndon, 62 y.o. male
PRIMARY CARE PROVIDER: Ellisha L. Brownfield, MD, MD

ACTIVE PROBLEMS:
Patient Active Problem List

Diabetes

- Diabetes mellitus type II
- CAD (coronary artery disease)
- HTN (hypertension)

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HIM ROI Notes Report

Page 20

27



MEDICAL RECORDS
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MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM (continued)

- Depression
- Hyperlipidemia

CHIEF COMPLAINT:

Chief Complaint

Patient presents with

- Hyperlipidemia
- Hypertension
- Diabetes

HISTORY OF PRESENT ILLNESS: Billy W Herndon is a 62 y.o. male here for follow-up of Bell's Palsy, and new complaint of tremor. Patient has finished course of medication for Bell's Palsy and is significantly better. No new weakness, and no side effects from these medications, although his sugars have been "up and down". He continues to have mouth and tooth pain from severe dental decay. Has found a dentist to have his remaining 7 teeth pulled, but is also seeking a consultation with dentistry here at MUSC. We called in lorab for the pain, and it does help, but causes severe nausea. Patient states that his hands shake, right more than left, and have done this for years, but worsening over the past several months. He is having difficulty eating and working with tools because of this. Does not have the tremor when at rest, and no tremor noted in the head or feet. No shuffling or stumbling and no change in handwriting. Patient is right-handed. Denies any weakness, slurred speech, visual complaints. No family history of tremor, and no personal history of head injury. No alcohol use in over 20 years.

PAST MEDICAL HISTORY:

has a past medical history of Diabetes mellitus type II; CAD (coronary artery disease) (2005); HTN (hypertension); Depression; Hyperlipidemia; and Bell's palsy (5/2012).

PAST SURGICAL HISTORY:

has no past surgical history on file.

PAST FAMILY HISTORY:

family history includes Cancer in his father; Diabetes in his maternal grandfather, maternal grandmother, paternal grandfather, and paternal grandmother; Heart disease (age of onset: 57) in his father; Heart disease (age of onset: 67) in his mother; and Hypertension in his father and mother.

PAST SOCIAL HISTORY:

reports that he quit smoking about 25 years ago. His smoking use included Cigarettes. He has a 75 pack-year smoking history. He does not have any smokeless tobacco history on file. He reports that he drinks alcohol. He reports that he does not use illicit drugs.

CURRENT MEDICATIONS:

Current Outpatient Prescriptions on File Prior to Visit:

Medication	DO	Dispense	Refill
aspirin 81 MG EC tablet		Take 81 mg by mouth daily.	



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Enc. Date: 06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM (continued)

• atenolol (TENORMIN) 50 MG tablet Take 1 tablet (50 mg total) by mouth 30 tablet daily. 11

• hydrocodone-acetaminophen (LORTAB) 10-500 mg per tablet Take 1 tablet by mouth every 4 (four) hours as needed for Pain, NMT 4 g of acetaminophen in 24 hrs. 40 tablet 0

• metformin (GLUCOPHAGE) 1000 MG tablet Take 1,000 mg by mouth 2 (two) times daily with meals.

• moexipril-hydrochlorothiazide (UNIRETIC) 15-25 mg per tablet Take 1 tablet by mouth daily.

• omeprazole (PRILOSEC) 20 MG capsule Take 20 mg by mouth daily.

• pravastatin (PRAVACHOL) 20 MG tablet Take 20 mg by mouth daily.

• tadalafil (CIALIS) 10 MG tablet Take 2.5 mg by mouth daily.

ALLERGIES:

Allergies as of 06/01/2012

(No Known Allergies)

REVIEW OF SYSTEMS: As documented in the HPI, and the remainder of the ROS is otherwise negative

PHYSICAL EXAM:

Vitals: BP 109/64 | Pulse 65 | Wt 230 lb 11.2 oz (104.645 kg)

Gen: Healthy appearing and in no distress

Head: normocephalic, atraumatic; some loss of the left nasolabial fold; some incomplete closing of the left eye

Eyes: pupils equal and round bilaterally

Nose: no discharge

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HIM ROI Notes Report

Page 22

29



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HIM ROI Notes Report

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DOB: 12/11/1949, Sex: M
Enc. Date: 06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM (continued)

Lungs: clear to auscultation with normal excursion

Cor: regular rate and rhythm without murmurs, rubs or gallops

Neuro: fine tremor of bilateral outstretched hands - none at rest. No movements of the legs involuntarily; normal gait; upper ext strength 5/5 all muscle groups. Lower ext strength 5/5 all muscle groups. Reflexes 2/2 bilaterally biceps, triceps, brachioradialis, patellar. Mild cogwheeling rigidity of the right arm.

LABS REVIEWED (resulted within past six months):

Lab Release on 06/01/2012

Component	Date	Value
• THYROID STIMULATING HORM*	06/01/2012	1.84

Lab Release on 05/22/2012

Component	Date	Value
• UREA NITROGEN, BLOOD (BU*	05/22/2012	26.0*
• SODIUM	05/22/2012	137.0
• POTASSIUM, CAP, POC	05/22/2012	5.10*
• CHLORIDE	05/22/2012	102.0
• CO2 CONTENT (BICARBONATE)	05/22/2012	28
• ANION GAP	05/22/2012	7
• GLUCOSE	05/22/2012	292.0*
• CREATININE	05/22/2012	1.0
• CALCIUM	05/22/2012	10.0
• EGFR	05/22/2012	>59
• HEMOLYSIS INDEX	05/22/2012	2.0*

Historical Encounter on 03/16/2012

Component	Date	Value
• HEMOGLOBIN A1C	03/16/2012	8.5*

HEALTH MAINTENANCE:

STATUS: Up to date

PATIENT COUNSELING: Regular exercise - Discussed the importance of staying active and exercising on a regular basis.

ASSESSMENT/PLAN:

1. Bell's Palsy - much improvement over the past week with treatment. Continue to follow.
2. Essential tremor - likely diagnosis is essential tremor. Since patient is already on a beta-blocker, will try increasing the dose. Follow symptoms at the next appt.
3. HTN - good control today
4. AODM - likely some fluctuations with prednisone, but too early to check A1C. Encouraged good lifestyle.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Electronically signed by Elisha L. Brownfield, MD on 6/3/2012 6:39 PM

CSN

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 23

30



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 05/16/14

CSN
58973378

Progress Notes by Elisha L. Brownfield, MD at 5/16/2014 10:39 AM

Author: Elisha L. Brownfield, MD Service: (none) Author Type: Physician
Filed: 5/16/2014 3:33 PM Note Time: 5/16/2014 10:39 AM Note Type: Progress Notes
Status: Signed Editor: Elisha L. Brownfield, MD (Physician)

Subjective:

Patient ID: Billy W Herndon is a 64 y.o. male.

HPI Comments: Pt returns for F/u. Had been doing well, but was the victim of an MVA this week. Struck head-on, but diagonally while the seated passenger. Went to a doctor's care and has been using flexeril, hydrocodone and ibuprofen for some MS pain. States he has rescheduled his eye appt. Taking his medication, diet is not ideal. He is driving 12 hours at a time and states that he has not had time to exercise on regular basis.

Review of Systems

All other systems reviewed and are negative.

The following portions of the patient's history were reviewed and updated as appropriate: allergies, current medications, past family history, past medical history, past social history, past surgical history and problem list.

Objective:

Physical Exam

Nursing note and vitals reviewed.

Constitutional: He appears well-developed and well-nourished. No distress.

HENT:

Head: Normocephalic and atraumatic.

Eyes: Conjunctivae and EOM are normal. No scleral icterus.

Neck: Normal range of motion.

Cardiovascular: Normal rate, regular rhythm and normal heart sounds. Exam reveals no gallop and no friction rub.

No murmur heard.

Pulmonary/Chest: Effort normal and breath sounds normal. No respiratory distress. He has no wheezes. He has no rales.

Musculoskeletal: Normal range of motion. He exhibits no edema.

Neurological: He is alert.

Skin: Skin is warm and dry.

Psychiatric: He has a normal mood and affect. His behavior is normal. Judgment and thought content normal.

Component	2/10/2014
Lab Ref Rng	
BUN	16.0
0.0-20.0 MG/DL	
SODIUM	139.0
135.0-145.0 MMOL/L	

Progress Notes

Patient: HERNDON, BILLY
Account Number: 00005188677
DOB: 12/11/1949 Age: 64 Y Sex: Male
Phone: 843-538-2584
Address: ~~1000~~ ~~HERNDON ROAD~~, WALTERBORO, SC-29488

Provider: Artur Pacult, MD
Date: 10/27/2014

Subjective:

Chief Complaints:

1. NP/REF: WORK COMP/DX: FORAMINAL STENOSIS/ MRI DONE (CASE MANAGER TO BRING DISKS) EXTRA TIME FOR CASE MGR. 2. PAIN IN THE NECK ON THE LEFT WITH PAIN RADIATING INTO THE LEFT SHOULDER WITH NUMBNESS AND TINGLING DOWN THE ARM AND INTO THE LEFT HAND. 3. HEADACHES.

HPI:

This is a very pleasant middle-aged gentleman who is a part-time driver of a logging truck and made made was involved in a head collision when his truck was done the high-speed was hit from the side. Since that time patient complains of a neck pain and headaches and particularly pain and tingling into the left arm and forearm into the second and third finger since the impact that he has had minimal treatment but his symptoms have not improved in fact they have gotten worse. According to the patient he did not have any prior symptoms of cervical radiculopathy. He has a history of myocardial infarction which required stent in 2005 but he did not have any issues since in fact when this happened he he had a cardiac workup assuming that this could be cardiac in origin. This was ruled out for.

ROS:

General/Constitutional:

Fever No. Fatigue Yes. Night sweats No. Weight gain No. Weight loss Yes.

ENT:

Nasal drainage No.

Endocrine:

Night thirst No. Night Sweats No.

Respiratory:

Chronic Cough No. Shortness of breath Yes.

Breast:

Nipple discharge No.

Cardiovascular:

Chest Pain Yes. Trouble breathing when lying down Yes.

Gastrointestinal:

Fecal Incontinence No. Jaundice No. Reflux No.

Hematology:

Bleeding problems No. Easy bruising Yes.

Musculoskeletal:

Muscle spasms No. Loss of muscle bulk Yes. Weakness of arm or leg Yes. Back pain No. Neck Pain Yes. Swollen joints No. Painful joints Yes.

Genitourinary:

Loss of Bowel/Bladder Control No.

Neurologic:

Blurred vision No. Double vision No. Hearing loss No. Decreased ability to smell No. Decreased ability to taste No. Numbness or tingling of the limbs Yes. Numbness of the face No. Blackout spells No. Seizures No. Headache Yes. Difficulty speaking No.

Psychiatric:

Depression Yes.

Medical History: DIABETES, HTN, HIGH CHOLESTEROL, MYOCARDIAL INFARCTION.

Surgical History: HEART STENT 10/25/05.

Hospitalization/Major Diagnostic Procedure: AS ABOVE, CHEST PAINS 06/14.

Family History: Father: deceased 75 yrs, KIDNEY FAILURE Mother: deceased, ALZHEIMERS Sister(s):

aliveDaughter(s): aliveSon(s): aliveSpouse: alive1 sister(s) - healthy, 1 son(s), 2 daughter(s) - healthy.

Social History:Marital and Family status:

Marital Status: Married.

Children: yes.

Employment/School:

No Employed, RETIRED TRUCK DRIVER.

Tobacco Use:

Tobacco Use/Smoking

Are you a *former smoker*

How long has it been since you last smoked? > 10 years

Drugs/Alcohol:

Alcohol Screen

Did you have a drink containing alcohol in the past year? No

Points 0

Interpretation Negative

Medications: Taking Metformin HCl 1000 MG Tablet 1 tablet with meals Twice a day, Taking Fluoxetine HCl 20 MG Capsule 1 capsule in the morning Once a day, Taking Moexipril-Hydrochlorothiazide 15-12.5 MG Tablet 1 tablet before a meal Once a day, Taking Atenolol 50 mg Tablet 1.5 tablets Once a day, Taking Pravastatin Sodium 20 MG Tablet 1 tablet Once a day, Taking Aspirin 81 MG Tablet Delayed Release 1 tablet Once a day, Taking Ibuprofen 800 MG Tablet 1 tablet Three times a day, Taking Oxycodone HCl 10 MG Tablet 1 tablet as needed every 6 hrs, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Ht 5 ft 10 in, Wt 220 lbs, BMI 31.56, Pulse Sitting 69, BP 133/73 mm Hg.

Examination:General Examination:

On examination the patient is a pleasant alert oriented individual who is in no distress. His heart this shows regular rate and rhythm lungs are clear bilaterally abdomen is benign he has supple neck although certain position of the neck and reproduced the left arm pain and he has minimal weakness in her left hand grip and he is now long track signs reflexes are hypoactive but present. Patient has normal mental status is no particular spine tenderness. He also has a positive left Tinel sign at the wrist.

Assessment:**Assessment:**

1. Cervical radiculopathy at C7 - 723.4 (Primary), left

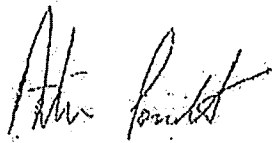
Plan:**Preventive:**

MR of the cervical spine shows significant disc degeneration at multiple levels and but on the left C6C7 there is a foraminal stenosis with impressive left-sided osteophyte formation compressing as expected left C7 nerve root. Satisfied Intervention discectomy and arthrodesis plus plating certainly is an option in this patient who herself had a two-level discectomies. Additionally treatment with physical therapy epidural injection has been discussed. All of this has been discussed with the patient's case manager and at this time patient wishes to consider surgical option is a first choice and we will make those accommodations if allowed by Workmen's Compensation. Until then the patient is to remain off work. He has medications prescribed I his family physician.

Follow Up: scheduled anterior cervical discectomy arthrodeses with plating at C6-C7 with Synthes system and

Provider: Artur Pacult, MD

Patient: HERNDON, BILLY DOB: 12/11/1949 Date: 10/27/2014



Electronically signed by ARTUR PACULT MD on 10/27/2014 at 11:04 AM EDT
Sign off status: Completed



**NEUROSURGERY
AND SPINE SPECIALISTS
OF CHARLESTON**

ROPER ST. FRANKLIN PHYSIC (A) 115

Artur Pacult, M.D., F.A.C.S.

Adele P. Moore FNP-C

Curtis Worthington, M.D., F.A.C.S.

**CERTIFICATE
FOR RETURN TO SCHOOL OR WORK**

BILLY HERNDON has been under my care and may not return to work until further notice. The patient will be undergoing surgery and post op care.

Limitations/Remarks:

Dr. Artur Pacult

Date: 10/27/14

Neurology – Neurosurgery Clinic, P.A.

125 Doughty Street, Suite 570 • Charleston, S.C. 29403
(843) 723-8967 • (843) 577-6093

35

Patient: HERNDON, BILLY
Account Number: 00005188677
DOB: 12/11/1949 Age: 65 Y Sex: Male
Phone: 843-538-2584
Address: ~~783 LEECH ROAD~~ WALTERBORO, SC-29488

Provider: Artur Pacult, MD

Date: 02/02/2015

Subjective:

Chief Complaints:

1. 1ST POST OP ACDFF C6-7 1-13-14/MEET W/CASE MGR. 2. PRESSURE ACROSS THE BACK OF THE NECK AND HEAD. SORENESS IN THE LEFT SHOULDER. DIZZINESS..

HPI:

Patient comes first time after cervical discectomy and decompression of nerve root at C6-C7. His pain is markedly improved as well as numbness. He essentially has normal neurological examination. He does complain of numbness at night and tightness in her neck and especially when he drives and looks straight and will include some physical therapy for. In my opinion a few weeks patient will be able to return to his occupation is truck driver.

Patient's clinical status has been discussed with his nurse case manager.

Medical History: DIABETIES, HTN, HIGH CHOLESTEROL, MYOCARDIAL INFARCTION, CERVICAL RADICULOPATHY.

Surgical History: HEART STENT 10/25/05, ACDFF C6-7 1-13-15.

Hospitalization/Major Diagnostic Procedure: AS ABOVE, CHEST PAINS 06/14.

Family History: Father: deceased 75 yrs, KIDNEY FAILURE Mother: deceased, ALZHEIMER Sister(s): alive Daughter(s): alive Son(s): alive Spouse: alive 1 sister(s) - healthy. 1 son (s), 2 daughter(s) - healthy.

Social History:

Marital and Family status:

Marital Status: Married.

Children: yes.

Employment/School:

No Employed, RETIRED TRUCK DRIVER.

Tobacco Use:

Tobacco Use/Smoking Are you a: former smoker, How long has it been since you last smoked?: > 10 years.

Drugs/Alcohol:

Alcohol Screen Did you have a drink containing alcohol in the past year?: No, Points: 0, Interpretation: Negative.

Medications: Taking Metformin HCl 1000 MG Tablet 1 tablet with meals Twice a day, Taking Fluoxetine HCl 20 MG Capsule 1 capsule in the morning Once a day, Taking Moexipril-Hydrochlorothiazide 15-12.5 MG Tablet 1 tablet before a meal Once a day, Taking Atenolol 50 mg Tablet 1.5 tablets Once a day, Taking Pravastatin Sodium 20 MG Tablet 1 tablet Once a day, Taking Aspirin 81 MG Tablet Delayed Release 1 tablet Once a day, Taking Ibuprofen 800 MG Tablet 1 tablet Three times a day, Discontinued Oxycodone HCl 10 MG Tablet 1 tablet as needed every 6 hrs, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Assessment:

Assessment:

1. Cervical radiculopathy at C7 - 723.4 (Primary), left

Plan:

1. Cervical radiculopathy at C7

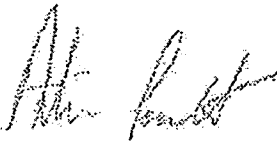
Referral To: Physical Therapy

Reason: physical therapy to his cervical spine and left shoulder. Status post anterior cervical discectomy C6-C7 for C7 radiculopathy

Follow Up: 6 Weeks

Provider: Arthur Pacult, MD

Patient: HERNDON, BILLY DOB: 12/11/1949 Date: 02/02/2015



Electronically signed by ARTUR PACULT MD on 02/02/2015 at 11:51 AM EST

Sign off status: Completed



**NEUROSURGERY
AND SPINE SPECIALISTS
OF CHARLESTON**

ROPER ST. FRANCIS PHYSICIANS

Artur Pacull, M.D., F.A.C.S.

Adelle P. Moore FNP-C

Curly Worthington, M.D., F.A.C.S.

**CERTIFICATE
FOR RETURN TO SCHOOL OR WORK**

BILLY HERNDON has been under my care and may not return to work until 3/17/15.

Limitations/Remarks:

Dr. Artur Pacull

Date: 2/2/15

Neurology — Neurosurgery Clinic, P.A.

125 Doughty Street, Suite 570 • Charleston, S.C. 29403

(843) 723-8967 • (843) 577-6093

Patient: HERNDON, BILLY
Account Number: 00005188677
DOB: 12/11/1949 Age: 65 Y Sex: Male
Phone: 843-538-2584
Address: ~~133 LEMON ROAD~~ WALTERBORO, SC-29488

Provider: Artur Pacult, MD

Date: 03/16/2015

Subjective:

Chief Complaints:

1. F/U WITH CASE MANAGER TO FOLLOW. 2. POST PT. 3. Patient states that therapy helped with the shoulder a lot. 4. Patient c/o cervical pain into the shoulder into the arm on the left side.

HPI:

The patient after initial significant improvement occurred to him in the relapse of possibly an he tried to do too much too early as he describes although I don't believe so. Patient attends physical therapy and when therapy is completed his as well and then he starts having pain again he has 8 treatments more. There is no change in his usual status and I will continue with physical therapy until completion to reassess him. Until then he is to remain off work until then.

Medical History: DIABETIES, HTN, HIGH CHOLESTEROL, MYOCARDIAL INFARCTION, CERVICAL RADICULOPATHY.

Surgical History: HEART STENT 10/25/05, ACDFP C6-7 1-13-15.

Hospitalization/Major Diagnostic Procedure: AS ABOVE, CHEST PAINS 06/14.

Family History: Father: deceased 75 yrs, KIDNEY FAILURE Mother: deceased, ALZHEIMER Sister(s): alive Daughter(s): alive Son(s): alive Spouse: alive 1 sister(s) - healthy. 1 son (s), 2 daughter(s) - healthy.

Social History:

Marital and Family status:

Marital Status: Married.

Children: yes.

Employment/School:

No Employed, RETIRED TRUCK DRIVER.

Tobacco Use:

Tobacco Use/Smoking Are you a former smoker, How long has it been since you last smoked?:
> 10 years.

Drugs/Alcohol:

Alcohol Screen Did you have a drink containing alcohol in the past year?: No, Points: 0,
Interpretation: Negative.

Medications: Taking Metformin HCl 1000 MG Tablet 1 tablet with meals Twice a day, Taking Flouxetine HCl 20 MG Capsule 1 capsule in the morning Once a day, Taking Moexipril-Hydrochlorothiazide 15-12.5 MG Tablet 1 tablet before a meal Once a day, Taking Atenolol 50 mg Tablet 1.5 tablets Once a day, Taking Pravastatin Sodium 20 MG Tablet 1 tablet Once a day, Taking Aspirin-81 MG Tablet Delayed Release 1 tablet Once a day, Taking Ibuprofen 800 MG Tablet 1 tablet Three times a day, Medication List reviewed and reconciled with the patient.

Allergies: N.K.D.A.

Objective:

Vitals: Ht 5 ft 10 in, Wt 220 lbs, BMI 31.56, Pulse Sitting 67, BP 163/78 mm Hg.

Assessment:

Assessment:

1. Cervical radiculopathy at C7 - 723.4 (Primary), left

Plan:

1. Cervical radiculopathy at C7

Start MOTRIN capsule, 600 MG, 1 capsule, orally, Every 6 to 8 hours as needed, 30 days, 60, Refills 0.

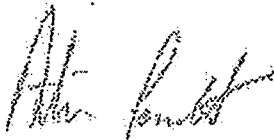
Preventive:

This was discussed with Mrs. Welch patient case manager.

Follow Up: 6 Weeks

Provider: Artur Pacult, MD

Patient: HERNDON, BILLY DOB: 12/11/1949 Date: 03/16/2015



Electronically signed by ARTUR PACULT MD on 03/16/2015 at 10:12 AM EDT

Sign off status: Completed

Patient: HERNDON, BILLY
Account Number: 00005188677
DOB: 12/11/1949 Age: 65 Y Sex: Male
Phone: 843-538-2584
Address: 133 LEMON ROAD WALTERBORO, SC-29488

Provider: Artur Pacult, MD
Date: 04/27/2015

Subjective:

Chief Complaints:

1. 5 WEEK F/U/CASE MGR TO FOLLOW.

HPI:

This is 66 years old gentleman who underwent C6-C7 discectomy in January 2015. The patient got somewhat better in fact he says he is about 50% better and when he starts driving particularly when he is on the tractor and the vibration cause severe neck pain and left shoulder pain. Patient has been attended physical therapy but there's been no long-term progress made. Overall he has plateaued. We have decided to begin his additional surgical treatment and at this point I believe the patient agrees that he has reached maximal medical improvement. According to him he is not able to return to work due to his persistent pain. No objective findings however. Referral to the impairment rating specialist at this point is in order to close Workmen's Compensation case.

Medical History: DIABETES, HTN, HIGH CHOLESTEROL, MYOCARDIAL INFARCTION, CERVICAL RADICULOPATHY.

Surgical History: HEART STENT 10/25/05, ACDFP C6-7 1-13-15.

Hospitalization/Major Diagnostic Procedure: AS ABOVE, CHEST PAINS 06/14.

Family History: Father: deceased 75 yrs, KIDNEY FAILURE Mother: deceased, ALZHEIMER Sister(s): alive Daughter(s): alive Son(s): alive Spouse: alive 1 sister(s) - healthy. 1 son (s), 2 daughter(s) - healthy.

Social History:

Marital and Family status:

Marital Status: Married.

Children: yes.

Employment/School:

No Employed, RETIRED TRUCK DRIVER.

Tobacco Use:

Tobacco Use/Smoking Are you a former smoker, How long has it been since you last smoked?
> 10 years.

Drugs/Alcohol:

Alcohol Screen Did you have a drink containing alcohol in the past year? No, Points: 0,
Interpretation: Negative.

Medications: Taking Metformin HCl 1000 MG Tablet 1 tablet with meals Twice a day, Taking Fluoxetine HCl 20 MG Capsule 1 capsule in the morning Once a day, Taking Moexipril-Hydrochlorothiazide 15-12.5 MG Tablet 1 tablet before a meal Once a day, Taking Atenolol 50 mg Tablet 1.5 tablets Once a day, Taking Pravastatin Sodium 20 MG Tablet 1 tablet Once a day, Taking Aspirin-81 81 MG Tablet Delayed Release 1 tablet Once a day, Taking Ibuprofen 800 MG Tablet 1 tablet Three times a day, Taking Skelaxin 800 MG Tablet 1 tablet BID, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Ht 5 ft 10 in, Wt 225 lbs, Wt Change 5 lb, BMI 32.28, Pulse Sitting 73, BP 135/79 mm Hg.

Assessment:

Assessment:

1. Cervical radiculopathy at C7 - 723.4 (Primary), left

Plan:

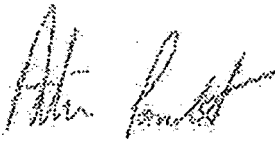
1. Cervical radiculopathy at C7

Continue Ibuprofen Tablet, 800 MG, 1 tablet, Orally, Every 6 to 8 hours as needed, 60 days, 90, Refills 0 ; Continue Skelaxin Tablet, 800 MG, 1 tablet, Orally, BID, 60 days, 120 Tablet, Refills 0 .

Follow Up: referring patient to specialist. 2+ impairment rating. Patient has reached maximal medical improvement and no farther treatment is suggested and recommended and the patient is according to him due to pain unable to return to truck driving

Provider: Artur Pacult, MD

Patient: HERNDON, BILLY DOB: 12/11/1949 Date: 04/27/2015



Electronically signed by ARTUR PACULT MD on 04/27/2015 at 10:06 AM EDT

Sign off status: Completed



**NEUROSURGERY
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OF CHARLESTON**

ROPER ST. FRANCIS PHYSICIANS

Arter Pacult, M.D., F.A.C.S.

Adele P. Moore FNP-C

Curtis Worthington, M.D., F.A.C.S.

**CERTIFICATE
FOR RETURN TO SCHOOL OR WORK**

BILLY HERNDON has been under my care from 10/14/2014 to until
and may not return to work until impairment rating completed.

Limitations/Remarks:

Dr. _____

Arter Pacult

Date: _____

4-27-15

Neurology – Neurosurgery Clinic, P.A.

125 Doughty Street, Suite 570 • Charleston, S.C. 29403
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43



**NEUROSURGERY
AND SPINE SPECIALISTS
OF CHARLESTON**
ROPER ST. FRANCIS PHYSICIANS

Artur Pacult, M.D., F.A.C.S.

Adele P. Moore FNP-C

Curtis Worthington, M.D., F.A.C.S.

**CERTIFICATE
FOR RETURN TO SCHOOL OR WORK**

BILLY HERNDON has been under my care from 10/14/2014 to until
and may not return to work until 4/27/2015.

Limitations/Remarks:

Dr. _____

Date: _____

Neurology – Neurosurgery Clinic, P.A.

125 Doughty Street, Suite 570 • Charleston, S.C. 29403
(843) 723-8967 • (843) 577-6093

44

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNDON, BILLY WAYNE
Phys: Vemula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM.324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS: Reason for Exam:
000684476 MRI SPINE-CERVICAL WO CON

HISTORY:

Neck pain, left side radiculopathy.

COMPARISON: None

TECHNIQUE: Multisequence multiplanar MR imaging of the cervical spine was performed without contrast.

FINDINGS:

Slight straightening of the cervical lordosis. No acute fracture or dislocation. The craniocervical junction is intact. Mild degenerative changes of the atlantoaxial joint. Multilevel spinal cord compression as detailed below but no definite signal abnormality within the spinal cord. Multilevel anterior and posterior osteophyte formation and disc dessication.

C2-C3: Unremarkable.

C3-C4: Prominent bilateral disc osteophyte complexes left greater than right with uncovertebral joint hypertrophy. There is severe bilateral foraminal stenosis left greater than right. Mild anterior/left lateral spinal cord compression and mild spinal canal stenosis.

C4-C5: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is moderate right foraminal stenosis resulting from disc osteophyte complex. No significant spinal canal stenosis.

C5-C6: Large right-sided disc osteophyte complex resulting in severe right foraminal stenosis. There is a left sided disc osteophyte complex and uncovertebral joint hypertrophy resulting in severe left foraminal stenosis. Compression of the anterior spinal cord greatest centrally on the right. Mild spinal canal stenosis.

C6-C7: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is compression of the left anterior aspect of the spinal cord but without significant spinal canal stenosis. There is moderate right foraminal stenosis.

C7-T1: Unremarkable.

IMPRESSION:

Large disc osteophyte complexes with uncovertebral joint hypertrophy from C3/C4 through C6/C7, overall, left greater than right. There is

PAGE 1

Signed Report

(CONTINUED)

Patient: HERNDON, BILLY WAYNE

MRN: CM00122276

Encounter: CM0109163294

Page 1 of 2

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNDON, BILLY WAYNE
Phys: Vemula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM.324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS:
000684476 MRI SPINE-CERVICAL WO CON
<Continued>

Reason for Exam::

severe multilevel bilateral foraminal stenosis left greater than
right as detailed above. There is also mild multilevel spinal cord
compression and mild spinal canal stenosis.

** Electronically Signed by CHRISTOPHER MOSES on 06/20/2014 at 1558 **
Reported and signed by: MOSES, CHRISTOPHER

CC: Nagasumanth Vemula MD

Dictated Date/Time: 06/20/2014 (1558)
Technologist: TRACY D. JONES, RT(R) (MR)
Transcribed Date/Time: 06/20/2014 (1558)
Prepared By: PHY. MOSCH
Electronic Signature Date/Time: 06/20/2014 (1558)
Printed Date/Time: 06/20/2014 (1603) BATCH NO: N/A

PAGE 2

Signed Report

Patient: HERNDON, BILLY WAYNE

MRN: CM00122276 Encounter: CM0109163294

Page 2 of 2

46

Colleton Medical Center
501 Robertson Blvd
Walterboro, SC 29488

Transthoracic Echocardiogram
2D, M-mode, Doppler, and Color Doppler

Patient: BILLY W HERNDON
URN: CM87907
Study date: 06/20/2014
HR:
BP: /
DOB: 12/11/1949
Age: 64 years
Gender: Male
Height: 70 in
Weight: 213.6 lb
BSA: 2.15 m

SUMMARY:

- Procedure information: This was a technically very difficult study.
- Left ventricle: Ejection fraction was estimated to be 55 %. There were no regional wall motion abnormalities. Left ventricular diastolic function parameters were normal.
- Aortic valve: The valve was trileaflet. Leaflets exhibited normal thickness and normal cuspal separation.
- Aorta; systemic arteries: The root exhibited normal size.
- Mitral valve: Not well visualized. Normal motion in orthogonal views.
- Left atrium: Size was normal.
- Right ventricle: The ventricle was moderately dilated; wall thickness was normal. Estimated peak pressure was at least 20 mmHg.
- Tricuspid valve: There was mild regurgitation.
- Right atrium: The atrium was moderately to markedly dilated.
- Inferior vena cava, hepatic veins: The inferior vena cava was not well visualized.

Sonographer: James Wallrath
Reading Physician: P. Jeffrey Bower, MD
Ordering Physician: Nagaswamy Venula, MD

Indications: Hypertension.

PROCEDURE: The procedure was performed as an inpatient. This was a routine study. The transthoracic approach was used. The study included complete 2D imaging, M-mode, complete spectral Doppler, and color Doppler. Echocardiographic views were limited by poor acoustic window availability,

Patient Name: HERNDON, BILLY WAYNE Account #: CM0109163294

morbid obesity of patient, and subcostal view gassed out. This was a

technically very difficult study.

LEFT VENTRICLE: Size was normal. Ejection fraction was estimated to be 55 %. There were no regional wall motion abnormalities. DOPPLER: There was an increased relative contribution of atrial contraction to ventricular filling. The deceleration time of the early transmitral flow velocity was normal. Left ventricular diastolic function parameters were normal. E/E prime was normal.

AORTIC VALVE: The valve was trileaflet. Leaflets exhibited normal thickness and normal cuspal separation. DOPPLER: Transaortic velocity was within the normal range. There was no evidence for stenosis. There was no regurgitation.

AORTA: The root exhibited normal size.

MITRAL VALVE: Not well visualized. Normal motion in orthogonal views.

LEFT ATRIUM: Size was normal.

RIGHT VENTRICLE: The ventricle was moderately dilated. Systolic function was normal. TAPSE=2.1 cm suggesting normal RV systolic function. Wall thickness was normal. DOPPLER: Estimated peak pressure was at least 20 mmHg.

TRICUSPID VALVE: DOPPLER: There was mild regurgitation.

RIGHT ATRIUM: The atrium was moderately to markedly dilated.

SYSTEMIC VEINS: IVC: The inferior vena cava was not well visualized.

SYSTEM MEASUREMENT TABLES

2D
LAEDV Index (A-L): 12.1 ml/m²

2D mode
IVSd: 1.1 cm
LVlDd: 4.4 cm
RVAWd: 0.4 cm
RVlDd: 4.4 cm

CW
RAP: 5 mmHg

NM
Ao Diam: 3.1 cm
AV Cusp: 1.8 cm
Ao/LA: 0.9
LA Diam: 3.5 cm
EDV(Teich): 59.7 ml
IVSs: 0.8 cm
LA/Ao: 1.1
LVlDs: 2.8 cm
LVPWd: 0.7 cm
LVPWs: 1.3 cm

PW

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

E': 0.1 m/s
E/E': 8

MV DecT: 217.4 ms
MV E/A Ratio: 0.7
MVA By PHT: 3.5 cm2
RVSP: 17 mmHg

Prepared and electronically signed by

P. Jeffrey Bower, MD
Signed 06/20/2014 09:01:49

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

Patient: HERNDON, BILLY WAYNE

MRN: CM00122276

Encounter: CM0109163294

Page 3 of 3

49

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNON, BILLY WAYNE
Phys: Vamula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM 324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS:

000684476 MRI SPINE-CERVICAL NO CON

Reason for Exam: :

HISTORY:

Neck pain, left side radiculopathy.

COMPARISON: None

TECHNIQUE: Multisequence multiplanar MR imaging of the cervical spine was performed without contrast.

FINDINGS:

Slight straightening of the cervical lordosis. No acute fracture or dislocation. The craniovertebral junction is intact. Mild degenerative changes of the atlantoaxial joint. Multilevel spinal cord compression as detailed below but no definite signal abnormality within the spinal cord. Multilevel anterior and posterior osteophyte formation and disc desiccation.

C2-C3: Unremarkable.

C3-C4: Prominent bilateral disc osteophyte complexes left greater than right with uncovertebral joint hypertrophy. There is severe bilateral foraminal stenosis left greater than right. Mild anterior/left lateral spinal cord compression and mild spinal canal stenosis.

C4-C5: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is moderate right foraminal stenosis resulting from disc osteophyte complex. No significant spinal canal stenosis.

C5-C6: Large right-sided disc osteophyte complex resulting in severe right foraminal stenosis. There is a left sided disc osteophyte complex and uncovertebral joint hypertrophy resulting in severe left foraminal stenosis. Compression of the anterior spinal cord greatest centrally on the right. Mild spinal canal stenosis.

C6-C7: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is compression of the left anterior aspect of the spinal cord but without significant spinal canal stenosis. There is moderate right foraminal stenosis.

C7-T1: Unremarkable.

07/06/2014 19:45 8437824086

REFERRALS

PAGE 04/13

COLLETON MEDICAL CENTER
504 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNDON, BILLY WAYNE
Phys: Vemula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM 324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS:

Reason for Exam:

000684476 MRI SPINE-CERVICAL W/ CON
<Continued>

IMPRESSION:

Large disc osteophyte complexes with uncovertebral joint hypertrophy from C3/C4 through C6/C7, overall, left greater than right. There is severe multilevel bilateral foraminal stenosis left greater than right as detailed above. There is also mild multilevel spinal cord compression and mild spinal canal stenosis.

** Electronically Signed by CHRISTOPHER MOSES on 06/20/2014 at 1558 **
Reported and signed by: MOSES, CHRISTOPHER

CC: Nagasumanth Vemula MD

Dictated Date/Time: 06/20/2014 (1558)
Technologist: TRACEY D. JONES, RT(R) (MR)
Transcribed Date/Time: 06/20/2014 (1558)
Prepared By: PHX MOSCH
Electronic Signature Date/Time: 06/20/2014 (1558)
Printed Date/Time: 06/20/2014 (1623) BATCH NO: N/A

PAGE 2

Signed Report Printed From PCT

51

Colleton Medical Center
501 Robertson Blvd
Walterboro, SC 29488

Name: HERNDON, BILLY WAYNE
Unit #: CM00122276
Adm Date: 06/19/14
D/C Date: 06/20/14
Dictated By: Vemula, Nagasumanth MD

Room #: CM.324
Acct #: CM0109163294

Report Name: DISCHARGE SUMMARY

MRI of the cervical spine without contrast showed severe multilevel bilateral foraminal stenosis, left greater than the right. There is also mild multilevel spinal cord compression with mild spinal canal stenosis. Due to lack of neurosurgery services, the patient will need to see a neurosurgeon as an outpatient for further evaluation and management of cervical disk disease. The patient is medically stable to be discharged from the hospital to home today.

Dictation ID / Confirmation #: 1096293 / 954090
DD: 06/20/2014 16:13 / DT: 06/20/2014 16:25
Authenticated by Nagasumanth Vemula, MD on 06/27/2014 05:29:45 PM

Electronically Signed by Nagasumanth Vemula, MD on 06/27/14 at 1830

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

PATIENT NAME: HERNDON, BILLY WAYNE
UNIT NO: CM00122276

SSN# 247-92-7471

EXAMS:
000407829 PORTABLE CHEST

Reason for Order::
FEVER

PORTABLE AP CHEST: May 29, 2008 9:32:00 PM

EXAM REASON: Pain following fall

COMPARISON: None

FINDINGS:

A portable AP view of the chest is obtained. The radiograph shows no gross abnormalities of the cardiomedial silhouette. The lungs are clear without evidence of focal airspace disease or effusion. No pneumothorax is seen.

IMPRESSION:

NEGATIVE PORTABLE AP VIEW OF THE CHEST.

** Electronically signed by M.D. THOMAS C. PUCKETTE **
** on 05/29/2008 at 2142 **
Reported and signed by: THOMAS C. PUCKETTE, M.D.

CC: MARK E BELT

DICTATED DATE/TIME: 05/29/2008 (2141)
TECHNOLOGIST: RANDALL LAWRENCE, RT(R)
TRANSCRIBED DATE/TIME: 05/29/2008 (2142)
TRANSCRIPTIONIST: RAD.VR
ELECTRONIC SIGNATURE DATE/TIME: 05/29/2008 (2142)
PRINTED DATE/TIME: 06/25/2008 (0957)

PAGE 1

Signed Report Printed From PCI

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERSBORO SC 29488

PHONE #: 843-549-0545
FAX #: 843-549-1613

NAME: HERNDON, BILLY WAYNE
PHYS: BEMAR - BELT, MARK E
DOB: 12/11/1949 AGE: 58 SEX: M
ACCT NO: CM0105456645 LOC: CM.ED
EXAM DATE: 05/29/2008 STATUS: DEP ER
PATIENT PH: (843) 538-2584

PATIENT NAME: HERNDON, BILLY WAYNE
UNIT NO: CM00122276

SSN# 247-92-7471

** REPORT HAS BEEN AMENDED **

EXAMS:	Reason for Order:
000407826 CT ABDOMEN WITH CONTRAST	TRAUMA
000407827 CT THORAX WITH CONTRAST	TRAUMA
000407828 CT PELVIS WITH CONTRAST	TRAUMA

<Continued>

evidence for pneumothorax. There is no pulmonary contusions seen. No airspace disease or endobronchial lesions are seen.

The mediastinal windows demonstrate no evidence for mediastinal or hilar adenopathy. There is no mediastinal hematoma present. The ascending aorta, aortic arch, and descending aorta appear normal. No pleural effusion is seen.

There is mild/moderate fatty infiltration of the liver present. No laceration or contusion is seen. The gallbladder, pancreas, spleen, adrenal glands and kidneys are unremarkable. There is no free air or free fluid present. There is moderate atherosclerotic disease of the aorta.

Within the pelvis there is no mass, adenopathy or free fluid present.

There are no gross bony fractures identified.

IMPRESSION:

1. Unremarkable CT imaging of the chest abdomen and pelvis. There is no evidence for significant trauma identified.

** Electronically Signed by M.D. THOMAS C. PUCKETTE **
** on 05/29/2008 at 2251 **
Reported and signed by: THOMAS C. PUCKETTE, M.D.

CC: MARK E BELT

Dictated DATE/TIME: 05/29/2008 (2249)
Technologist: RANDALL LAWRENCE, RT(R)
Transcribed DATE/TIME: 05/29/2008 (2251)
Transcriptionist: RAD.VR/CMRAD.LWC/CMRAD.LWC
Electronic Signature DATE/TIME: 05/29/2008 (2251)
Printed DATE/TIME: 06/25/2008 (0957)

PAGE 2

Signed Report Printed From PCI

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-549-0545
FAX #: 843-549-1613

NAME: HERNDON, BILLY WAYNE
PHYS: BEMAR - BELT, MARK E
DOB: 12/11/1949 AGE: 58 SEX: M
ACCT NO: CM0105456645 LOC: CM. ED
EXAM DATE: 05/29/2008 STATUS: DER ER
PATIENT PH: (843) 538-2584

PATIENT NAME: HERNDON, BILLY WAYNE
UNIT NO: CM00122276

SSN# 247-92-7471

** REPORT HAS BEEN AMENDED **

EXAMS:	Reason for Order:
000407826 CT ABDOMEN WITH CONTRAST	TRAUMA
000407827 CT THORAX WITH CONTRAST	TRAUMA
000407828 CT PELVIS WITH CONTRAST	TRAUMA

Addendum - 05/30/2008 SIGNED 06/19/2008

Exam 000407826 CT/ABD2 was added to this report by COX, LORI W on
05/30/2008 (0925)

Exam 000407828 CT/PEL2 was added to this report by COX, LORI W on
05/30/2008 (0925)

The original report was signed prior to the changes involving the
above exam(s). I, the undersigned physician, have reviewed this report
for accuracy and verify that this is correct.

** Electronically signed by M.D. THOMAS C. PUCKETTE **
** on 06/19/2008 at 1603 **
Reported and signed by: THOMAS C. PUCKETTE, M.D.
Created Date/Time/User: 05/30/2008 (0925) CMRAD.LWC

Report

CT SCAN OF THE CHEST, ABDOMEN, AND PELVIS WITH CONTRAST: May 29,
2008 10:20:00 PM

EXAM REASON: Pain following fall

COMPARISON: None

TECHNIQUE: CT imaging of the chest, abdomen, and pelvis is performed
following administration of oral and intravenous contrast. 100 cc of
Isovue-370 was administered intravenously. Axial images were obtained
at 5 mm intervals from the thoracic inlet to the symphysis pubis.

FINDINGS: The lung windows of the chest portion study demonstrate no

PAGE 1

Signed Report Printed From PCI

(CONTINUED)

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-549-0545
FAX #: 843-549-1613

NAME: HERNDON, BILLY WAYNE
PHYS: BEMAR - BELT, MARK E
DOB: 12/11/1942 AGE: 58 SEX: M
ACCT NO: CM0105456645 LOC: CM-ED
EXAM DATE: 05/29/2008 STATUS: DEP ER
PATIENT PH: (843) 538-2584



LabCorp Burlington
1447 York Court, Burlington, NC 27215-3361

Phone: 888-200-5439

X results faxed to 919-781-8593 9:10 AM

SPECIMEN 190-022-0474-0	TYPE S	PRIMARY LAB BM	REPORT STATUS COMPLETE	Page #: 1																		
ADDITIONAL INFORMATION SS#: 144-14-7471																						
fax to 919-781-8593 FASTING: N PHONE: 843-538-2584 DOB: 12/11/1949																						
PATIENT NAME HERNDON, BILLY W		SEX M	AGE (YR/MOS.) 58 / 6																			
PT. ADDR.: ~~Walterboro~~ Walterboro SC 29488-0000																						
DATE OF COLLECTION TIME 7/08/2008 14:26	DATE RECEIVED 7/08/2008	DATE REPORTED 7/09/2008	TIME 8:20	306																		
<table border="1"> <tr> <th colspan="3">CLINICAL INFORMATION</th> </tr> <tr> <td colspan="3">CD-20125636066</td> </tr> <tr> <td>PHYSICIAN ID: JOHNSTON J</td> <td>NPI 1346283421</td> <td>PATIENT ID. 60511</td> </tr> <tr> <td colspan="3">ACCOUNT: Walterboro Family Practice</td> </tr> <tr> <td colspan="3">107 Church Street Walterboro SC 29488-2901</td> </tr> <tr> <td colspan="3">ACCOUNT NUMBER: 39812485</td> </tr> </table>					CLINICAL INFORMATION			CD-20125636066			PHYSICIAN ID: JOHNSTON J	NPI 1346283421	PATIENT ID. 60511	ACCOUNT: Walterboro Family Practice			107 Church Street Walterboro SC 29488-2901			ACCOUNT NUMBER: 39812485		
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ACCOUNT: Walterboro Family Practice																						
107 Church Street Walterboro SC 29488-2901																						
ACCOUNT NUMBER: 39812485																						
TEST	RESULT	LIMITS	LAB																			

Basic Metabolic Panel (8)

> Glucose, Serum	199 H	mg/dL	65 - 99	01
BUN	20	mg/dL	5 - 26	01
Creatinine, Serum	0.82	mg/dL	0.50 - 1.50	01
Glom Filt Rate, Est	>60	mL/min	60 - 137	
If African-American	>60	mL/min	60 - 137	

Note: Persistent reduction for 3 months or more in an eGFR <60 mL/min/1.73 m2 defines CKD. Patients with eGFR values $\geq$ 60 mL/min/1.73 m2 may also have CKD if evidence of persistent proteinuria is present. Additional information may be found at www.kdofi.org.

BUN/Creatinine Ratio	24		8 - 27	
Sodium, Serum	137	mmol/L	135 - 145	01
Potassium, Serum	4.4	mmol/L	3.5 - 5.2	01
Chloride, Serum	99	mmol/L	97 - 108	01
Carbon Dioxide, Total	29	mmol/L	20 - 32	01
Calcium, Serum	9.3	mg/dL	8.5 - 10.6	01

Hepatic Function Panel (7)

Protein, Total, Serum	7.3	g/dL	6.0 - 8.5	01
Albumin, Serum	4.2	g/dL	3.5 - 5.5	01
Bilirubin, Total	0.3	mg/dL	0.1 - 1.2	01
Bilirubin, Direct	0.07	mg/dL	0.00 - 0.40	01
Alkaline Phosphatase, S	93	IU/L	25 - 150	01
AST (SGOT)	23	IU/L	0 - 40	01
ALT (SGPT)	39	IU/L	0 - 55	01

Hemoglobin A1c

> Hemoglobin A1c	7.7 H	%	<7.0	01
	Diabetic Adult		<7.0	
	Healthy Adult		4.8 - 5.9	
			(DCCT/NGSP)	

American Diabetes Association's Summary of Glycemic Recommendations for Adults with Diabetes:
Hemoglobin A1c <7.0%. More stringent glycemic goals (A1c <6.0%) may further reduce complications at the cost of increased risk of hypoglycemia.

LAB: 01 BN LabCorp Burlington	DIRECTOR: Frank Hancock MD
1447 York Court, Burlington, NC 27215-3361	

Pat Name: HERNDON, BILLY W	Pat ID: 60511	Spec #: 190-022-0474-0	Seq #: 306

Results are Flagged in Accordance with Age Dependent Reference Ranges

1st Page of Report

LCM Version: 03.21.00

RUN DATE: 08/06/08
RUN TIME: 0935
RUN USER: CMPT.LEC

Colleton Medical Ctr Patient Care *Live*
List Patient Notes

PAGE 1

Patient: HERNDON, BILLY WAYNE
Account #: CM0105517417

Unit #: CM00122276

Age/Sex: 58 M
Location: CM-PT
Room/Bed:

Attending: JOHNSTON, JOHN B
Admitted:
Status: REG REG

Date: 08/06/08 Time: 0930
Occurred: LEC CRABTREE, LISA E
Recorded: 08/06/08 0935 LEC CRABTREE, LISA E

Nurse Type
PTA
PTA

Category
INTERDISCIPLINARY

DR. JOHNSTON,

WAYNE HAS BEEN RECIEVING PT FOR R SHLD/FLANK PAIN. HE WAS INSTRUCTED IN
A HOME EX PROGRAM AND HAS GOOD FOLLOW UP. HIS SHLD ROM WAS FLEX 100 ABD 90
NOW 180 180
HE IS PAINFREE EXCEPT WITH SUDDEN MOVEMENTS OR "TWIST THE WRONG WAY"
HIS MMT B UE 5/5. WAYNE FEELS HE IS READY TO TRY TO RETURN TO WORK.

PLEASE ADVISR. THANK YOU FOR ALLOWING ME TO PARTICIPATE IN MR. HERNDON'S
CARE.

LISA CRABTREE LPTA

Note Type	Description
No Type	NONE

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Billy Wayne Herndon Employer's Name: Boyle Logging
Physician's Name: John Johnston, MD Insurance Carrier: _____
Practice/Clinic: Walterboro Family Practice SCWCC File No: _____
Preparer's Name: Dorothy Folk, LPN
Phone: (843) 549-1558

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

Date of Injury or Illness: 5/29/08

Date of first office visit: 5/29/08 Date of last visit: 8/7/08

Diagnosis or nature of injury or illness: Contusion Rib Cage

Body part(s) injured: Rt. rib cage Body part(s) affected: Rt. rib cage

Date of Maximum Medical Improvement: 8/7/08

Based on the AMA Guidelines, the claimant has sustained a 0 % medical impairment to right injured body
part(s) and a 0 % medical impairment to N/A other affected body part(s).

☒ The claimant is able to return to work without restriction;

 The claimant is able to return to work with the following restrictions:

 The claimant is unable to return to work at his or her current employment.

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

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

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

x-1 Blah Blah
Treating Physician

Date 8/7/08

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



Physician's Statement

Claimant's Name: WAYNE HERNDON

Employer's Name: BOOTLE LOGGING, LLC

Physician's Name: DR. JOHN B. JOHNSTON

Insurance Carrier: FORESTRY MUTUAL INS. CO.

Practice/Clinic: WALTERBORO FAMILY PRACTICE P.A.

SOWCC File No: 0808299

Repairer's Name: LEIGH ANN STROUD

Phone: (800)849-7788

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

Date of Injury or Illness: 05/29/08

Date of first office visit: 5-28-08 Date of last visit: 8-2-08

Diagnosis or nature of injury or illness: Contusion R Rib Cage

Body part(s) injured: Rib cage Body part(s) affected: _____

Date of Maximum Medical Improvement: 8-2-08

Based on the AMA Guidelines, the claimant has sustained a 0 % medical impairment to _____ injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

☐ The claimant is unable to return to work at his or her current employment.

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

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

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

J. B. Johnston
Treating Physician

10-23-08
Date

8-7-08 BILLY WAYNE H(NOON

F/U OF WC INJURY OF 5/29/08. STATES HE HAS COMPLETE RELIEF OF HIS PAIN. HAVING NO SOB. FEELS LIKE HE CAN GO BACK TO WORK WITH NO RESTRICTIONS.

O: BREATH SOUNDS EQUAL AND SYMMETRICAL. NO TENDERNESS OR PAIN ON PALPATION OF CHESTWALL.

A: CONTUSION RT RIBCAGE. RESOLVED.

P: WILL LET HIM RETURN TO WORK ON 8/11/08 WITH NO RESTRICTIONS.
JBJ/PSE

cc: Wd

6-2-08 BILLY WAYNE HERNDON

F/U OF WC INJURY OF 5/29/08. AFTER BEING SEEN IN OFFICE THAT DAY. HE WENT TO ER THAT NIGHT DUE TO HURTING SO MUCH. X-RAYS FAILED TO SHOW FX. CT OF CHEST SHOWED 2 FX'D RIBS AND CONTUSED LIVER. HE WAS GIVEN IV MED AND THEN SENT HOME ON MEDS PRESCRIBED BY ME THAT DAY. HE STATES HE IS FEELING BETTER TODAY BUT STILL HAVING HARD TIME GETTING AROUND.

O: APPEARS STATED AGE. NAD. HEART RR W/O MTG. CHEST CTA. NO DISCOLORATION OVER RT LATERAL CHESTWALL BUT HAS TENDERNESS TO PALPATION OF THE RIBS. BREATH SOUNDS EQUAL AND SYMMETRICAL.

A: 2 RIB FXS/CONTUSION OF LIVER FROM WC INJURY, RESOLVING.

P: CONTINUE REST, OBSERVATION, LORTAB 7.5 QID PRN PAIN. SINCE HIS WORK INVOLVES CLIMBING IN AND OUT OF TRUCKS AND MANAGING 18 WHEELERS. I WILL KEEP HIM OFF WORK FOR ANOTHER WK. F/U 1 WK.
JBJ/PSE

cove P

6-9-08 BILLY WAYNE HERNDON

F/U OF WC INJURY WITH BOOTLE LOGGING OF 5/29/08. HE FEELS ABOUT 50% BETTER BUT STILL REQUIRING LORTAB AND HAVING TROUBLE USING RT ARM TO CLIMB IN TRUCK CAB. JUST HITTING ANY BUMP STILL CAUSES PAIN.

O: NO RESP DISTRESS. STILL SOME TENDERNESS OVER RT LATERAL RIBS. CHESTWALL EXCURSIONS AND BREATH SOUNDS ARE EQUAL AND SYMMETRICAL. NO DISCOLORATION SEEN ON CHESTWALL.

A: 2 RIB FXS. RESOLVING.

P: REFILLED LORTAB 7.5 MG. #15 X 0R. CMS. NO WORK. F/U 10 DAYS.
JBJ/PSE

21
cq: WC

6-17-08 BILLY WAYNE HERNDON

F/U OF WC INJURY WITH BOOTLE LOGGING OF 5/29/08. PT AND WIFE ARE HAVING PROBLEMS DEALING WITH LENGTH OF TIME IT IS TAKING TO GET OVER FX'D RIBS. ALSO SOUNDS LIKE HIS EMPLOYER IS HAVING TROUBLE DEALING WITH LENGTH OF TIME HE IS TAKING TO HEAL. STILL HAVING JUST AS MUCH PAIN AS HE DID LAST WK. DENIES RESP DISTRESS. STILL REQUIRING LORTAB.

O: SITTING ON EXAM TABLE. NAD. EQUAL AND SYMMETRICAL BREATH SOUNDS AND CHESTWALL EXCURSIONS. STILL TENDER OVER RT LATERAL RIBCAGE. NO TENDERNESS IN ABDOMINAL AREA.

A: 2 RIB FXS, RESOLVING.

P: GIVEN MORE LORTAB 7.5 MG. #30 X 1R. CONTINUE REST. WE WILL GET 2ND OPINION FROM DR. HOLMAN AS HE IS NOT ABLE TO WORK DUE TO HIM BEING A TRUCK DRIVER AND HAVING TO CLIMB IN AND OUT OF THE CAB.
JBJ/PSE

[Signature]

61

WALTERBORO FAMILY PRACTICE, ASSOCIATES, P. A.

NEW PATIENT SHEET

PATIENT'S NAME: Billy W Herndon AGE: 58 BIRTHDATE: 12/11/19

ADDRESS: [REDACTED] Walterboro SC 29488

PARENT'S NAME IF THE PATIENT IS A CHILD: _____

SPOUSE'S NAME: Deborah Herndon EMPLOYER: Booth Logging

I. PAST HISTORY:

ALCOHOL:

DRUG ALLERGIES: NO

TOBACCO:

MEDICINES: Zelta, Gluopage, Atenol, asprin, uniritra

SURGERIES:

MEDICAL PROBLEMS: diabetic, High blood pressure

IMMUNEZATIONS INCLUDING TETANUS:

HOSPITALIZATIONS: 2 1/2 yrs ago

FAMILY HISTORY:

ARE YOU CURRENTLY SEEING ANOTHER PHYSICIAN: Dr. E. Brownfield

I. PRESENT ILLNESS:

5-29-08 WAYNE HERNDON

MC WITH BOOTH LOGGING. HE FELL ONTO A LOWBOY WHILE TRYING TO LOAD A PIECE OF EQUIPMENT. HAPPENED ABOUT AN HR PRIOR TO COMING IN TODAY. HAS PAIN IN RT LATERAL CHESTWALL. NO LOSS OF CONSCIOUSNESS.

O: SPLINTING RT LATERAL CHESTWALL. BREATH SOUNDS EQUAL AND SYMMETRICAL AS WELL AS CHESTWALL EXCURSIONS. NO DISCOLORATION OF RIBS. PAIN ON COMPRESSION OF RIBS LATERALLY. CHEST X-RAY AND RT RIB VIEWS FAIL TO SHOW PNEUMOTHORAX OR FX.

A: CONTUSION RT RIB CAGE.

P: GIVEN RX FOR RIB BINDER, LORTAB 7.5 MG. #30 X QID PRN PAIN. EXPLAINED TO REDUCE ACTIVITY SO THERE IS NO MOVEMENT OF THE CHESTWALL. ALSO TOLD HIM HOW TO COMPRESS RIBS WITH A PILLOW BETWEEN THE ARM AND CHESTWALL. NO WORK UNTIL I SEE HIM MONDAY AS HE DRIVES AN 18 WHEELER. IT WOULD NOT BE WISE FOR HIM TO DO THIS WHILE HAVING THE CHESTWALL PAIN AND TAKING THE LORTAB.

JBJ/RSP

cc: WC

62

Walterboro Family Practice Associates, PA

New Patient Sheet

Patient Name: Billy W Herndon Sr. Age: 64 Birthdate: 12/11/49

Address: ~~283 - 1st Ave. S.E.~~ Walterboro, SC 29488

Parent's Name if Patient is a Child: _____

Spouse's Name: Deborah Herndon Employer: ~~Walterboro~~ retired

I Past History

Drug Allergies: 0

Alcohol: 0

Medicines: Atenolol 50mg qd

Tobacco: 1986
quit

Surgeries: metformin 1000mg qd
Prostatectomy @ AFS
ASA 81

Heart attack

9 yrs ago

Medical Problems:

Heart attack
9 yrs ago

Immunizations Including Tetanus:

Hospitalizations: for surgery

Family History:

6 - Parents + Parent - heart, diabetes

Are you currently seeing another Physician:

II Present Illness:

~~Dr. Brownfield~~ MDC
Dr. Brownfield

1/28/2014 Billy Herndon DOB: 12/11/1949

S: Patient presents with a two to three day history of left upper back pain that radiates to his left chest area. Describes a burning pain and now is noting a rash on the back for the last two days. No previous history. No injury. Patient does have a history of heart disease. Pain is not worse with activity. It is sensitive to light touch.

O: Temperature 97.3. Blood pressure 150/80. Cardiovascular: Regular. Lungs: Clear. Skin: Linear rash starting in the upper left back area, radiating towards the chest. Tender to light touch consistent with shingles.

A: Shingles.

P: 1. Valtrex 1000 mg, one p.o. t.i.d. for 7 days.
2. Neurontin 300 mg, one p.o. b.i.d. as needed for pain, #30, no refills.
3. Zostavax prescription given. Patient can have the vaccine in the next two to three weeks after the shingles episode resolves.
4. Patient will return with any issues or worsening of symptoms.

Bryan Tompkins, M.D./TUSAVB-17980096

Bryan Tompkins

5/12/2014 Billy Herndon DOB: 12/11/1949

S: Patient presents here status post MVA. He drives an 18-wheeler. He had a head-on collision this morning around 8:30 a.m. He states the other car crossed over into his lane. He attempted to avoid the collision by moving to the right. He was impacted primarily on his left front. He was restrained with a seatbelt. No loss of consciousness. No head injury. He presents primarily with some left upper arm pain and elbow pain, minimal.

O: Vital signs are stable. General: Well-appearing. Alert. Answers questions appropriately. No apparent distress. HEENT: Negative. No significant findings. Cardiovascular: Regular. Lungs: Clear to auscultation bilaterally. Good breath sounds. Abdomen is soft, nontender. Extremities: Tenderness primarily in the left upper arm. There is some limited range of motion on the left shoulder, but no significant findings on exam. No instability. No swelling. Two plus pulses.

A: 1. Left arm pain.
2. Status post MVA.

P: A urine drug screen was done through CPL today at the request of his employer. We will call with the results. Ibuprofen 800 mg, one p.o. q.d. to b.i.d. p.r.n., #30. Flexeril 10 mg, one p.o. q.d. to t.i.d. p.r.n., #30. Norco 5/325, one p.o. q.d. to t.i.d. p.r.n., #30, no refills. Heat, stretching, and increase range of motion. Return if symptoms are not resolving.

Bryan Tompkins, M.D./TUSAVB 10277064

5/12/2014 Billy Herndon, DOB: 12/11/1949

S: Patient presents here status post MVA. He drives an 18-wheeler. He had a head-on collision this morning around 8:30 a.m. He states the other car crossed over into his lane. He attempted to avoid the collision by moving to the right. He was impacted primarily on his left front. He was restrained with a seatbelt. No loss of consciousness. No head injury. He presents primarily with some left upper arm pain and elbow pain, minimal.

O: Vital signs are stable. General: Well-appearing. Alert. Answers questions appropriately. No apparent distress. HEENT: Negative. No significant findings. Cardiovascular: Regular. Lungs: Clear to auscultation bilaterally. Good breath sounds. Abdomen is soft, nontender. Extremities: Tenderness primarily in the left upper arm. There is some limited range of motion on the left shoulder, but no significant findings on exam. No instability. No swelling. Two plus pulses.

A: 1. Left arm pain.
2. Status post MVA.

P: A urine drug screen was done through CPL today at the request of his employer. We will call with the results. Ibuprofen 800 mg, one p.o. q.d. to b.i.d. p.r.n., #30. Flexeril 10 mg, one p.o. q.d. to t.i.d. p.r.n., #30. Norco 5/325, one p.o. q.d. to t.i.d. p.r.n., #30, no refills. Heat, stretching, and increase range of motion. Return if symptoms are not resolving.

Bryan Tompkins, D.O./TUSAVB-18377964

* 2 panel

25 C spine
26 Shoulder

REQUEST FOR
Radiological Consultation and Services
(ALL BLANKS BELOW MUST BE FILLED BEFORE INTERPRETATION CAN BE RENDERED)

Roentgenographic Examination of: L shoulder
C spine

Number of Views: _____

Clinical Diagnosis or Diagnostic Problem Involved:
Spine - C-spine pain
C - C shoulder pain
phn 538 4884

Name: <u>Hawkins, Billy</u>
Age: <u>64</u>
Date: <u>5-27-14</u>
Date of Birth: <u>BD 12/11/49</u>
Charge: <u>\$150.00</u>
<u>62</u>

Physician: B. Humphries, D.O. Technician: D. Belgin, R.T.

WALTERBORO MEDICAL CENTER
X-RAY REPORT

Chest: C/T= _____ ☐ Negative ☐ Abnormal

Other:
Shoulder: Mild/mod D.D.
Cervical: Multilevel D.D.

Discontinue
changes
to neck
findings
to 5/28/14
6-2-14 pm (initials)

Radiologist Signature: [Signature]
Initials: [Initials]

666

5/27/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up on his left neck/ left shoulder pain. Continues to have issues. This started after a MVA while working. He is a truck driver. He was prescribed Ibuprofen and Norco and Flexeril with some mild improvement, but symptoms continue and have not resolved. He also is having more swelling on the left upper extremity and some numbness or tingling that he describes recently.

O: Vital signs reviewed and stable. Cardiovascular: Regular. Lungs are clear. Musculoskeletal: Tenderness primarily on the C-spine paraspinal muscles on the left trapezius area and into the left shoulder. Good range of motion of the left shoulder. No obvious deficits. He does have decreased strength in the left arm, but this seems to be related to pain than a true loss of strength. Again, pain continues with palpation in the trapezius area as well and C-spine paraspinal muscles continue to have spasm in the area.

A: 1. Neck pain.
2. Left shoulder pain.

P: X-rays were done today of the C-spine and left shoulder. No obvious fractures. Await Radiology's final reading. We will refill the Ibuprofen 800 mg as needed and the Norco at 5/325, 330- to with no refills. We will change from Flexeril to Baclofen 10 mg, one p.o. q.d. to t.i.d. p.r.n., #30 with no refills. Do not take before driving or operating machinery. Physical therapy referral today secondary to poor progress and improvement at this point. Patient to follow up in the next two weeks. A note for two more weeks off of work was given today.

Bryan Tompkins, D.O./TrUSAVB-18433973

6/10/2014 Billy Herndon DOB: 2/11/1949

S: Patient is here for a follow up. Continues to have neck pain with left-sided shoulder and arm radiation. He has had some improvement with the new muscle relaxer, but continues to have pain on a daily basis. It often wakes him up at night as well. He is awaiting approval for Workman's Comp for the physical therapy. He has hired an attorney to look into this issue. They also needs records from us.

O: Vital signs reviewed and stable. HEENT: Negative. Cardiovascular: Regular. Lungs are clear. Musculoskeletal: Tenderness again left side of the C-spine paraspinal muscles and into the shoulder. Describes radiation into the left arm. He does appear to have decreased grip strength and decreased flexion and extension on the left today. Two plus pulses.

A: 1. Neck pain.
2. Left shoulder pain.

P: Again, I continue to recommend physical therapy, but we will wait approval for this. I also recommend an MRI of the C-spine. I will order this today. We will refill current medications. Ibuprofen 800 mg, one p.o. q.d. to b.i.d., #60; take as needed with food. Increase the Norco to 10/325, one p.o. q.d. to b.i.d. p.r.n., #60 with one refill and Baclofen 10 mg, one p.o. q.d. to t.i.d. p.r.n., #45 with one refill. Patient to follow up in the next two weeks. A note for work given for two more weeks off.

Bryan Tompkins, D.O./TrUSAVB-18483947

5/27/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up on his left neck/ left shoulder pain. Continues to have issues. This started after a MVA while working. He is a truck driver. He was prescribed ibuprofen and Norco and Flexeril with some mild improvement, but symptoms continue and have not resolved. He also is having more swelling on the left upper extremity and some numbness or tingling that he describes recently.

O: Vital signs reviewed and stable. Cardiovascular: Regular. Lungs are clear. Musculoskeletal: Tenderness primarily on the C-spine paraspinal muscles on the left trapezius area and into the left shoulder. Good range of motion of the left shoulder. No obvious deficits. He does have decreased strength in the left arm, but this seems to be related to pain than a true loss of strength. Again, pain continues with palpation in the trapezius area as well and C-spine paraspinal muscles continue to have spasm in the area.

A: 1. Neck pain.
2. Left shoulder pain.

P: X-rays were done today of the C-spine and left shoulder. No obvious fractures. Await Radiology's final reading. We will refill the ibuprofen 800 mg as needed and the Norco at 5/325, 330 to with no refills. We will change from Flexeril to Baclofen 10 mg, one p.o. q.d. to t.i.d. p.r.n., #30 with no refills. Do not take before driving or operating machinery. Physical therapy referral today secondary to poor progress and improvement at this point. Patient to follow up in the next two weeks. A note for two more weeks off of work was given today.

Bryan Tompkins, D.O./TrUSA VB-18433973

6/10/2014 Billy Herndon DOB: 2/11/1949

S: Patient is here for a follow up. Continues to have neck pain with left-sided shoulder and arm radiation. He has had some improvement with the new muscle relaxer, but continues to have pain on a daily basis. It often wakes him up at night as well. He is awaiting approval for Workman's Comp for the physical therapy. He has hired an attorney to look into this issue. They also needs records from us.

O: Vital signs reviewed and stable. HEENT: Negative. Cardiovascular: Regular. Lungs are clear. Musculoskeletal: Tenderness again left side of the C-spine paraspinal muscles and into the shoulder. Describes radiation into the left arm. He does appear to have decreased grip strength and decreased flexion and extension on the left today. Two plus pulses.

A: 1. Neck pain.
2. Left shoulder pain.

P: Again, I continue to recommend physical therapy, but we will wait approval for this. I also recommend an MRI of the C-spine. I will order this today. We will refill current medications. Ibuprofen 800 mg, one p.o. q.d. to b.i.d., #60, take as needed with food. Increase the Norco to 10/325, one p.o. q.d. to b.i.d. p.r.n., #60 with one refill and Baclofen 10 mg, one p.o. q.d. to t.i.d. p.r.n., #45 with one refill. Patient to follow up in the next two weeks. A note for work given for two more weeks off.

Bryan Tompkins, D.O./TrUSA VB-18483947

* 2 panel

25 C spine
26 shoulder

REQUEST FOR
Radiological Consultation and Services
(ALL BLANKS BELOW MUST BE FILLED BEFORE INTERPRETATION CAN BE RENDERED)

Röntgenographic Examination of:

L shoulder
C spine

Number of Views:

Clinical Diagnosis or Diagnostic Problem Involved:

Spina - C spine pain
C - C shoulder pain
phn 538 2584

Name:

Hendon, Betty

Age:

64

Date

5-27-14

Date of Birth

BD 12/11/49

Charge

150.00
62 6002

neg

neg

Physician

B. Thompson, D.O.

Technician

D. Belger, R.T.

WALTERBORO MEDICAL CENTER
X-RAY REPORT

Chest: C/T=

☐ Negative

☐ Abnormal

Other:

Shoulder: Mild/MOD DSD.

Cervical: Multilevel DDD.

Dissective
changes
No acute
findings
P 5/29/14
6-2-14 pm (RNT)

Radiologist Signature:

[Signature]

Initials:

[Initials]

1.0

1/28/2014 Billy Herndon DOB: 12/11/1949

S: Patient presents with a two to three day history of left upper back pain that radiates to his left chest area. Describes a burning pain and now is noting a rash on the back for the last two days. No previous history. No injury. Patient does have a history of heart disease. Pain is not worse with activity. It is sensitive to light touch.

O: Temperature 97.3. Blood pressure 150/80. Cardiovascular: Regular. Lungs: Clear. Skin: Linear rash starting in the upper left back area, radiating towards the chest. Tender to light touch consistent with shingles.

A: Shingles.

P: 1. Valtrex 1000 mg, one p.o. t.i.d. for 7 days.
2. Neurontin 300 mg, one p.o. b.i.d. as needed for pain, #30, no refills.
3. Zostavax prescription given. Patient can have the vaccine in the next two to three weeks after the shingles episode resolves.
4. Patient will return with any issues or worsening of symptoms.

Bryan Tompkins, M.D./TrUSAVB-17980096

Bryan Tompkins

5/12/2014 Billy Herndon DOB: 12/11/1949

S: Patient presents here status post MVA. He drives an 18-wheeler. He had a head-on collision this morning around 8:30 a.m. He states the other car crossed over into his lane. He attempted to avoid the collision by moving to the right. He was impacted primarily on his left front. He was restrained with a seatbelt. No loss of consciousness. No head injury. He presents primarily with some left upper arm pain and elbow pain, minimal.

O: Vital signs are stable. General: Well-appearing. Alert. Answers questions appropriately. No apparent distress. HEENT: Negative. No significant findings. Cardiovascular: Regular. Lungs: Clear to auscultation bilaterally. Good breath sounds. Abdomen is soft, nontender. Extremities: Tenderness primarily in the left upper arm. There is some limited range of motion on the left shoulder, but no significant findings on exam. No instability. No swelling. Two plus pulses.

A: 1. Left arm pain.
2. Status post MVA.

P: A urine drug screen was done through CPL today at the request of his employer. We will call with the results. Ibuprofen 800 mg, one p.o. q.d. to b.i.d. p.r.n., #30. Flexeril 10 mg, one p.o. q.d. to t.i.d. p.r.n., #30. Norco 5/325, one p.o. q.d. to t.i.d. p.r.n., #30, no refills. Heat, stretching, and increase range of motion. Return if symptoms are not resolving.

Bryan Tompkins, D.O./TrUSAYB-18377964

B

70

06/30/2014 14:27 FAX

CHAIN OF CUSTODY FORM

004

OTS - RTA
LABCORP
1904 ALEXANDER DRIVE
RTP, NC 27709
1100

Customer Service: 800-833-3784

SPECIMEN NO.

0942129366

LAB ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No. WALTERBORO FAMILY PRACTICE 107 CHURCH STREET WALTERBORO 043-549-1558 FAX: Location C. Donor SSN or Employee I.D. No. 247-127471		B. MRO Name, Address, Phone and Fax No. STEP 1: 12465 FAX: D. Reason for Test: ☐ Pre-Employment ☐ Random ☐ Reasonable Suspicion/Onset ☒ Post Accident ☐ Periodic ☐ Other E. Collector Name, Address, Phone and Fax No. Collector Phone No. Collector Fax No.	
F. Donor Identification Verified By: ☒ Photo I.D. ☐ Employer Representative			

STEP 2: TO BE COMPLETED BY COLLECTOR

Redd specimen temperature within 4 minutes, is temperature between 90° and 100°F? ☒ Yes ☐ No, Enter Remark Below Apil Specimen Collection ☒ Yes ☐ No

REMARKS:

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR. Collector affixes bottle seal(s) to bottle(s). Collector signs seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY COLLECTOR AND DONOR

G. Daytime Phone No. 247-127471 Evening Phone No.

Date of Birth 11/11/71

H. TEST(S) REQUESTED BY EMPLOYER:

N7 788045 9+ALC+QRT

I authorize the collection of this specimen for the purpose of a drug screen. I acknowledge that the specimen container(s) was/were sealed with tamper-proof seal(s) in my presence; and that the information provided on this form and on the label(s) affixed to the specimen container(s) is correct. I authorize the laboratory to release the results of the test to the company identified on this form or its designated agent(s).

(PRINT) DONOR'S NAME (FIRST, MI, LAST) Willie Howard SIGNATURE OF DONOR Willie Howard INITIAL WH MONTH 11 DAY 11 YEAR 71

STEP 5: CHAIN OF CUSTODY (INITIALS OF COLLECTOR, EMPLOYER AND COMPLETED BY LABORATORY) TO BE COMPLETED BY COLLECTOR AND DONOR

I certify that the specimen given to me by the donor identified on this form was collected, labeled, sealed, and released to the Delivery Service noted in accordance with applicable requirements.

Signature of Collector Willie Howard Date of Collection 11/11/14 Date of Delivery Service 11/11/14

RECEIVED AT LAB: 11/11/14 Primary Specimen Bottle Seal Initial WH SPECIMEN BOTTLE(S) RELEASED TO: Willie Howard
☒ Yes ☐ No, Enter Remark Below

Printed: 11/13

COPY 4 - EMPLOYER COPY - BLUE

LabCorp

EKG Report
Colleton Medical Center
501 Robertson Blvd
Walterboro, SC 29488

Patient: HERNDON, BILLY WAYNE
Unit #: CM00122276

Service Date: 06/19/14
Service Time: 1109

Test Reason : CHEST PAIN

Blood Pressure : ***/** mmHG

Vent. Rate : 071 BPM Atrial Rate : 071 BPM

P-R Int : 182 ms QRS Dur : 080 ms

QT Int : 382 ms P-R-T Axes : 065 028 025 degrees

QTc Int : 415 ms

Normal sinus rhythm

Normal ECG

No previous ECGs available

Confirmed by BOWER, JEFFREY (4645) on 6/20/2014 8:12:33 AM

Referred By: Suzanne Echemendia-Wirth

Overread By: JEFFREY BOWER

Electronically Signed by Philip J Bower, MD on 06/20/14 at 0812

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina

PCI *LIVE* (PCI: OE Database COCDAB)

Run: 06/20/14-16:24 by CASH, VICTORIA

Page 1 of 1

RUN DATE: 06/20/14
 RUN TIME: 1624
 RUN USER: CMNUR.VC1

Colleton Medical Center
 501 Robertson Blvd.
 Walterboro, SC 29488
 (843) 782-2521

PAGE 1

PCI User: CMNUR.VC1 Lab Database: LAB.COCODAB

Name: HERNDON, BILLY WAYNE		Age/Sex: 64/M		Attend Dr: Vemula, Nagasumanth MD		
Acct#: CM0109163294		Unit#: CM00122276		Status: ADM INO		
Reg: 06/19/14		Disch:		Location: CM: 3 CM: 324-A		
Specimen: 0619:DAB:C00091S Collected: 06/19/14-1402 Status: COMP Reg#: 01812897						
Received: 06/19/14-1422 Subm Dr: Vemula, Nagasumanth MD						
Ordered: LIPID PROFILE						
Test	Low	Normal	High	Flag	Reference	Site
LIPID PROFILE						
> TRIGLYCERIDES		470		H	35-165 mg/dL	CM
					06/19/14-1507	
> CHOLESTEROL		246		*H	150-199 mg/dL	CM
					06/19/14-1512	
> HDL CHOL		42			26-71 mg/dL	CM
					06/19/14-1507	
> LDL CHOLESTEROL		110				CM
					06/19/14-1507	

CM - COLLETON MEDICAL CENTER
 501 ROBERTSON BLVD, WALTERBORO, SC. 29488
 DR. MILTON J. ARRAS

** END OF REPORT **

73

Colleton Medical Center
501 Robertson Blvd
Walterboro, SC 29488

Name: HERNDON, BILLY WAYNE
Unit #: CM00122276
Adm Date: 06/19/14
D/C Date:
Dictated By: Vemula, Nagasumanth MD

Room #: CM.324
Acct #: CM0109163294

Report Name: DISCHARGE SUMMARY

DISCHARGE DIAGNOSES:

1. Chest pain, negative for myocardial infarction.
2. Hyperlipidemia.
3. History of coronary artery disease status post cardiac stent 9 years ago.
4. History of type 2 diabetes mellitus.

HOSPITAL COURSE:

A 64-year-old male with history of hypertension, coronary artery disease status post cardiac stent. The patient has not followed up with a cardiologist in the last 9 years post-cardiac stenting, history of type 2 diabetes mellitus, non-insulin-dependent, history of hyperlipidemia, had left-sided chest pain, lasted for half an hour, came to the Emergency Room for further evaluation. In the ER, aspirin 325 mg p.o. was given once along with nitroglycerin. By the time medications were given, the patient's chest pain resolved. The patient was admitted to the hospitalist service. His initial EKG showed normal sinus rhythm at 71 beats per minute with no bundle-branch block changes. Chest x-ray showed no pleural effusion, no pneumothorax, no pneumonia. Had a remote right posterior fifth through eighth rib fractures. The patient's initial set of cardiac enzymes were troponin 0, CK-MB 3.4. The patient had 3 sets of subsequent cardiac enzymes, which have been negative. Third troponin is 0.01, CK-MB is 2.2. Lipid panel shows triglycerides of 470, cholesterol 246, HDL 42, and LDL of 110. He was evaluated by Dr. Reeves. Echocardiogram showed normal ejection fraction at 55% with no regional wall motion abnormalities. Left ventricular diastolic function parameters were normal. He had nuclear stress test done which showed no evidence of ischemia. There is minimal decrease in the inferior wall, most likely representing nontransmural injury from previous MI 9 years ago. Normal left ventricular systolic function, wall motion, and ejection fraction were noted on the stress test. The patient was cleared from cardiology service to be discharged. The patient today complains of neck pain with tingling down the arm ever since he had a motor vehicle accident 6 weeks ago. I have ordered an MRI of the neck to rule out spine disease. We will discharge the patient today after the MRI is done. The patient was seen and examined by me on the day of the discharge. The patient is medically stable to be discharged home today.

Dictation ID / Confirmation #: 1095395 / 953249
DD: 06/20/2014 10:11 / DT: 06/20/2014 10:43
Authenticated by Nagasumanth Vemula, MD On 06/20/2014 11:20:07 AM

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina PCI *LIVE* (PCI: OE Database COCDAB)

Run: 06/20/14-16:23 by CASH, VICTORIA

Page 1 of 2

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNDON, BILLY WAYNE
Phys: Vemula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM.324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS:
000684476 MRI SPINE-CERVICAL WO CON

Reason for Exam::

HISTORY:

Neck pain, left side radiculopathy.

COMPARISON: None

TECHNIQUE: Multisequence multiplanar MR imaging of the cervical spine was performed without contrast.

FINDINGS:

Slight straightening of the cervical lordosis. No acute fracture or dislocation. The craniocervical junction is intact. Mild degenerative changes of the atlantoaxial joint. Multilevel spinal cord compression as detailed below but no definite signal abnormality within the spinal cord. Multilevel anterior and posterior osteophyte formation and disc dessication.

C2-C3: Unremarkable.

C3-C4: Prominent bilateral disc osteophyte complexes left greater than right with uncovertebral joint hypertrophy. There is severe bilateral foraminal stenosis left greater than right. Mild anterior/left lateral spinal cord compression and mild spinal canal stenosis.

C4-C5: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is moderate right foraminal stenosis resulting from disc osteophyte complex. No significant spinal canal stenosis.

C5-C6: Large right-sided disc osteophyte complex resulting in severe right foraminal stenosis. There is a left sided disc osteophyte complex and uncovertebral joint hypertrophy resulting in severe left foraminal stenosis. Compression of the anterior spinal cord greatest centrally on the right. Mild spinal canal stenosis.

C6-C7: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is compression of the left anterior aspect of the spinal cord but without significant spinal canal stenosis. There is moderate right foraminal stenosis.

C7-T1: Unremarkable.

COLLETON MEDICAL CENTER
501 ROBERTSON BLVD
WALTERBORO SC 29488

PHONE #: 843-782-2545
FAX #: 843-782-3317

Name: HERNDON, BILLY WAYNE
Phys: Vemula, Nagasumanth MD
DOB: 12/11/1949 Age: 64 Sex: M
Acct: CM0109163294 Loc: CM.324 A
Exam Date: 06/20/2014 Status: ADM IN
Radiology No:
Unit No: CM00122276

EXAMS: .
000684476 MRI SPINE-CERVICAL WO CON
<Continued>

Reason for Exam::

IMPRESSION:

Large disc osteophyte complexes with uncovertebral joint hypertrophy from C3/C4 through C6/C7, overall, left greater than right. There is severe multilevel bilateral foraminal stenosis left greater than right as detailed above. There is also mild multilevel spinal cord compression and mild spinal canal stenosis.

** Electronically Signed by CHRISTOPHER MOSES on 06/20/2014 at 1558 **
Reported and signed by: MOSES, CHRISTOPHER

CC: Nagasumanth Vemula MD

Dictated Date/Time: 06/20/2014 (1558)
Technologist: TRACEY D. JONES, RT(R) (MR)
Transcribed Date/Time: 06/20/2014 (1558)
Prepared By: PHY. MOSCH
Electronic Signature Date/Time: 06/20/2014 (1558)
Printed Date/Time: 06/20/2014 (1623) BATCH NO: N/A

PAGE 2

Signed Report Printed From PCI

Electronically Signed by Nagasumanth Vemula, MD on 06/20/14 at 1220

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina PCI *LIVE* (PCI: OE Database COCDAB)

06/20/14-16:23 by CASH, VICTORIA

Page 2 of 2

77

Colleton Medical Center
501 Robertson Blvd
Walterboro, SC 29488

Transthoracic Echocardiogram
2D, M-mode, Doppler, and Color Doppler

Patient: BILLY W HERNDON
URN: CM87907
Study date: 06/20/2014
HR:
BP: /
DOB: 12/11/1949
Age: 64 years
Gender: Male
Height: 70 in
Weight: 213.6 lb
BSA: 2.15 m²

SUMMARY:

- Procedure information: This was a technically very difficult study.
- Left ventricle: Ejection fraction was estimated to be 55 %. There were no regional wall motion abnormalities. Left ventricular diastolic function parameters were normal.
- Aortic valve: The valve was trileaflet. Leaflets exhibited normal thickness and normal cuspal separation.
- Aorta, systemic arteries: The root exhibited normal size.
- Mitral valve: Not well visualized. Normal motion in orthogonal views.
- Left atrium: Size was normal.
- Right ventricle: The ventricle was moderately dilated. Wall thickness was normal. Estimated peak pressure was at least 20 mmHg.
- Tricuspid valve: There was mild regurgitation.
- Right atrium: The atrium was moderately to markedly dilated.
- Inferior vena cava, hepatic veins: The inferior vena cava was not well visualized.

Sonographer: James Wallrath
Reading Physician: P. Jeffrey Bower, MD
Ordering Physician: Nagasumanth Vemula, MD

Indications: Hypertension.

PROCEDURE: The procedure was performed as an inpatient. This was a routine study. The transthoracic approach was used. The study included complete 2D imaging, M-mode, complete spectral Doppler, and color Doppler. Echocardiographic views were limited by poor acoustic window availability.

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina PCI *LIVE* (PCI: OE Database COCDAB)

Date: 06/20/14-16:24 by CASH, VICTORIA

Page 1 of 3

78

morbidity of patient and subcostal view gassed out. This was a technically very difficult study.

LEFT VENTRICLE: Size was normal. Ejection fraction was estimated to be 55 %. There were no regional wall motion abnormalities. DOPPLER: There was an increased relative contribution of atrial contraction to ventricular filling. The deceleration time of the early transmitral flow velocity was normal. Left ventricular diastolic function parameters were normal. E/E prime was normal.

AORTIC VALVE: The valve was trileaflet. Leaflets exhibited normal thickness and normal cuspal separation. DOPPLER: Transaortic velocity was within the normal range. There was no evidence for stenosis. There was no regurgitation.

AORTA: The root exhibited normal size.

MITRAL VALVE: Not well visualized. Normal motion in orthogonal views.

LEFT ATRIUM: Size was normal.

RIGHT VENTRICLE: The ventricle was moderately dilated. Systolic function was normal. TAPSE=2.1 cm suggesting normal RV systolic function. Wall thickness was normal. DOPPLER: Estimated peak pressure was at least 20 mmHg.

TRICUSPID VALVE: DOPPLER: There was mild regurgitation.

RIGHT ATRIUM: The atrium was moderately to markedly dilated.

SYSTEMIC VEINS: IVC: The inferior vena cava was not well visualized.

SYSTEM MEASUREMENT TABLES

2D

LAEDV Index (A-L): 12.1 ml/m2

2D mode

IVSd: 1 cm

LVIDD: 4.4 cm

RVAWd: 0.4 cm

RVIDd: 4.4 cm

CW

RAP: 5 mmHg

MM

Ao Diam: 3.1 cm

AV Cusp: 1.8 cm

Ao/LA: 0.9

LA Diam: 3.5 cm

EDV(Teich): 59.7 ml

IVSs: 0.8 cm

LA/Ao: 1.1

LVIDs: 2.8 cm

LVPWd: 0.7 cm

LVPWs: 1.3 cm

EF

Patient Name: HERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina

PCI *LIVE* (PCI: OE Database COCDAB)

Run: 06/20/14-16:24 by CASH, VICTORIA

Page 2 of 3

E': 0.1 mPa
E/E': 8
MV DecT: 217.4 ms
MV E/A Ratio: 0.7
MVA By PHT: 3.5 cm2
RVSP: 17 mmHg

Prepared and electronically signed by

P. Jeffrey Bower, MD
Signed 06/20/2014 09:01:49

Patient Name: BERNDON, BILLY WAYNE

Account #: CM0109163294

South Carolina

PCI *LIVE* (PCI: OE Database COCDAB)

Run: 06/20/14-16:24 by CASH, VICTORIA

Page 3 of 3

80

6/23/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up for his neck pain. He went to the ER secondary to chest pain with neck pain. He was concerned he was having a heart issue. He was admitted. Cardiac workup was done and it was negative. MRI was also done and they feel that his C-spine issues may be the source of his pain. We did review the records. Again, his MRI of the C-spine did show multiple disk osteophyte complexes from C3/C4 through C6/C7, left greater than right. Severe bilateral foraminal stenosis, left greater than right. Multilevel mild spinal cord compression and stenosis as well. Patient continues to have pain. He gets some relief with the Norco. It appears to be short lived. Difficulty sleeping secondary to pain. He continues to have left upper extremity radiation, numbness, and discomfort.

O: Vital signs reviewed and stable. Cardiovascular: Regular. Lungs are clear. Musculoskeletal/C-spine: Tenderness primarily on the left side with left upper extremity radiation. Continues to have pain. Difficulty finding a comfortable position. No new changes from last visit.

A: 1. Neck pain.
2. Left upper extremity radiculopathy.

P: We will adjust his pain medicine for now to Percocet 10/325, one p.o. q.d. to t.i.d. p.r.n., #90 with no refills and Neurontin 600 mg, one p.o. t.i.d., #90 with no refills. Neurosurgery referral. They are requesting Dr. Raymond Torres at MUSC. We will do that today. He is also currently following with an attorney for Workman's Comp. Patient to return in the next two to three weeks to reevaluate or sooner with any issue.

Bryan Tompkins, D.O./TrUSAVB-18527979

6/23/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up for his neck pain. He went to the ER secondary to chest pain with neck pain. He was concerned he was having a heart issue. He was admitted. Cardiac workup was done and it was negative. MRI was also done and they feel that his C-spine issues may be the source of his pain. We did review the records. Again, his MRI of the C-spine did show multiple disk osteophyte complexes from C3/C4 through C6/C7, left greater than right. Severe bilateral foraminal stenosis, left greater than right. Multilevel mild spinal cord compression and stenosis as well. Patient continues to have pain. He gets some relief with the Norco. It appears to be short lived. Difficulty sleeping secondary to pain. He continues to have left upper extremity radiation, numbness, and discomfort.

O: Vital signs reviewed and stable. Cardiovascular: Regular. Lungs are clear. Musculoskeletal/C-spine: Tenderness primarily on the left side with left upper extremity radiation. Continues to have pain. Difficulty finding a comfortable position. No new changes from last visit.

A: 1. Neck pain.
2. Left upper extremity radiculopathy.

P: We will adjust his pain medicine for now to Percocet 10/325, one p.o. q.d. to t.i.d. p.r.n., #90 with no refills and Neurontin 600 mg, one p.o. t.i.d., #90 with no refills. Neurosurgery referral. They are requesting Dr. Raymond Torres at MUSC. We will do that today. He is also currently following with an attorney for Workman's Comp. Patient to return in the next two to three weeks to reevaluate or sooner with any issue.

Bryan Tompkins, D.O./TrUSAVB-18527979

7/14/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up on his neck and left shoulder and upper extremity pain. He states he would like to switch back to the Norco. He is currently taking Norco. He had trouble tolerating the Percocet. Increasing nausea. He states it was too strong. The Neurontin has seemed to help and he is currently taking the Baclofen as well. He is continuing to await this Neurosurgical referral. He is waiting on Workman's Comp. He does have an attorney.

O: Vital signs reviewed and stable. Afebrile. HEENT: Negative. Cardiovascular: Regular. Lungs are clear. Neck: Tenderness primarily on the left side. It radiates into the left hand and arm. There is some weakness in the area and pain that continues.

A: 1. Neck pain.
2. Left upper extremity radiculopathy.

P: Continue to await Neurosurgical evaluation. We will change from Percocet to Norco 10/325, one p.o. q.d. to t.i.d. p.r.n., #90. Continue Neurontin 600 mg t.i.d. Refilled Baclofen 10 mg, one p.o. t.i.d., p.r.n., #90, no refills. Patient to follow up in the next three to four weeks to reevaluate.

Bryan Tompkins, D.O./TrUSAVB-18597339

7/17/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for irritation on the tongue and some bleeding this morning. Unclear where this is coming from. He also feels like the back of the throat is swollen. Some change in his voice, but again no significant pain. No fever.

O: Vital signs reviewed and stable. Afebrile. HEENT: There is some fissuring in the tongue. Small areas of white changes that could be related to thrush. The posterior oropharynx without significant change. Her uvula does appear to be somewhat swollen. No active bleeding seen. No significant sinus drainage. TMs are clear. No lymphadenopathy. Cardiovascular: Regular. Lungs are clear.

A: Thrush.

P: We will start a trial of prednisone 20 mg once a day for five days to see if this helps the swelling and the posterior oropharynx symptoms. Nystatin solution 10 cc p.o., swish and spit t.i.d. for 7 days. Return if symptoms are not resolving.

Bryan Tompkins, D.O./TrUSAVB-18611229

7/21/2014 Billy Herndon DOB: 12/11/1949

He has been having a lot of nausea with his Baclofen and hydrocodone. He would like to hold off on this until the morning when he can see his physician and I have said that would be fine. He will let me know if he has any problems tonight. I am going to have him take a half tablet of the hydrocodone if he feels like he is having withdrawal symptoms.

Gunther Rencken, MD/TrUSAVB-18673251

7/22/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for dull headache, nausea. He states his mood has been down. He thinks it may be because of his chronic pain or pain medication. He is requesting to cut back on the medicine to see if he starts feeling better. Again he does have a history of diabetes and hypertension as well. He is treated by an outside physician. He is currently on atenolol and metformin 1000 mg twice daily, aspirin, Pravachol, and there was one other medicine that he is not sure of. He is still awaiting the decision from Workman's Comp for further evaluation of his neck pain.

O: Vital signs reviewed. Blood sugar is elevated at 235. HEENT: Negative. Moist mucosa. Cardiovascular: Regular rate and rhythm. No murmurs. Lungs are clear. Abdomen is soft. Generally his mood does appear to be down. He states he is having occasional crying spells. His wife is starting to notice the change.

A: 1. Depressed mood.
2. Nausea.
3. Diabetes type 2.
4. Neck pain, chronic.

P: Again, await neurosurgical evaluation. Patient can cut back on the Norco to see if he sees improvement. He can increase the Baclofen if needed. A trial of Cymbalta 30 mg daily. Keep a close eye on his blood sugar. Increase fluids. A prescription of Phenergan given 25 mg, one p.o. q. 6 hours as needed, #20, no refills. Follow up in the next two to three weeks to reevaluate. Return sooner with any issues.

Bryan Tompkins, D.O./TrUSAVB-18626301

P

84

8/11/2014 Billy Herndon DOB: 12/11/1949

S: Patient is here for follow up. Continues with neck pain into the left shoulder. He has felt better since he has cut back on his Norco. He only takes it intermittently and only as needed. He did not start his Cymbalta. He instead started fluoxetine that he had at home from his wife. He states he feels good on this medication. Requested a refill. No new issues at this time. Blood sugars are generally well controlled.

O: Vital signs reviewed and stable. Afebrile. Cardiovascular: Regular. Lungs are clear. Abdomen is soft. Neck: Tenderness remains on the left C-spine paraspinal muscles into the left trapezius area. Awaiting Workman's Comp approval for further evaluation.

- A:
1. Neck pain with left shoulder radiation.
 2. Depression, improving.
 3. Diabetes type 2.
 4. Hypertension.
 5. Hyperlipidemia.

P: We will attempt to get all the latest labs from the hospital when he was there for atypical chest pain. Refilled fluoxetine 20 mg once daily, #30 with five refills and ibuprofen 800 mg one p.o. q.d. to b.i.d. with food, p.r.n. severe pain, #60, also with five refills. He has a Workman's Comp hearing he states in September to decide on Neurosurgical evaluation. Await that decision.

Bryan Tompkins, D.O./TrUSAVB-18691728

pr

85

9/15/2014 - Billy Hemdon DOB: 12/11/1949

S: Patient is here for follow up. He states he did get approval for Neurosurgery evaluation and possible surgery from Workman's Comp. He has also been able to get disability. He continues to have pain. He thinks he may have more weakness on that left upper extremity recently.

O: Vital signs reviewed and stable. Cardiovascular: Regular. Lungs are clear. Neck: No significant changes from previous exam. Continues to have pain primarily in the left and again he does appear to have more decreasing grip strength on this exam as opposed to our previous exams, 3/5 in the left and 5/5 on the right.

- A:
1. Neck pain.
 2. Left upper extremity radiculopathy.
 3. Depressed mood, improving.
 4. Diabetes type 2.
 5. Hypertension.
 6. Hyperlipidemia.

P: Patient does have a PCP that takes care of his diabetes, hypertension, hyperlipidemia at MUSC. We will wait on Neurosurgical evaluation to decide on the treatment option or plan. He will continue his medicines as prescribed. If he gets low in the month he can call and we will leave a refill of medicines if needed, and he will follow up after Neurosurgical evaluation and treatment. No change in medicines at this time.

Bryan Tompkins, D.O./TrUSAVB-18814513

86



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Billy W Herndon

Encounter Date: 6/30/2015

Date of Birth: 12/11/1949

Account Number: 845660

Chief Complaint: Neck and radiating left arm pain.

History of Present Illness: The patient is a 65 year old from Walterboro. He has complaints of neck pain with radiating pain, paresthesias and numbness down the left arm to the left hand. He is status post a work-related injury of 05-12-14. He states he was "hit head on in an accident by a car while driving a log truck." He underwent cervical fusion C6-C7 by an outside spinal surgeon in Charleston. He relates it took eight months to "approve surgery." In fact, he and his wife state an MRI of the neck was done only after they went to the emergency room with chest and radiating left arm pain thinking he was having a heart attack. MRI of the neck was done at that time and a diagnosis was made.

The patient continues to have symptoms more neck than arm pain. His pain is typically 6 out of 10. Pain is made better by medication and worse by driving, riding, lifting or straining.

Past Medical History: Heart Attack, Diabetes (250.0), Hypertension,

Past Surgical History: Status post cardiac stent(s).

Current Medications: Fluoxetine 10 mg tablet Oral, aspirin 325 mg tablet Oral, metaxalone 800 mg tablet Oral, Tylenol 325 mg tablet Oral, metformin 500 mg tablet Oral, atenolol 25 mg tablet Oral, pravastatin 10 mg tablet Oral, moexipril 15 mg tablet Oral.

Drug Allergies: No known allergies.

Personal and Social History: The patient does not smoke nor drink. He previously worked as a truck driver for a logging company. His job involves riding over uneven terrain. He must secure straps and trim loads with a chainsaw. He describes his job as requiring heavy physical manual labor.

~~**Physical Examination:** The patient is 5 feet 10 inches weighing 125 pounds. He has a well-healed anterior scar.~~

Range of motion is somewhat limited but appropriate for the fusion. Spurling's maneuver is provocative on the left side. He has no spasticity or myelopathic signs. His numbness interestingly is in a C5-6 distribution. He has symptoms down into the index and forefinger. He also has some symptoms along the brachioradialis. He has pain with range of motion of his neck.

Imaging Findings: The patient is accompanied by past medical records from his treating physician Dr. Pacult dated 06-11-15. It was stated the patient could return to work by "limiting heavy work or straining." It was also felt he would not require any further medical treatment.

87

Patient Name: Herndon, Billy W

Account number: 845660

DOB: 12/11/1949

Encounter Date: 6/30/2015

The patient is accompanied by past medical records from Dr. James Gee including his evaluation of 06-17-15.

The patient is accompanied by past medical records that I reviewed from Dr. Artur Pacult in regards to medical treatment. We also have notes from Walterboro physical therapy. Preoperative note from Dr. Pacult dated 10-27-14 is reviewed. At that time he scheduled an anterior discectomy and fusion at C6-7. Cervical MRI from 06-20-14 was reviewed. Particularly on the left, there was a C6-7 foraminal stenosis with left-sided disc osteophyte and compression of the C7 nerve root.

I personally reviewed the cervical MRI scan. The patient has multilevel pathology at 3-4, 4-5, 5-6 and 6-7. Indeed, in regards to left-sided pathology, the 6-7 level looks the worse. However, I am concerned the patient has pathology at the adjacent levels above.

Plain x-rays which accompany the patient today show cervical fusion between C6-C7.

Diagnosis Codes:

723.1 CERVICALGIA

722.0 DISPLACED CERVICAL INTERVERT DISC

Impression:

1. Multilevel severe degenerative cervical disc disease 3-4, 4-5, 5-6, 6-7.
2. Status post anterior cervical discectomy fusion C6-7 for left cervical radiculopathy.

Treatment Plan: I think before this patient closes his case he should update his cervical MRI scan. I am concerned about the levels above the previous cervical fusion. For this reason I think the patient will need ongoing medical treatment. I would suggest physician visits every one to three months. He may require injections in the area of his facets and certainly if this pain worsens, we would be concerned the disc above the patient's fusion is worsening. He will need intermittent cervical MRI scans in the future. Because the bottom of four degenerative discs have been fused, there will be additional stresses placed across the three discs above the fusion and these may tend to worsen.

Per the fifth edition AMA Guides, I would assign a 26% impairment to the whole person per page 392, table 15-5. This is a whole person rating. However, the patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand.

In regards to work, the patient may not return to his previous vocation. If he tries to do so, I think it is inevitable that he will injure a disc above his cervical fusion. Work restrictions of avoiding heavy lifting and strain are impossible in the line of work this gentleman is currently employed by.

Work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level to above greater than 15 to 20 pounds. Again, I am worried about the adjacent levels of this patient's cervical fusion.

Most probable to a reasonable degree of medical certainty the patient's work injury of 05-12-14 exacerbated a pre-existing asymptomatic degenerative condition. All opinions given above are most probable to a reasonable degree of medical certainty.

88

DIGITALLY SIGNED Donald R. Johnson, II, MD

2 of 3

Patient Name: Herndon, Billy W

Account number: 845660

DOB: 12/11/1949

Encounter Date: 6/30/2015

The patient is instructed to return if pain or symptoms arise.

Donald R. Johnson, II, MD

DRI/jbe

cc: John Hettrick, Esquire FAX#: 843-549-1973

Enclosure: Cervical MRI picture

89

DIGITALLY SIGNED Donald R. Johnson, II, MD

3 of 3

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1406130

BILLY WAYNE HERNDON,

Employee,

Claimant,

v.

G & G LOGGING, INC.,

Employer,

and

PALMETTO TIMBER S.I. FUND
c/o WALKER, HUNTER &
ASSOCIATES, INC.,

Carrier,

Defendants.

COPY
Scanned Exhibits
on Attached CD

DEPOSITION OF: ARTUR PACULT, M.D.
DATE TAKEN: January 7, 2016
TIME: 4:07 p.m.
PLACE: Offices of Artur Pacult, M.D.
 125 Doughty Street
 Charleston, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
 Registered Professional Reporter,
 Certified Realtime Reporter
 and Notary Public

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

Page 2

1 APPEARANCES
2 REPRESENTING THE EMPLOYEE/CLAIMANT:
3 JOHN R. HETRICK, ESQUIRE
4 ROBERT J. BONDS, ESQUIRE
5 Hetrick, Harvin & Bonds
6 Post Office Box 139
7 Walterboro, South Carolina 29488
8 REPRESENTING THE DEFENDANT'S:
9 BENJAMIN T. CRUSE, ESQUIRE
10 McAngus, Goudelock & Couric
11 735 Johanne Dodds Boulevard, Suite 200
12 Mount Pleasant, South Carolina 29464
13 ben.cruse@mgclaw.com
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Page 4

1 (The deposition commenced at 4:07 p.m.)
2 ARTUR PACULT, M.D., SWORN.
3 DIRECT EXAMINATION
4 BY MR. CRUSE:
5 Q. Doctor, would you state your full name for
6 the record, please.
7 A. Artur Pacult.
8 Q. I'm sorry?
9 A. Artur Pacult.
10 Q. Dr. Pacult, my name is Ben Cruse, and I've
11 been retained by G & G Logging and their workers'
12 compensation insurance carrier to represent their
13 interest in a claim filed by Billy Wayne Herndon. And
14 before we get into some of the details of that claim,
15 for the record, could you please describe your
16 professional training and education including any board
17 certifications?
18 A. I went to undergraduate training in Poland;
19 some was also in Africa; but then I did my residency in
20 neurosurgery in Charleston, and I practiced in
21 Charleston since I'm board certified in neurosurgery.
22 Q. Okay. And do you have a specialty? Is it
23 neurosurgery? Is that your specialty?
24 A. Correct.
25 Q. Do you have any area of the body that you

Page 3

1 INDEX
2 Testimony of Artur Pacult, M.D.
3 Direct Examination by Mr. Cruse.....4
4 Cross-Examination by Mr. Hetrick.....24
5 Redirect Examination by Mr. Cruse.....45
6 CERTIFICATE.....50
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX OF EXHIBITS
2 Exhibit 1 - Form 14B/James Gee.....12
3 Exhibit 2 - June 30, 2015, Questionnaire.....19
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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1 STIPULATIONS
2 It is hereby stipulated and agreed by and
3 between the parties hereto, through their respective
4 counsel, that the reading and signing of the transcript
5 is waived by the Deponent.
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Page 5

1 focus on primarily?
2 A. Well, I guess, neurosurgeons would do brain
3 and spine neurosurgery.
4 Q. And have you met with Mr. Herndon's attorney
5 before today?
6 A. Just five minutes before.
7 Q. Okay. And did you all discuss the upcoming
8 deposition?
9 A. No.
10 Q. What was the nature of that conversation?
11 A. He showed me a form, asked me if that's my
12 signature, and I said no.
13 Q. Okay. Prior to that, have you had any
14 communications with Mr. Herndon's attorney about this
15 claim or this deposition?
16 A. Well, paperwork. There's been some form
17 sent by Mr. Hetrick.
18 Q. Is that the medical questionnaire?
19 A. I don't think that's -- I think this is the
20 opinion of Dr. Don Johnson, an orthopedic spine
21 surgeon. I actually have not read that.
22 Q. Okay. So that looks like an IME from
23 Dr. Johnson. Is that the only communication that
24 you've had with him?
25 A. As I remember, yes.

Page 6

1 Q. And I understand you provided treatment for
2 Mr. Herndon; is that correct?
3 A. Correct.
4 Q. And you have your records today with you,
5 and you'll be using those to assist you in your
6 testimony today?
7 A. Yes, sir.
8 Q. And aside from those records and the
9 independent medical evaluation from Dr. Johnson, do you
10 have any other medical records you're going to be
11 relying on today?
12 A. No, I don't think so. In fact, most of the
13 records are in the computer. This is copies of our
14 encounter with the patient.
15 Q. And how did you come to treat Mr. Herndon?
16 A. Well, Mr. Herndon was referred to us. Let
17 me find out who referred him to us. I don't see
18 exactly how -- how he was referred to a neurosurgeon in
19 Charleston.
20 Q. Okay. But he was referred to your
21 attention?
22 A. Well, he's from Walterboro, so he was
23 referred. We only take patients by referral. It could
24 be emergency or could be family doctor, workers'
25 compensation carrier.

Page 7

1 Q. And what is your --
2 A. Actually, it says here, New patient referral
3 workman's compensation.
4 Q. Okay. And what is your understanding of how
5 Mr. Herndon injured himself?
6 A. Well, the patient -- all I know is what the
7 patient tells me. I don't go to look for additional
8 information. I rely solely on the patient information.
9 So the patient told me that he drives a logging truck
10 and was involved in a head-on collision when his truck
11 was hit at a high speed from the side. Since that
12 time, he complained of the neck pain, headaches,
13 particularly pain and tingling into the left arm and
14 forearm into his second and third finger.
15 Q. What was your diagnosis of Mr. Herndon at
16 those early evaluations? What did you diagnose him
17 with?
18 A. Well, in addition to this, the patient had
19 MRI scan, and eventually we were highly suspicious he
20 had a seventh nerve pinching probably from the
21 pathology at C6-C7 segment.
22 Q. And what treatment did you recommend for
23 Mr. Herndon?
24 A. I believe he had an injection, and
25 eventually he underwent surgery. He underwent cervical

Page 8

1 discectomy, decompression of nerve root, and a fusion,
2 which is a standard operation for this problem.
3 Q. Okay. And that surgery was done in January
4 of 2015; is that correct?
5 A. Correct.
6 Q. And was that at the C6-7 level?
7 A. Yes.
8 Q. And did surgery improve Mr. Herndon's
9 symptoms?
10 A. I think it did, yes.
11 Q. Okay. And do you have your February 2nd,
12 2015, note with you today?
13 A. Sure.
14 Q. And you indicate in this report that
15 Mr. Herndon states his pain is markedly improved; is
16 that correct?
17 A. That's what the note says, correct.
18 Q. And his numbness is also improved?
19 A. Yes.
20 Q. And would that have been the numbness into
21 his left arm?
22 A. Yes.
23 Q. And into his left fingers?
24 A. Correct.
25 Q. And you also note that Mr. Herndon

Page 9

1 essentially has a normal neurological examination; is
2 that correct?
3 A. Correct.
4 Q. And what is the significance of a normal
5 neurological examination?
6 A. That means that he might have pain, but he
7 doesn't have a paralysis, he doesn't have a numbness,
8 he does not have weakness in the arm, so all what he
9 had at that time is subjective.
10 Q. And when you say "subjective," that's just
11 his subjective complaints of pain that he was
12 experiencing?
13 A. Correct.
14 Q. Okay. And it was your opinion at that time
15 that in a few weeks, Mr. Herndon should be able to
16 return to his occupation as a truck driver; is that
17 correct?
18 A. Correct.
19 Q. You then indicated Mr. Herndon reached
20 maximum medical improvement on April 27th of 2015; is
21 that correct?
22 A. Yes.
23 Q. And was he still having the subjective pain
24 complaints at that time?
25 A. This is the next visit you're referring to.

Page 10

1 Q. Yeah, April 27.

2 A. Right. The patient underwent discectomy in
3 January 2015. I'm referring to my note. He got
4 somewhat better. In fact, he says he's about
5 50 percent better. He starts -- he started driving.
6 The vibration of the vehicle caused him to have neck
7 pain and the left shoulder pain, so he'd been attending
8 physical therapy. However, we still decided that he
9 has reached maximum medical improvement with this
10 residual complaint.

11 Q. And were there any objective findings or
12 indications at that time which would support
13 Mr. Herndon's subjective complaints?

14 A. No.

15 Q. And this note, further on in that paragraph
16 that you're reading, you said, and this is a quote,
17 "According to him, he's not able to return to work due
18 to his persistent pain," end quote. Do you see that
19 notation there?

20 A. Where?

21 Q. It's in that first paragraph that you were
22 reading from. It's the second to last sentence, I
23 believe.

24 A. Yes. Yes, I do. According to the patient,
25 he is not able to return to work due to his persistent

Page 11

1 pain. No objective findings, however.

2 Q. Do you have any independent recollection
3 regarding that conversation and how that came up in
4 your evaluation, his not being able to return to work?

5 A. Well, I would lie if I say that I remember
6 every time we speak with a patient. That's why we have
7 notes.

8 Q. Sure.

9 A. Otherwise, we wouldn't have it. But I found
10 Mr. Herndon a pleasant and reliable gentleman. So I
11 don't remember exactly how he said that or what exactly
12 he said, but --

13 Q. Do you ask your patients whether they can
14 return to work or is that something that he would have
15 offered voluntarily?

16 A. Either way. Either way.

17 Q. Okay. Again, and you read it as well, there
18 was no objective findings, is that correct, as of this
19 date to corroborate his subjective complaints?

20 A. Correct.

21 Q. And at this point in time, on April 27th of
22 2015, it was your opinion that no further medical
23 treatment was required; is that correct?

24 A. Yes.

25 Q. And you referred him to a specialist for an

Page 12

1 impairment rating.

2 A. Well, we don't provide impairment ratings,
3 so we rely on a specialist to do so, and it is most
4 often that we ask workman's compensation who they would
5 like the patient to go to. If not, we have few
6 specialists that we send the patients to.

7 Q. And did you -- in this particular case with
8 Mr. Herndon, did you or your office refer Mr. Herndon
9 to a specific specialist?

10 A. Honestly, I don't remember.

11 Q. And are you aware of the specialist that
12 Mr. Herndon went to for his impairment rating?

13 A. And who was that?

14 Q. Dr. James Gee with Tuomey Medical
15 Professionals.

16 A. No, I don't know Dr. Gee.

17 Q. Okay. And I believe you indicated that you
18 were shown Dr. Gee's 14B just prior to this deposition?

19 MR. HETRICK: Why don't we go ahead and put
20 it in the deposition.

21 MR. CRUSE: Sure. We can mark this.

22 (Exhibit No. 1 marked for identification.)

23 BY MR. CRUSE:

24 Q. Dr. Pacult, let me show you what's been
25 marked as Exhibit 1; and this is the 14B from Dr. Gee.

Page 13

1 A. Yes.

2 Q. And the first thing, it appears your name
3 has been written at the bottom of this 14B under where
4 it says "Treating Physician." Is that your signature?

5 A. No, that's not my signature. That's my
6 name, but that's not my signature.

7 Q. Okay. Dr. Gee notes then back at the top
8 that Mr. Herndon has been diagnosed with radiculopathy,
9 and the body parts injured are the cervical, referring
10 to the cervical spine. Do you agree with that
11 assessment of the body parts injured and nature of the
12 illness?

13 A. Yes. That's what he received the care from
14 this office from me, radiculopathy-cervical.

15 Q. Okay. And Dr. Gee then confirms April 27th,
16 2015, as the date of maximum medical improvement. And
17 do you still believe Mr. Herndon reached maximum
18 medical improvement as of that date?

19 A. I do.

20 Q. And Dr. Gee indicated Mr. Herndon is able to
21 return to work with recommendations to, quote, "limit
22 heavy-work and stairs." Do you agree with the
23 recommendations as far as those restrictions are
24 concerned?

25 A. I'm not clear what heavy means and what

Page 14

1 stair means. I mean I know staircase, but is that --
2 what does stair mean?
3 Q. It's a good question. Do you agree with
4 limiting Mr. Herndon's, I guess, lifting as a result of
5 his cervical spine injury at all?

6 A. What lifting? I mean what is the limitation
7 of lifting? What does it state? Could you rephrase
8 the question? I mean, I believe this patient is able
9 to return to his work and his limitation is his pain.
10 Now, how much he can weight, I don't have clue. And we
11 are frequently asked this: Is it 20, 30, 50 pounds? I
12 don't know how you can ever establish that. And many
13 times physician says, "You should not lift more than
14 30 pounds." I don't know of any way to say that 30
15 is -- 25 is okay, but 35 is not. I just don't know how
16 you can do that. Maybe I'm just lacking some education
17 or something, but I don't know how you can say that.

18 Q. So is it your opinion, though, and I believe
19 you did say it, that regardless of the lifting
20 restrictions that may be noted on the 14B, it's your
21 opinion that Mr. Herndon is capable of returning to
22 work as a truck driver?

23 A. As I said, assuming that his pain allows him
24 to do that. I don't drive the truck, so I don't know
25 how much pain you have to have not being able to do --

Page 16

1 wish I could do that, but I would be first one to say
2 that -- I tell the patient that, "I wouldn't be
3 surprised if you have some residual pain."

4 Q. Dr. Gee, referring back to Exhibit 1,
5 confirms no further treatment is anticipated as a
6 result of the May 12th, 2014, accident. Do you agree
7 with that opinion from Dr. Gee on the 14B?

8 A. Well, this is at the moment, you know, in
9 June of 2015, that's what Dr. Gee felt, and I have no
10 objection to that. Now, on 6/12, there may be whole
11 different situation, you know. We all know the
12 situation that the physician tells you what the patient
13 call clean bill of health, and they walk out and drop
14 dead. I mean, we see that.

15 Q. And I understand there's no -- there's no
16 crystal ball --

17 A. Right.

18 Q. -- or perfect way to anticipate day to day
19 whether future treatment is needed and --

20 A. At that time I would agree that at that time
21 or at the time when the patient was seen by me last, I
22 did not feel that he needed any more care.

23 Q. And that was April 27th of 2015? Is that
24 the last time you saw Mr. Herndon?

25 A. Yes.

Page 15

1 to be not able to drive the truck. And that's
2 essentially how -- how most of the situations I handle;
3 I say, you know, "I don't do your work, and you just
4 have to tell me." We base on the honesty of the
5 patient. If the patient says, "I can go back to work,
6 I have no problem," there's no limitation.

7 The surgery that this patient had, cervical
8 discectomy and fusion, if you are a football player and
9 you had injury to your neck and you required that
10 operation, the professional football teams would take
11 you back to play professional football, now, presuming
12 that everything is healed and you have no symptoms,
13 so...

14 Q. Is it --

15 A. It just points out the discrepancy, you
16 know, from one situation to another.

17 Q. Is it common for an individual with an
18 injury such as Mr. Herndon's to still be experiencing
19 ongoing pain a year after a fusion procedure?

20 A. It's certainly not uncommon. I mean, I
21 would be the last person to tell you or anyone that if
22 you have a cervical spondylosis, which means
23 essentially aging of the spine, and then you have
24 trauma to your spine, then you have surgery, that I can
25 cure all of your pain. I mean, I'd have to be -- I

Page 17

1 Q. So is it fair to say that your opinion
2 regarding his future medical treatment has not changed
3 since that date?

4 A. Well, it's fair to say that I haven't seen
5 the patient since.

6 Q. So do you have any reason to believe that he
7 would require additional medical treatment or do you
8 have any reason to, I guess, go back and change that
9 opinion?

10 A. If he wouldn't come to me, then I wouldn't
11 have any reason to assume that he did need additional
12 care. Now, we do see a patient who come to us, I treat
13 today. We see them once. We assume that they're well.
14 And then it turned out that they come back three years
15 later and had an operation by someone else. So I don't
16 know if this patient had any additional care or not.
17 Not from this office.

18 Q. Okay. As we sit here today, is it still
19 your opinion today that Mr. Herndon does not require
20 any future medical treatment?

21 A. Based on what we have so far, yes.

22 Q. Okay. Dr. Gee then also assigned a
23 nine percent medical impairment rating to the whole
24 person, referring again to Exhibit 1 in front of you.
25 Do you agree with that rating as assigned by Dr. Gee?

Page 18

A. Well, like I say, this certainly doesn't sound unreasonable, but I don't do those ratings for that one reason. I don't have the knowledge how to assign the impairment rating. There's special book that pain managing physicians have and AMA guidelines. I don't have that. But that is about what I see frequently.

Q. So is it your opinion that this rating is in line with the mechanism of injury, Mr. Herndon's diagnosis, the treatment he's received, and his current condition?

A. I don't see reason to undermine that or question that. Let's put it that way.

Q. You also then completed a questionnaire on October 4th of 2015.

THE WITNESS: This is your thing, right?

MR. CRUSE: Yes. I don't want that to get mixed up.

A. Which questionnaire is that?

Q. It's a questionnaire that -- it's dated June 30th of 2015, but it says it was filled out October 14th, 2015. Do you have a copy of this?

A. I don't think I have a copy of that. Can you --

Q. I can give it to you. Can we maybe make a

Page 20

additional note. Patient had impairment -- improvement -- excuse me -- in weakness post-op, but some pain persisted on the last visit. He was referred for impairment -- permanent impairment rating. This office does not provide this evaluation. This is answer to question 3. Question --

Q. So -- I'm sorry. Just sticking with question 3 then. And that was my question. On some of the handwritten part of it, it says the patient had improvement in weakness post-op; is that correct?

A. Correct.

Q. And that would be, I guess, what you've said today as well, that the weakness in his arm and his strength had improved at that point?

A. Yes, sir.

Q. However, he had persistent pain complaints. And these are the subjective pain complaints that you've been discussing; is that correct?

A. Yes.

Q. Okay. And then -- I'm sorry. On question 4, if you could, please, tell us what your answer was on 4.

A. The question 4 says, If the answer to question 3 is yes, to a reasonable degree of medical certainty, what is the degree of permanent impairment

Page 19

copy and also use that as an exhibit?

MR. HETRICK: I may not have a copy brought with me. Let's go ahead and make copies.

THE WITNESS: Should I have a copy made?

MR. CRUSE: Can we do that?

THE WITNESS: Sure.

MR. CRUSE: Thank you.

Doctor, could I see the IME that you have from Dr. Johnson as well?

(Exhibit No. 2 marked for identification.)

BY MR. CRUSE:

Q. Doctor, we're looking at what's been marked as Exhibit 2. It's a medical questionnaire to you dated June 30th, 2015. And did you complete this questionnaire on October 4th of 2015?

A. Yes. Yes.

Q. Okay. On this questionnaire, numbers 3 and 4, those two questions ask about whether Mr. Herndon sustained permanent impairment to his left arm and, if so, how much. And what was your response to number 3, please?

A. The number 3 question is: To a reasonable degree of medical certainty, did Mr. Herndon sustain a permanent impairment to the left arm, and my answer was yes. Patient had impairment -- and I made an

Page 21

to his left upper extremity including left hand and fingers? My answer was that, We do not provide permanent impairment rating. Please refer elsewhere.

Q. And referring elsewhere, in question 4, that notation, and also the referral in question 3 that you noted, that would have been to Dr. Gee, correct, for those ratings?

A. I assume so, yes, that's what Dr. Gee does.

Q. And so if Dr. Gee did not provide any medical impairment to the left upper extremity, would you have any reason to question Dr. Gee's assessment of the impairment in his left upper extremity?

A. No. I presume that the physician gave nine percent impairment rating total body; that left arm is part of total body.

Q. So that would include any radiculopathy or pain symptoms in the left arm?

A. I would assume so, yes. I would assume so. I mean, that's what I read.

Q. And would you classify the left arm complaints that Mr. Herndon was -- the subjective complaints that he was complaining to you about, would you classify that as radiculopathy?

A. Well, it's difficult to say. His complaint was pain when there was a vibration during driving or

1 whatever he was doing at work, so I presume he had some
2 arm pain or neck pain, but this was just a subjective
3 pain.
4 Q. In your assessment of Mr. Herndon through
5 your evaluations and studies you've performed, have you
6 found any separate or distinct injury to the left arm?
7 A. He did not have injury to his left arm, no,
8 to the extremity itself, no.
9 Q. Finally, the questionnaire asks on question
10 number 6 whether Mr. Herndon could return to work
11 driving a truck, and what was your response in the
12 handwritten portion or what was your response to that
13 question?
14 A. Well, the question reads, Mr. Herndon is 65
15 years old and has worked as a log truck driver for
16 approximately last 25 years. As a log truck driver, he
17 is exposed to constantly driving a heavy truck over
18 uneven terrain which results in continuous jostling and
19 bouncing of the driver and occupants of the log truck.
20 To a reasonable degree of medical certainty, can
21 Mr. Herndon safely return to his occupation as a truck
22 driver?
23 My answer was: Patient is unable to return
24 to work as a result of subjective complaint of pain.
25 Otherwise, he would be able to.

1 Now, I don't know if that's because of the
2 uneven surface he drives on asphalt; I don't know.
3 But, as I said all along, we are believing what the
4 patient says. Now, is this real or not? I don't know.
5 I'm not a detective. But if the patient says he cannot
6 do it because of so and so, we believe him, and that's
7 what it states.
8 Q. Is there any test or study or objective way
9 of confirming whether or not there's ongoing pain
10 symptoms?
11 A. Not that I know. I wish I did, but I don't
12 think there is.
13 Q. So the entirety of your response to number 6
14 is based upon the subjective complaints from
15 Mr. Herndon?
16 A. Correct.
17 Q. And that last part, "Otherwise, he would be
18 able to," is that saying that if it weren't for these
19 subjective pain complaints, there's nothing medically
20 preventing him from returning to work as a truck
21 driver?
22 A. The fact that he had the type of surgery
23 that the patient had does not prevent him from doing
24 so. That's what I'm trying to say. We do surgery
25 based on pain all the time, and most of the surgery

1 that we do, the patients are -- One of the purpose of
2 performing the surgery is to bring the patient back to
3 his previous life; is it work, is it pleasure life,
4 whatever it is. So that's the objective. I don't know
5 of many surgeries that physicians do, and from then on,
6 you cannot do something. I mean, certainly, common
7 sense would be that he probably shouldn't jump out of
8 planes, but, I mean, for the pleasure life, driving
9 truck, if I have that surgery, I would go back to my
10 occupation in blink of eye.
11 MR. CRUSE: Okay. I believe those are all
12 the questions I have for you, Doctor. I appreciate
13 your time.
14 CROSS-EXAMINATION
15 BY MR. HETRICK:
16 Q. Dr. Pacult, my name is John Hetrick, and I
17 represent Mr. Herndon in this case, and I've just got a
18 few follow-up questions and things I want to try to
19 clarify if I can.
20 Now, I believe in your direct testimony, you
21 testified that when Mr. Herndon or throughout the time
22 Mr. Herndon was treated by you, that he was pleasant
23 and you felt like reliable; is that correct?
24 A. That is very correct, yes.
25 Q. Was he cooperative?

1 A. Yes.
2 Q. Was there any evidence that you had that he
3 was malingerer or that there was any gain basis based
4 on what he was telling you?
5 A. Well, no, but would there be any, I wouldn't
6 perform an operation on a person like that.
7 Q. That's correct. So you did perform the
8 operation, and I assume that confirms that you felt
9 like he was a credible, reliable, honest person.
10 A. I sure do.
11 Q. Okay. Now, when he came to see you -- The
12 last time you saw him I believe was 4/27/2015, is that
13 correct, the date you released him at maximum medical
14 improvement?
15 A. Yes. Yes.
16 Q. Okay. And I think you said at that time
17 that he was still having some pain, but there weren't
18 any objective signs of radiculopathy. Is that correct?
19 A. Correct.
20 Q. Now, pain is one indication of
21 radiculopathy, would it not be? I mean, when you have
22 radiculopathy, you have pain?
23 A. Correct.
24 Q. Okay. But there are other signs also; is
25 that right?

Page 26

1 A. Well, there are subjective symptoms; there
2 are objective. Subjective is when the person comes and
3 says, "I'm about to jump out the window because I have
4 a headache." Objectively, we can't prove that. We
5 cannot find weakness, drooping, speech problem, so
6 forth. Same in this situation. Patient comes, says,
7 "I have pain," but objectively there is no weakness,
8 there is no numbness, there is no change of reflex. So
9 subjectively he has radiculopathy; objectively he does
10 not have. To have a radiculopathy, you have to have
11 pain, numbness, weakness, reflex change. Those are the
12 four things of radiculopathy. Three of those are
13 objective; one is subjective.
14 Q. Okay. But that can change, per your
15 testimony, I believe, really at any time after --
16 A. Of course.
17 Q. -- you saw him.
18 A. Of course.
19 Q. And I think he was seen then -- and I'll get
20 to this in a minute, but he was seen on 6/30 of 2015.
21 That would be about a year, I guess -- No. That would
22 be -- I'm sorry. That would be about three months
23 later.
24 A. That's at the Spine Institute.
25 Q. By the Spine Institute, but --

Page 27

1 A. Yeah, but --
2 Q. Go ahead.
3 A. Honestly, I have not read that note, and I
4 did not send the patient there, so I can't comment on
5 that, but it sounds like he was there just six months
6 ago.
7 Q. Right.
8 A. Right.
9 Q. And my question is that from the time that
10 he last saw you, that would be 4/27/2015, until the
11 time that he saw Dr. Johnson on 6/30 of 2015, he could
12 have developed these symptoms of radiculopathy; is that
13 correct?
14 A. Sure. A person can develop that overnight.
15 Q. Now, the objective signs that you talk
16 about, are there objective tests to measure these
17 signs?
18 A. Yes. Numbness, weakness, change of reflex,
19 those are objective.
20 Q. And are there certain tests you can do to
21 measure those? For instance, what does an MRI do?
22 What does an MRI show you?
23 A. Well, the MRI is a radiographic test that
24 has nothing to do with objective findings. The MRI
25 just -- I personally get MRI just to confirm my

Page 28

1 clinical diagnosis by talking and examining the
2 patient. So nine out of ten times, I know what I want
3 to find on MRI scan.
4 Q. They had a previous MRI, I think, that was
5 done in April or earlier. I believe it may have been
6 in -- Let me see when that was. Well, do you have a
7 copy of the MRI? Is it in your records? Let me see
8 what I can find here. Yeah, here it is, on 6/20 of
9 2014. That would have been about a month after the
10 wreck. Have you seen a copy of the MRI of, I believe,
11 6/20/2014?
12 A. Is this the one?
13 Q. I believe it is. Is there a date right
14 there? What date does that say?
15 A. 6/20/2014.
16 Q. All right. And that's part of your records;
17 is that correct?
18 A. That's correct.
19 Q. And so I assume you've seen a copy of that.
20 A. Yes.
21 Q. All right. Now, with respect to the other
22 tests -- I want to go back to the other tests, and then
23 we'll get back to the MRI.
24 The MRI is just basically a picture, so you
25 say that's not an objective test as far as any

Page 29

1 symptomatology. How about a nerve conduction study;
2 does that show anything?
3 A. That also is a confirmatory test. I don't
4 think that if the patient would have either one of
5 those tests positive for pathology, that means if
6 either test showed that there's something wrong with a
7 person, yet the patient says, "I have no symptoms,"
8 then we disregard that.
9 Q. If a patient had symptoms, would it be --
10 would you use a nerve conduction -- do you ever use a
11 nerve conduction study?
12 A. We do; we do use that. It's a, as I said,
13 additional test that helps. Negative does not negate
14 the diagnosis or vice versa. It's --
15 Q. Okay. So you -- Go ahead.
16 A. It's helpful in a clinical setting. If you
17 want to prove something and it does prove, it's
18 helpful, but negative test does not really say, well,
19 there's nothing wrong with you because the test is
20 negative.
21 Q. So then, as I understand it, you could have
22 a negative nerve conduction study and still have a
23 radiculopathy; is that correct?
24 A. Absolutely.
25 Q. Or you could have a positive nerve

1 conduction study and not have a radiculopathy.

2 A. Correct.

3 Q. Now, with respect to -- I want to look back
4 at this MRI that I asked you about on 6/20/2014. You
5 operated on the C6-7 disc; is that right?

6 A. Correct.

7 Q. And when I read this thing, it looked to me
8 like there were some other discs that were -- that his
9 spine in general was not in real good shape. Is that a
10 fair statement?

11 A. His spine is not what?

12 Q. Not in good shape. I mean, he's got a lot
13 of degenerative disc disease in his spine, a lot of
14 problems with various other discs in his spine?

15 A. Well, that is correct. It's kind of like if
16 you have a car that drives, but it looks ugly, that
17 doesn't mean anything needs to be done to the car. The
18 paint is scratched, the car doesn't look pretty, but it
19 drives perfect, which happens. I have a truck, you
20 know, it's 20 years old, perfect shape, ugly as hell.

21 Q. Is there a risk when you repair a disc or
22 when you repair a disc such as C6-7 that the other
23 discs either above or below it are more prone to
24 damage?

25 A. Yes. That's a good question.

1 Statistically, three to four out of ten patients would
2 have additional problem because of that. The question
3 is how do you prove that this is due to the fusion or
4 is it because of the primary condition of the spine
5 worsens with time and age anyway. Now, if you have
6 three discs problem to start with, you fuse one, and
7 the one above is an issue, is that because of the
8 fusion or is that because of the progression of --
9 natural progression of the primary problem, which is
10 disc degeneration? As I said, we don't have an answer
11 for that.

12 Q. Now, when you make a determination as to
13 what discs are involved or what was caused by an
14 accident -- We've got a head-on wreck, so, of course,
15 it was a serious accident. You made a determination
16 that the C7 -- C6-7 disc was damaged.

17 A. Correct.

18 Q. What about the other discs? I mean, would
19 they be typically injured or damaged in a severe
20 accident?

21 A. Well, they could have been, yeah, but the
22 patient's symptoms were coming from C6-7.

23 Q. Okay.

24 A. I mean, that's why, I guess, it takes
25 several years to train a neurosurgeon. But if you have

1 a pain going in a certain part of the hand or arm,
2 there is a certain pattern, so there is certain nerve
3 that follow that pattern, so that's how we know it's
4 the seventh nerve, sixth nerve, or fifth nerve. If we
5 operate just because the patient had an accident, had a
6 bad looking MRI, we would operate 24 hours a day, and
7 still would not probably do all of it.

8 Q. But as far as the other discs that he had,
9 certainly they could have been injured in the accident
10 or the accident could have aggravated any preexisting
11 condition. Would you agree with that?

12 A. Well, I'm not so sure I understand. I mean,
13 if you're asking could the patient have a disc rupture
14 because of an accident elsewhere, yes, but if you have
15 degenerative condition like this, there is no way to
16 say that the accident caused additional problems.

17 Q. I guess my question would be: If you have
18 an accident and, as a result of previous degeneration
19 in your spine, you have an aggravation of this, but you
20 have one particular disc such as C6-7 that is clearly
21 herniated that you repair...

22 A. Correct.

23 Q. Does the spine in general -- is it more
24 prone because of that accident to herniate at a later
25 time or to degenerate further?

1 A. I don't know if you can say that. However,
2 I can tell you, if we are dancing around the same
3 problem, that you can have ugly looking neck, let's
4 call it, and you have an accident, and you have pain,
5 but there's no surgery available, how do we -- and we
6 still say, well, the accident caused that aggravation
7 and the patient has pain, but there's no surgery
8 available, we cannot pinpoint which one is it, so, in
9 general, the condition is -- yes, you can aggravate a
10 condition that you cannot pinpoint which disc is
11 causing the pain. I mean, you've represented many
12 clients that have had negative MRIs, yet they had
13 intractable pain, and they did not require an
14 operation, and we still go through, Did the accident
15 cause that? Well, the patient says yes. Can we prove
16 it by looking at the x-ray? No.

17 Q. If you compare two patients -- and then I'm
18 going to move on. But if you compare two patients, one
19 that has a good spine, no degeneration, and is injured
20 in an accident and has a herniation at C6-7, you repair
21 that, versus one that's 65 years old, like Mr. Herndon,
22 has a bad spine, has a lot of degeneration in his
23 spine --

24 A. Correct.

25 Q. -- and he has a herniation at C6-7 and you

Page 34

1 repair that, is one more likely to have further
2 herniations either up and down the chain as a result of
3 the fusion than another one?

4 A. I would say that is correct. If you have
5 several discs degeneration, and let's say one is
6 symptomatic, the one above is really looking bad, but
7 it's not symptomatic, we frequently include that in the
8 treatment as well anticipating that maybe that will get
9 worse because it's already bad, but it can get worse
10 because of the fusion below, so we do treat that
11 sometimes. Now, when do you have to do that? We're
12 not -- there are surgeons that absolutely will never do
13 that. They just treat the segment that is symptomatic
14 today. And there are some surgeons who say, well, the
15 one above looks also very bad; it's not causing you a
16 problem today, but we should include that in a fusion
17 because it may next week. And there are surgeons who
18 just do this overhaul. I will tell you that's like a
19 mechanic. You know, you take the car to a mechanic.
20 Both is a organ in motion. It's remarkable how similar
21 it is to the car or something mechanical. You go to
22 mechanic, you have a carburetor broke. He says, "Well,
23 that's what you need to have fixed." And the other one
24 says, "There's the carburetor, but also the radiator is
25 pretty bad and is going to go in a month. I'm going to

Page 36

1 definitely something that would make me worse or at
2 least that I know that it would make you worse, or that
3 means that once I have a disc -- there's plenty of
4 surgeons who have bad discs, had the surgery, they
5 continue to work. So your question is logical.

6 Q. Well, the reason I ask that is because you
7 said the reason that Mr. Herndon should not go back to
8 work or would not be able to go back to work was
9 because of his pain, and only he can determine the
10 pain.

11 A. Correct.

12 Q. I'm looking at it from an objective
13 standpoint, if there's a greater risk of further injury
14 to his back by going back to work in logging woods --

15 A. Uh-huh.

16 Q. -- would you recommend -- if he came back in
17 today and said, you know, "Going out in the logging
18 woods, I bounce around all the time. I don't want to
19 do further damage to my back," would you recommend to
20 him, "Well, you need to go back to work" or "You need
21 to go back to work as a log truck driver"?

22 A. No, I don't. But in the same premise, if
23 you ask should everybody who has a disc degeneration
24 after event that requires surgery, should they retire
25 from what they do, the answer is no. You'd have half

Page 35

1 fix that," and you say yes. And there's some that just
2 say, "Well, hell, you just need to get rid of this car
3 because it's just so bad."

4 Q. And the reason I ask these questions, Dr.
5 Pacult, because --

6 A. It all makes very good sense, by the way.

7 Q. This goes back to Mr. Herndon and the reason
8 that he brought up about the driving. If you're
9 driving a truck over a rough road, driving a log truck
10 over a rough road that has logs in it and bumps and
11 whatever, is there a risk there with somebody that has
12 a fusion at C6-7, has a bad spine above, in three disc
13 levels above that, has basically four bad discs, is
14 there a greater risk in an individual like that to
15 herniate a disc above the one you did the fusion at?

16 A. I think it makes perfect sense. It's very
17 logical. But would you ask me that in a reasonable
18 medical degree of certainty, I would say no. But this
19 is what happens. You can have that situation. And, as
20 I say, would I have a bad disc and have a surgery for
21 that, and would I have additional bad discs, would I
22 take some risky activity such as scuba diving or
23 parachuting? I wouldn't. But would I go back to my
24 profession as a surgeon? Yes, because that's what I do
25 for living, and I will do that. I don't think that is

Page 37

1 of the population not working.

2 Q. Certainly, I agree, but there are
3 different -- Would you agree that there are different
4 types of occupations? I mean, obviously, your
5 occupation, although you're standing on your feet, I'm
6 sure, a lot, you use your mind and you use your skills,
7 whereas somebody who does construction work uses their
8 back and uses their arms and whatever, so would you
9 agree that different jobs maybe would require different
10 treatment with respect to a back injury?

11 A. Well, again, we look at -- we're talking
12 about something that is completely maybe irrelevant
13 here because I can also tell you that I have patients
14 who have done hell of jobs. They were loggers, they
15 were professional wrestlers, they were football
16 players, and they have pristine looking backs. And
17 there are people like yourself, attorneys, physician,
18 who don't do very strenuous thing. And my neck is
19 horrible, and I know that for a fact because I do have
20 a problem. So intensity of your work does not warrant
21 how your spine is going to look or how -- along the
22 same line, we have patient who says, "Well, I have had
23 this operation. Please tell me what do I do so I won't
24 have another problem again." And my answer is -- is
25 the same as if you have a flat tire on your car and

1 have it fixed. Now, tell me what do you do so you
2 won't have a flat tire again. Well -- So your
3 conclusion is very logical, but I don't think it always
4 works the same way.
5 Q. Okay.
6 A. Bottom line is not everybody who has a disc
7 disease and has adjacent or degenerative problems
8 elsewhere need to retire from strenuous work, because
9 we all see patients who have pristine spine, yet they
10 have a minor accident, and they end up paralyzed. They
11 have nothing wrong before, and they actually don't have
12 anything wrong after except they're paralyzed, and that
13 happens. So there's a dynamic of the spine that plays
14 a role that we really don't know. And, again, there's
15 plenty of people who drive who have terrible looking
16 necks, and we don't even know that, and it's better
17 that we don't.
18 Q. Let me talk -- digress a minute and speak
19 about radiculopathy. What is radiculopathy or cervical
20 radiculopathy?
21 A. Well, it's a condition that is caused by the
22 dysfunction of the nerve root and manifests itself in
23 pain, numbness, weakness, change of reflex.
24 Q. And that would be in an upper extremity such
25 as an arm?

1 A. If we're talking about the upper extremity
2 radiculopathy. So upper and lower.
3 Q. A cervical problem or a cervical
4 radiculopathy would deal with the upper extremity, the
5 upper arm?
6 A. Cervical radiculopathy is the upper
7 extremity pain or upper extremity symptoms.
8 Q. And as I understand from your testimony, the
9 cause of that is the neck, is that correct, or a
10 problem with the disc in the neck or where the nerve
11 root comes out of the disc, I guess?
12 A. That's right, most of the time.
13 Q. And as far as the effect goes, can you say
14 to a reasonable degree of medical certainty will a
15 radiculopathy affect an upper extremity?
16 A. Yes. The cervical radiculopathy by
17 definition is an upper extremity problem, result in an
18 upper extremity condition, yes.
19 Q. So the damage in the -- the injury in the
20 neck then would affect, say, in this case, the left
21 arm.
22 A. Correct.
23 Q. Okay. Are you familiar with Don Johnson?
24 A. Yeah, I know Dr. Johnson, yes.
25 Q. You have practiced in the Charleston area a

1 long time, and, of course, you've got a good
2 reputation, Dr. Facult, but I wanted to ask you, are
3 you familiar with Dr. Johnson's reputation?
4 A. Yes.
5 Q. Does he have a good reputation?
6 A. Yes.
7 Q. Do you feel that Dr. Johnson would be a
8 competent individual to give an impairment rating in a
9 particular case?
10 A. Absolutely.
11 Q. And he gave one in this particular case.
12 Now, Dr. Johnson notes that -- and he bases it on -- he
13 gave him a 26 percent impairment rating. Have you
14 looked at his report at all?
15 A. I haven't. That's why I don't do them,
16 because then you have a third one.
17 Q. And he says that, at least at the time that
18 he gave his report, which was roughly two months or
19 three months, I guess it is, after yours -- No. I take
20 that back. Let's see. 4/30, 5/30, 6/30. Two months
21 after yours, he saw him, and he said that at that time
22 he diagnosed him as having a secondary radiculopathy
23 with residual numbness and weakness in the left arm and
24 hand. It's your testimony, I believe, earlier that at
25 least numbness and weakness in the extremity would be

1 signs, objective signs, of a radiculopathy.
2 A. Correct.
3 Q. Is that correct?
4 A. Uh-huh.
5 Q. And I think it was further your testimony
6 that at any time really after you saw him, you could
7 develop a radiculopathy; is that correct?
8 A. Correct.
9 Q. And is the radiculopathy something that
10 maybe you have it one day or you have it for a week
11 depending on, you know, how you turn your neck, and it
12 bothers you for a week, and then, you know, you get a
13 little bit better and it eases off, and then you get it
14 again?
15 A. Or you -- or your case come to conclusion.
16 Yes.
17 Q. Let me ask you this, because I certainly
18 don't want to be -- that to reflect badly on
19 Mr. Herndon.
20 A. No, no, absolutely.
21 Q. The comment that you made, that has no
22 reflection on Mr. Herndon.
23 A. No. That was just irresponsible joke.
24 Q. Well, I won't say it was irresponsible, but
25 it was just a joke.

Page 42

1 A. Yes, it was a joke.

2 Q. And I think you already testified that you
3 think Mr. Herndon certainly was credible.

4 A. Mr. Herndon is a very nice person. I have
5 nothing against Mr. Herndon. I think he is a
6 legitimate patient. He had a surgical procedure done
7 based on what he told me, and I believe what he said.
8 So your answer to your question can the -- can the
9 situation change? Yes, it can change from day to day.

10 Q. All right. Now, I'm going to just ask you
11 very briefly about Dr. Gee, I believe, or Dr. -- I call
12 him Dr. Gee.

13 A. That's not Dr. Gebleski (ph). That's not --

14 Q. This is Dr. James Gee that did the 14B.
15 Okay. My understanding of it is this is not your
16 handwriting on the 14B; is that correct?

17 A. On this form, whatever form that is, it says
18 my name, but this is not my handwriting and this is not
19 my signature.

20 Q. Okay. Did you ever authorize Dr. Gee to
21 sign your name on that form?

22 A. No. I don't know who Dr. Gee is.

23 Q. Well, Dr. James Gee, he's the one who signed
24 the form.

25 A. I understand. But how could I -- how do I

Page 44

1 Q. Is it likely that he'll go the rest of his
2 life without needing any further medical care with his
3 spine?

4 A. I would say it's not -- it probably is more
5 likely that he will need additional care in the future
6 than not. Tiger Woods recently had a back surgery.
7 Somebody made a very good comment about that. He had
8 three surgeries in two years. And somebody made very
9 good comment, says, "The only way not to have many
10 spine surgeries is not to have the first one." I agree
11 with that.

12 Now, if he could have gotten by without the
13 surgery, it would be best not to have an operation.
14 And the more surgery the person has, more likely they
15 are, in my opinion, my modest opinion, I should say,
16 that they're going to continue to have more problems.

17 Q. Okay.

18 A. Now, remember, I do surgeries.

19 Q. Dr. Gee is classified as an industrial
20 medicine and wellness doctor. Have you ever known any
21 industrial medicine and wellness doctors? Is that a
22 recognized medical --

23 A. You know, I don't know, and I -- we keep
24 going around Dr. Gee, and I don't even know Dr. Gee.

25 Q. I'm going to quit going around Dr. Gee.

Page 43

1 tell him to sign my name who I don't even know?

2 Q. You don't know Dr. Gee, and you've never met
3 Dr. Gee to your knowledge.

4 A. That is for certain.

5 Q. And Dr. Gee practices, in fact, in Sumter.
6 You wouldn't have an occasion to send somebody to a
7 Sumter doctor to have an evaluation done, would you?

8 A. You know, I've been here 35 years. I don't
9 even know how to get to Sumter. No, I don't, I don't.

10 Q. Okay. That's fine. And as far as any
11 impairment ratings in this document, this is all
12 Dr. Gee's opinion. You had nothing to do with this.

13 A. Absolutely, that is correct.

14 Q. And same thing with Dr. Johnson.

15 A. Absolutely.

16 Q. You didn't have anything to do with that
17 either.

18 A. We all give our own opinions, yes, sir.

19 Q. As far as medical care goes with -- you
20 know, we've talked about the problems that
21 Mr. Herndon's got, other problems he's got with his
22 spine, the three discs above the one you operated on.

23 A. Yes.

24 Q. He's 65 years old.

25 A. Uh-huh.

Page 45

1 A. Yeah. But industrial doctors, there are
2 physicians who are employed by the, I guess, factories,
3 who are the first line of physicians, and the person
4 gets injured, they get assigned to the -- they get
5 evaluated by that physician.

6 Q. They work for employers?

7 A. Physician who makes referrals later on.

8 Q. They work for the employers?

9 A. I don't know. I presume so, yeah.

10 Q. The opinions that you've given today,
11 Dr. Pacult, are they to a reasonable degree of medical
12 certainty?

13 A. Yes, sir.

14 MR. HETRICK: All right. Thank you. I have
15 nothing further.

16 THE WITNESS: Only my opinion. Those are
17 only my opinions.

18 REDIRECT EXAMINATION

19 BY MR. CRUSE:

20 Q. Doctor, a couple points of clarification. I
21 will be very brief, I promise you.

22 The levels above the fusion that we've been
23 discussing, that you were discussing just a moment ago,
24 you indicated -- there was a question posed to you
25 about in an accident such as Mr. Herndon's, whether or

Page 46

1 not multiple levels could be injured, could have been
2 injured in that accident and maybe whether they were,
3 and you indicated that if -- correct me if I'm wrong --
4 that if you can't pinpoint where the pain or where the
5 symptoms are, that, sure, multiple vertebrae could have
6 been injured. Is that a fair assessment of your
7 testimony?

8 A. The longer this takes, the more difficult I
9 have to concentrate. Please repeat that again.

10 Q. Sure. The question was posed whether or not
11 multiple vertebrae were potentially injured in the
12 motor vehicle accident, and I believe it was your
13 answer that if you're unable to pinpoint where the pain
14 or where the symptoms are coming from, what level, then
15 that you would potentially agree that multiple
16 vertebrae could have been injured in this accident.

17 A. The multiple vertebrae can be injured in an
18 accident. That's -- Is that the question?

19 Q. That is the question. I guess then I'll get
20 specific with Mr. Herndon's accident. Were you able to
21 pinpoint through his symptoms what level was injured as
22 a result of the motor vehicle accident?

23 A. Well, I thought I was. It was C6-C7.

24 Q. So you had findings that would demonstrate a
25 specific injury at that level; correct?

Page 47

1 A. C6-C7 disc injury, seventh nerve. The
2 symptom that the patient came were from the seventh
3 nerve, correct. Now, would other nerves be injured or
4 a disc were also somehow messed up and they are just
5 going to show up in the future, I don't know.

6 Q. And is it fair to say that it was your
7 testimony that after having a fusion procedure with the
8 MRI findings that you've seen with the degenerative
9 disc disease in his neck, that there's no possible way
10 to a reasonable degree of medical certainty to know
11 whether the degenerative disc disease would naturally
12 progress worse or whether it would be caused by the
13 fusion?

14 A. Well, that is correct. We -- at least I use
15 the statistic three to four out of ten people in four
16 years, four to five years, have problem above. Now,
17 and that's -- we think it's -- I don't know if it's
18 20 percent of that because of the predisposition,
19 because of the previous determination or because of the
20 fusion, I don't know how you assign that, but I tell
21 the patient, if you have a fusion here, three to four
22 out of ten going to come back with a problem above or
23 below. It also applies to below. It's most often
24 above, but it can be below.

25 Q. Have you read Dr. Johnson's independent

Page 48

1 medical evaluation?

2 A. For the fifth time, I said no.

3 Q. Would you read it right now?

4 A. Why would I need to do that?

5 Q. I'm going to ask you whether or not, after
6 reading that IME, any of your opinions that you've
7 provided in this claim and all of your treatment and
8 today if your testimony would change.

9 A. I can tell you it won't change no matter if
10 I read it or not. I mean, each of us stands behind
11 what we say. This is not something that we come just,
12 you know, we change our minds right and left. What I
13 told you today I'll tell you tomorrow and yesterday,
14 irregardless what Dr. Johnson says. That's what --
15 that's why there is so many opinions. I don't think
16 everything is clear. You know, I don't question his
17 opinion. I hope he doesn't question mine. I mean, you
18 saw -- you saw -- the best example, you saw one
19 impairment rating 9 percent, the other one 26 percent,
20 I mean...

21 Q. And nothing about that has changed your
22 opinion from what you've testified?

23 A. No. I wouldn't question either one.

24 MR. CRUSE: Okay. I have nothing further.

25 MR. HETRICK: I don't have anything further,

Page 49

1 Doctor.

2 (Discussion held off the record.)

3 BY MR. CRUSE:

4 Q. Doctor, has all your testimony today been
5 provided to a reasonable degree of medical certainty?

6 A. Yes, sir.

7 MR. CRUSE: Okay. Thank you.

8 (The deposition concluded at 5:06 p.m.)
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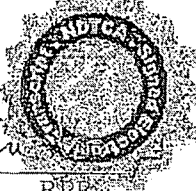
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Artur Pacult, M.D.; and that the transcript is a true record of the testimony given by the witness, and was sworn as such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 9th day of January, 2016, in the City of Charleston, County of Charleston, State of South Carolina.


Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

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PAGE REHABILITATION SERVICES, INC.
Vocational Rehabilitation Experts

DATE: 2-2-16

WCC #: 1406130

CLIENT: Billy "Wayne" Herndon

DATE OF INJURY: 5-12-14

CUSTOMER: MGC Law

EMPLOYER: G & G Logging

Vocational Assessment

General information

This case was referred by Mr. Ben Crews of MGC Law for assessment of Mr. Herndon's employability and wage earning capacity. Mr. Herndon is represented by John Hetrick of Walterboro. Mr. Herndon was injured in a motor vehicle accident on May 12, 2014 employed by G & G Logging.

Contact was made with Mr. Hetrick's office on January 14, 2016 in an effort to visit with Mr. Herndon. I followed up the same date with an email. I also sent an email on January 18. On January 20 we were able to set an appointment for January 22 in Walterboro.

Mr. Herndon read and reviewed my disclosure statement and understood the purpose of my visit. He answered questions without any apparent hesitancy or concerns. Mr. Herndon is a 56-year-old white male currently living in Walterboro with his wife Deborah who still works for the school system. Mr. Herndon is right-handed. I questioned him regarding his stated physical restrictions and he revealed the following:

- Still has neck pain and a constant headache in the back of his head
- Left-hand has less strength and aches
- He notes he has pain when lifting too much, driving or standing too long
- Said the surgery did assist in removing the tingling in his arm

In addition to the neck injury Mr. Herndon also has high blood pressure and Type II diabetes. Prescription medications which he revealed that he takes include: metformin for diabetes, pravastatin for cholesterol, atenolol and aspirin for blood pressure, premedon and for hand tremor and flexitine for depression (spelling of medicines are phonetic). All of these are given by his family doctor at MUSC, Dr. Brownfield. He also revealed he takes extra strength Tylenol up to four times per day, mexatocsin 800 mg, a muscle relaxer, two times per day and gabapentin two times per day. These are for his neck issues.

Client Mr. Billy "Wayne" Herndon

Date 2/2/16

Page 2

According to Mr. Herndon he is a member of a hunt club but does not hold any kind of position in the club. He occasionally goes to church but noted if he were to work, his religion does not prevent working on Saturdays and Sundays. He denied membership in any Community organization. He has three children, a son 43 and daughters 40 and 36; they are all on their own. Mr. Herndon does have a driver's license and reliable transportation but is required to wear glasses. He denied a criminal record or ever being in bankruptcy but did note he is receiving Social Security as he retired at age 62.

Daily activities include having his coffee, picking up his mail, watching television and occasionally taking his wife to lunch. Hobbies and interests include hunting and fishing. He noted he killed four deer this year using a smaller caliber rifle, a 243. He does intend to turkey hunt when the season opens. He used to fish regularly and sometimes all day, but notes he can only fish from 45 minutes to an hour due to pain.

Medical Information

Mr. Herndon indicated that when he was initially injured he went to the emergency room but it took so long he decided to go to a local family physician for treatment. He noted he saw a Dr. Tompkins in Walterboro. Medical information reviewed includes the following:

- MUSC reports dating between August 13, 2003 and October 4, 2015
- Walterboro physical therapy note dated March 18, 2015
- Deposition of Dr. Pacult dated January 7, 2016
- Deposition of Mr. Herndon dated August 21, 2014
- 14Bs from a prior rib contusion dated October 23, 2008 and August 7, 2008
- Report by Dr. Tompkins dated June 23, 2014
- ER report from Colleton Medical Center dated May 20, 2012
- Discharge summary from Colleton Medical Center dated June 19, 2014
- 14B and report by Dr. James Gee dated June 11, 2015
- Report by Dr. Donald Johnson II dated June 30, 2015
- Checklist requests from Mr. Hetrick to Dr. Pacult signed October 4, 2015
- Vocational report by Dr. Dixon Pearsall dated August 31, 2015

Dr. Pacult was Mr. Herndon's treating physician and does not do permanent impairment ratings. On the checklist provided by Mr. Hetrick page 2 number six the question is:

Client Mr. Billy "Wayne" Herndon

Date 2/2/16

Page 3

Mr. Herndon is 65 years old and has worked as a log truck driver for approximately the last 25 years. As a log truck driver he is exposed to constant driving a heavy truck over uneven terrain which results in continuous "jostling and bouncing" of the driver and occupants of the log truck. To a reasonable degree of medical certainty can Mr. Herndon safely return to his occupation as a log truck driver?..... Dr. Pacult answered **"pt unable to return to work as result of subjective complaints of pain otherwise he would be able"**.

Dr. Gee provided a report in a 14B dated June 11, 2015 and revealed on the 14B for Mr. Herndon to **"limit heavy work and strain"**. He also revealed no further care anticipated for accident of 5/12/2014. He gave him a 9% medical impairment to the whole person.

In a report by Dr. Johnson II dated June 30, 2015 on page 2 of the document it reveals Mr. Herndon to have a 26% impairment to the whole person **"and the patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand..... In regards to work, the patient may not return to his previous vocation..... Work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level to above greater than 15 to 20 pounds"**

Education

According to Mr. Herndon he completed 11 ½ years of school before he quit to get married. He went right into truck driving. He was in the National Guard between 1969 and 1975 and received an honorable discharge. He noted he did take a written test for his CDL as that was all that was required when he began truck driving. I did administer The Wide Range Achievement Test, Revised Fourth Edition, word recognition and math test to Mr. Herndon. Results indicate Mr. Herndon is reading at a 10.2 grade level and performing math on a 9.8 grade level. These scores reveal Mr. Herndon can read most materials including technical information with understanding. He should be able to follow any verbal instructions and complete an application without difficulty. Mathematically he can add, subtract, multiply and divide whole numbers and decimals and simple fractions.

Work History and Related Information

Mr. Herndon retired at age 62 and began working part-time and revealed he could make up to \$15,000 per year. He noted he would work until he reached the \$15,000 and not work the rest of the year. He noted G&G Logging was aware.

Client Mr. Billy "Wayne" Herndon

Date 2/2/16

Page 4

G&G logging was Mr. Herndon's last place of employment. He was a log truck driver. According to Mr. Herndon he has been truck driving since 1969. He revealed he has driven long-haul, logging, containers and rock and sand dump trucks. He did log truck driving off and on for 18 to 20 years.

Other work included carpentry for six to seven years which he learned on the job. He revealed he could do framework, form work, trim and finish carpentry. He did mostly residential carpentry and learned his trade on the job through Quality Builders.

According to Mr. Herndon he has never been fired.

I asked Mr. Herndon if he was a good worker and she stated: **"I reckon I was"**. I asked him to define a good worker for me and he utilized the following terms:

- did not tear up trucks
- no wrecks
- worked every day
- on time
- reliable
- doing what was asked
- did job expected to do

I asked Mr. Herndon if he wanted to try and go back to work and he noted all he has ever done was truck driving and carpentry work. He stated he did not want to stand behind a store counter and was unaware of what he could do. I asked if there was a job that allowed him movement on a regular basis and was within his physical restriction, would he be willing to work, and he stated: **"I would try it"**.

Summary and Opinions

Mr. Herndon was a pleasant individual to interview. He sat throughout the interview and did occasionally shift in his seat but it was not distracting. I did not observe any other pain behaviors such as grimacing, perspiring, holding his breath or flinching. He was casually dressed in a flannel shirt, a camo hat and jeans. He had a well-groomed beard. I asked him about his activities of daily living and he noted no issues with dressing, bathing or restroom activities. I asked him how long he intended to work and he noted as long as he could; that his father worked until he was 70 years old.

Client Mr. Billy "Wayne" Herndon

Date 2/2/16

Page 5

It appears that all of Mr. Herndon's work history has been within the carpentry or truck driving field. Carpentry is considered heavy by the US Department of Labor and truck driver is considered medium duty by the US Department Labor. The following are definitions for medium and heavy-duty as defined by the US Department of Labor.

M-Medium Work - Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

H-Heavy Work - Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

The most specific objective medical physician findings for his physical limitations are from Drs. Gee and Johnson II. Dr. Gee identified on the 14B dated June 11, 2015 that he should "limit heavy work and strain". Dr. Johnson stated: "work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level or above greater than 15 to 20 pounds".

It is my opinion that there are jobs Mr. Herndon can perform as they would be considered light or sedentary duty. Jobs such as security guard, night auditor, and pay-day cashier would all fit within Mr. Herndon's academic and physical abilities. With Mr. Herndon's hunting and fishing knowledge he might also be well suited for retail sales in an outdoors sporting-goods center. Other options could also include parking lot attendant and escort vehicle driver.

Below are the mean wages identified by the US Department of Labor's, Bureau of Labor, Statistics for the Low Country South Carolina Nonmetropolitan Area, May 2015.

Job	Mean Wage
Security guard	\$11.53
Cashier	\$9.20
Retail sales	\$12.12
Night Auditor	\$11.35

Client Mr. Billy "Wayne" Herndon

Date 2/2/16

Page 6

Parking attendant
Escort vehicle driver

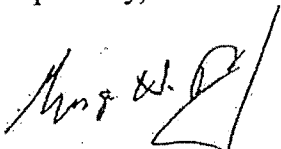
not listed
not listed

All of the jobs listed above can be performed on a full or part-time basis and fit within Mr. Herndon's criteria of making no more than \$15,000 per year due to his Social Security income. It is my opinion Mr. Herndon possesses the academic and physical skills to perform the listed jobs. These jobs would only require short-term on-the-job training. If Mr. Herndon is motivated he could improve his opportunities by taking an entry-level computer course along with a keyboarding course. These are generally located free of charge at local community colleges or public libraries.

It has been my experience that age is not an issue with regard to employment, as employers are more interested in the individual's work ethic, appearance and positive motivation for returning to work. It is my opinion Mr. Herndon is currently employable for a wage between \$9 and \$10 per hour.

I hope this information is beneficial to all parties. Please feel free to contact me with any questions. Thank you for this referral.

Respectfully,



George H. Page MS, CVE, CDMS, PVE

PEARSALL VOCATIONAL SERVICES

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Date: 08/31/15

Referral Source: John R. Hetrick, Esq.
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P.O. Box 139
Walterboro, South Carolina 20488
Phone: 843-549-6432
Fax: 843-549-1973

Regarding: Billy Wayne Herndon

Vocational Assessment and Residual Vocational Capacity (Employability) Opinion

Mr. John Hetrick, attorney of record for Billy Wayne Herndon, requested Dixon Pearsall, Ph.D.; to provide a vocational assessment and provide a residual vocational capacity (employability) opinion. Mr. Hetrick represents Mr. Herndon concerning South Carolina workers' compensation claims and benefits.

All records and case materials reviewed were provided by the Hetrick Law Firm. No representation is made by Pearsall Vocational Services that the records and materials reviewed represent the entirety of the case or file records.

Personal Information

Mr. Herndon is 64 years of age (DOB 12/11/49). He resides in Walterboro, South Carolina. He lives in a mobile home with his wife of 45 years (second marriage). He has 3 adult daughters. Two of his daughters reside in the Walterboro, South Carolina area.

Current Status

Mr. Herndon is residual to a motor vehicle accident (MVA) of 05-12-14. Mr. Herndon was involved in a "head-on" collision while operating/driving a log truck for G&G Logging Incorporated. He has not returned to work at G&G since the date of the accident. Mr. Herndon has not engaged in competitive work/employment in any capacity since the date of the MVA.

110

Expectations of Competitive Work

Full-time competitive employment at any exertion or skill level including unskilled work requires the capacity to focus, concentrate, remain on task, follow basic instructions, complete assignments, attend to work duties, maintain reasonable pace, and persist throughout the work day. Full-time competitive employment requires the capacity to work and attend to work duties 8 hours daily and 40 hours weekly. Normal or acceptable breaks are two breaks of 10-20 minutes each during an 8 hour work day. The accepted break periods are generally approximately 4 hours apart. Workers are expected to attend work regularly and consistently on a continual and ongoing basis. Workers are expected not to exceed accepted employer absences.

In any full-time competitive employment setting, a worker must have the capacity to work an 8 hour day and 40 hour week. The worker must have the capacity to meet basic vocational expectations as detailed above. These expectations exist for all full-time competitive positions in the United States economy including unskilled work. Semi-skilled and skilled work requires the basic vocational expectations of unskilled work but also have higher level expectations.

DOT Characterization of Exertion and Skill Levels

The Dictionary of Occupational Titles, United States Department of Labor, Fourth Edition, (hereafter referred to as the DOT) categorizes work by a number of factors. Exertion or strength levels and specific vocational preparation level (SVP) are primary categorization factors. The DOT defines exertion levels of work:

Sedentary- *"Exerting up to 10 lbs. of force occasionally (occasionally: activity or condition exists up to 1/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met".*

Light- *"Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or conditions exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and*

is physically demanding of a worker even though the amount of force exerted is negligible".

Medium- *"Exerting 20 to 50 lbs. of force occasionally, and/or 10 to 25 lbs. of force frequently, and/or up to 10 lbs of force constantly to move objects. Physical demand requirements are in excess of those of "Light" work".*

Heavy- *"Exerting 50 to 100 pounds of force frequently (Frequently: activity or condition exist from 1/3 to 2/3 of the time) and/or 10 to 20 pounds of force constantly (Constantly: activity or conditions exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Medium Work".*

Very Heavy- *"Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work".*

Skill or training levels are described in the DOT as Specific Vocational Preparation (SVP). SVP is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. SVP levels range from 1 to 9.

<u>Level</u>	<u>Time</u>
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Work Experience

Mr. Herndon's primary work for the course of 30+ years has been as a heavy truck operator/driver. Mr. Herndon has had several employers but the work performed is essentially the positions as referenced by the Dictionary of Occupational Titles (DOT) with the titles/descriptions of:

Long-haul truck driver/operator	DOT code: 904.383-010
Log truck driver/operator	DOT code: 904.683-010
Heavy truck driver/operator	DOT code: 905.663-014

112

Mr. Herndon additionally has work experience on a part-time and intermittent basis as a Construction Trades Worker (CTW). Construction Trades Worker is referenced by the DOT as:

Construction Trades Worker

DOT code: 869.664-014

Analyses of Past Work

Mr. Herndon's prior work as a truck driver/operator (all positions), per the USDOL/DOT, are at the exertion (strength) level of "Medium". The specific vocational preparation (SVP) or "skill" level is 4.

Mr. Herndon's past work of Construction Trades Worker, per the USDOL/DOT, is at the "Heavy" exertion level. The specific vocation preparation (SVP) or "skill" level is 4.

Transferable Skills Analyses

Mr. Herndon did acquire, obtain and does retain potentially transferable skills from his past work experience of Truck Drive/Operator and Construction Trades Worker. SVP Level 4 is defined by the USDOL/DOT to be 'semi-skilled' work. Transferable skills acquired in the Truck Driver positions would potentially transfer to related positions involving operating and driving vehicles at the exertion levels of Medium and/or Light only possessing a skill or SVP level of 3 or 4 only.

Transferable skills from the Construction Trades Worker position would potentially transfer to the "Heavy" and/or "Medium" exertion levels only. Transferable skills from the CTW position would potentially transfer to the skill (SVP) levels of 3 or 4 only.

In consideration of age (64 years of age) potentially transferable skills are relevant only to and consistent with highly related positions requiring little to no accommodation, additional training, or adaptation to work place change or environment. This is consistent as directed by USDOL standards, requirements, and interpretations regarding "older" workers.

Education

- Completed 10th grade- Walterboro High School, Waterboro, SC
- South Carolina National Guard, 1969-1975
- No additional formal education or training
 - Obtained truck driver certification (CDL) by on-the-job (OJT) training/experience
- Able to read/write and perform basic computational/math

113

Results of Vocational Rehabilitation Interview

The interview was held in a private conference room at the Hetrick Law Office in Walterboro, South Carolina. Mr. Hetrick was not present on the date of the vocational assessment. Mr. Herndon was prompt and appropriately dressed for the evaluation. Mr. Herndon was initially reserved and somewhat cautious but became more cooperative and comfortable as the vocational rehabilitation interview progressed. Mr. Herndon presented as a competent and knowledgeable personal historian. He attempted to answer all of the evaluator's questions. He generally responded with short and direct answers providing little elaboration or detail. He did provide additional details without reservation when requested.

Mr. Herndon alternated sitting and standing, and shifted while seated throughout the approximately 2+ hour vocational evaluation. Mr. Herndon did reference increasing discomfort and pain, particularly in the shoulders and upper arms, as the interview progressed.

Mr. Herndon is post multiple cardiac stents. He does have Type II Diabetes and is insulin dependent. He has a history of hyperlipidemia. He reports issues of daily neck, shoulder, and arm pain. Mr. Herndon has experienced radiculopathy of the shoulder and upper extremities since the MVA (05/12/14). In his opinion he has worsened over the interval of time following his surgery to the present.

Mr. Herndon reported experiencing "good" and "bad" days. In an "average" or "normal" 7 day week, Mr. Herndon experiences 2 "good" days and 5 "bad" days. Mr. Herndon defines a "good" day as experiencing less pain, less stress, and the ability to complete small things. He reports being more likely to leave his home, dress, bathe, and to complete tasks on "good" day. Mr. Herndon states that on "good" days he may require and utilize reduced pain medications.

Mr. Herndon describes a "bad" day as accomplishing little to nothing of significance. On bad days he has increased pain, increased discomfort, requires additional medications, experiences headaches, and frequently does not bathe or dress. On "bad" days, Mr. Herndon reports spending 15-20 hours of a 24 hour day either in bed or lying in a recliner primarily in attempt of pain relief. On "bad" days, he avoids people including friends and family and generally does not leave his home.

Mr. Herndon describes a disrupted and disjointed sleep pattern. Mr. Herndon reports going to bed for the night on an average or normal night at 10 p.m. He reports arising the next day at 8 a.m. During this 10 hour period of attempted sleep, Mr. Herndon reports actual or total sleep of 4 to 5 hours. He reports tossing and turning in attempt to become comfortable throughout the remaining 5 to 6 hours of "attempted" sleep. He describes this to be his sleep pattern since the 05-12-14 MVA. He does not recall the last time he experienced a complete night's sleep and awoke rested and refreshed. He is certain this has not been the case since the MVA.

114

Mr. Herndon reports being very "stressed" (his term). He considers his stress to be reflective of financial concern and consistent with his ongoing pain and discomfort. Mr. Herndon is particularly concerned about the impact of his current medical, health, and physical issues upon his wife and to somewhat lesser degree his adult daughters.

Mr. Herndon does consider himself to be depressed. The evaluator asked Mr. Herndon to describe depression with the evaluator stating "Tell me in your own terms, what depression means to you." Mr. Herndon stated that depression is "having no will, seeing nothing as positive, and not believing in the future." Mr. Herndon also experiences anxiety and has anxiety attacks. He is taking Zoloft.

He is uncertain as to the effectiveness of the anti-depressant medications. He is not seeing a psychiatrist, psychologist, or counselor. He did express fatalistic and suicidal thoughts and death focusing. He denies an active suicide planning. He does have suicidal thoughts (without ideation) on a daily basis. He stated that he considers himself a burden to his family and believes his family would be better off without him.

He would like to see a counselor or mental health professional. He stated he would cooperate completely and is desirous of mental health services. He reports requesting mental health services with his physicians but to date has not been successful in obtaining services. Mr. Herndon's statements are professionally concerning and I strongly recommend mental health evaluation and treatment if so indicated.

Treating Medical Sources with Vocational Implications

Christopher Moses, MD in a 06-20-14 Collenton Medical Center "MRI Exam Report" states:

C3-C4: Prominent bilateral disc osteophyte complexes left greater than right with uncovertebral joint hypertrophy. There is several bilateral foraminal stenosis left greater than right. Mild anterior/left lateral spinal cord compression and mild spinal canal stenosis.

C4-C5: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is moderate right foraminal stenosis resulting from disc osteophyte complex. No significant spinal canal stenosis.

C5-C6: Large right-sided disc osteophyte complex resulting in severe right foraminal stenosis. There is a left sided disc osteophyte complex and uncovertebral joint hypertrophy resulting in severe left foraminal stenosis. Compression of the anterior spinal cord greatest centrally on the right. Mild spinal canal stenosis.

C6-C7: Large left sided disc osteophyte complex resulting in severe left foraminal stenosis. There is compression of the left anterior aspect of the spinal

115

cord but without significant spinal canal stenosis. There is moderate right foraminal stenosis.

IMPRESSION:

Large disc osteophyte complexes with uncovertebral joint hypertrophy from C3/C4 through C6/C7, overall, left greater than right. There is severe multilevel bilateral foraminal stenosis left greater than right as detailed above. There is also mild multilevel spinal cord compression and mild spinal canal stenosis.

Donald R. Johnson II, MD of Southeastern Spine Institute in a 07-10-15 IME states:

IMPRESSION:

- 1. Multilevel severe degenerative cervical disc disease 3-4, 4-5, 5-6, 6-7.*
- 2. Status post anterior cervical discectomy fusion C6-7 for left cervical radiculopathy.*

Per the fifth edition AMA Guides, I would assign a 26% impairment to the whole person per page 392, table 15-5. This is a whole person rating. However, the patient has decreased functional use of his left arm secondary to radiculopathy with residual numbness and weakness of the left arm and hand.

In regards to work, the patient may not return to his previous vocation. If he tries to do so, I think it is inevitable that he will injure a disc above his cervical fusion. Work restrictions of avoiding heavy lifting and strain are impossible in the line of work this gentleman is currently employed by.

Work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level to above greater than 15 to 20 pounds. Again, I am worried about the adjacent levels of this patient's cervical fusion.

Most probable to a reasonable degree of medical certainty the patient's work injury of 05-12-14 exacerbated a preexisting asymptomatic degenerative condition. All opinions given above are most probable to a reasonable degree of medical certainty.

James Gee, MD of Tuomey Medical Professional in a 06-11-15 "Permanent Impairment Rating" states:

The patient did not return to his job as a truck driver and chose to retire. He based a significant amount of this decision on the fact that he could not even drive his private vehicles without having significant neck discomfort. He indicates at times that the "vibration" while driving causes cervical pain.

The pain that the patient is experiencing now is certainly an improvement from his preoperative situation. He does not have radicular pain or paresthesias in the

116

lift arm as he did prior to surgery. He now describes an "aching pain" involving the entire cervical area with some radiation into the posterior part of his head and some down into the left strap shoulder muscles.

Dr. Gee in the same 06-11-15 rating states:

Based on the above plus my many years of orthopedic experience and with use of the Reference Guides, I feel that the diagnosis based impairment and the range of motion impairment correlate quite well. It is my opinion that the patient has a 9% permanent impairment of the whole person. I cannot differentiate whole person from spine.

Dr. Gee in a 06-11-15 Form 14B South Carolina Workers' Compensation Physician Statement States:

The claimant is able to return to work with the following restrictions: limit "heavy" work and strain.

Residual Vocational Capacity (Employability) Opinion

Mr. Herndon has a very long term and consistent work history. Mr. Herndon would like very much to return to work. He identifies strongly and defines himself to a great extent based upon his perceived vocational/work roles. Mr. Herndon readily acknowledges being despondent. He feels as though his entire world has been taken from him. He stated that he is not particularly angry regarding his life circumstances but is very sad and unhappy; and does consider himself to be depressed and anxious.

As defined and described by the USDOL, full-time substantial gainful employment (work) requires the capacity to work an 8 hour work day and 40 hour work week and to have the capacity do so on an ongoing, consistent, and continuous basis. (Please see Expectations of Work section cited prior in this report). Per the USDOL, if an individual, regardless of reason or cause, is unable to meet the standards and expectations of competitive employment, they are unable to work. Most disability determinations, vocational assessments, and residual vocational capacity evaluations utilize and employ these USDOL standards and classifications. If an individual does not have the residual functional and/or physical capacity to work, they are not "competitively employable" and may be categorized as "non-employable" or "unemployable"

If an individual can not withstand or meet the residual functional and physical requirements of work, the attainment, acquisition, or retention of vocational/occupational skills or potentially transferable skills is not of issue in that the individual can not meet the basic expectations of competitive employment (work) at any exertion or skill level. This is precisely the state, condition, and circumstance of Mr. Herndon. He would like to work, he did acquire and does possess viable vocational/occupational skills, and potentially transferable vocational/occupational skills. However, unfortunately, he can not meet the basic expectations and requirements of competitive employment (work) at

117

any exertion or skill level. This would include but not be exclusive to SEDENTARY positions.

In consideration of Mr. Herndon's age 64, any potentially transferable skills to other significantly related positions would have to be highly and specifically related and require very few to no changes or adaptations to the work place environment. This includes but not be exclusive to machines, tools, equipment, technology, work conditions, processes, and work procedures. It is well established and documented that older workers (55+) have increased difficulty obtaining and/or maintaining employment and adapting or accommodating work place changes.

Mr. Herndon's current access to competitive employment (employability) is negligible (> 1%). Essentially and practically there are no positions represented in significant numbers in the regional or national economies consistent with the residual functional/vocational capacities of Mr. Herndon. It is "highly likely" and "very probable" that Mr. Herndon will not return to gainful employment in any capacity. This would include all full and part-time competitive positions represented in significant numbers in the national economy at any and all exertion or skill levels. As such, Mr. Herndon is not competitively employable in the national economy.

Of particular relevance is that there is no statement or prognosis in the records reviewed indicating the likelihood of improvement. There are no significant pending medical procedures. There are no treating medical source statements or opinions indicating the likelihood of substantive improvement.

I would caution that vocational rehabilitation activities and processes are not appropriate at present. Such activities as additional education, formal training, retraining, vocational placement, vocational exploration, work conditioning, and work hardening are premature and professionally inappropriate. Such activities are very likely to be unsuccessful, frustrating, and potentially detrimental.

I am confident to a reasonable degree of professional assurance that my analyses and opinions accurately represent Mr. Herndon's vocational capacity and vocational access (employability). My opinions are my own and are rendered without influence of any other person or organization. These opinions, analyses, and recommendations are provided consistent with the standards, ethics, and protocols of vocational rehabilitation counseling, vocational assessment, and professional counseling practice.

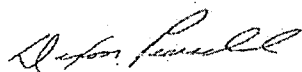
In consideration of current medical and functional residual capacity, in consideration of age (65) and prior work experiences, and incorporating the absence of readily transferable skills to "Light" and/or "Sedentary" work; it is "highly likely" and "probable" that Mr. Herndon will not return to competitive employment. This is true of all fulltime competitive positions represented in significant numbers in the national economy at all exertion or skill levels.

It is 'highly likely' and "probable" that Mr. Herndon will not return to commercial driving. Vocationally, exertionally, and practically there is no difference in the operation and/or essential job description of "logging truck driver" and other commercial truck driver positions such as "long haul truck driver" or "School Bus Driver". Commercial driving positions generally require a commercial driving license (CDL) which requires passing a DMV physical examination. Commercial driving is prohibited if prescription pain medications (narcotics) are utilized. Additionally, commercial driving positions require drug testing. I am professionally confident that Mr. Herndon would not be able to obtain and/or maintain a commercial driving license. A significant and substantive factor is that Mr. Herndon does not consider himself "safe" to operate a commercial vehicle. It is 'highly likely' and 'probable' that Mr. Herndon would not pass the physical/medical examination required to obtain and maintain a commercial driver's licenses (CDL).

I caution that vocational rehabilitation activities and processes are not appropriate at present. Such activities as additional education, formal training, retraining, vocational placement, vocational exploration, work conditioning, and work hardening are premature and professionally inappropriate. Such activities are very likely to be unsuccessful, frustrating, and potentially detrimental. In consideration of age (64) any vocational activity involving training retraining or education is not realistic or professionally plausible.

I strongly recommend formal and structured mental health assessment personal counseling services. Mr. Herndon is receptive and desirous of such mental health treatment and services.

I am confident to a reasonable degree of professional assurance that my analyses and opinions accurately represent Mr. Herndon's vocational capacity and vocational access (employability). My opinions are my own and are rendered without influence of any other person or organization. These opinions, analyses, and recommendations are provided consistent with the standards, ethics, and protocols of vocational rehabilitation counseling, vocational assessment, and professional counseling practice.



Dixon Pearsall, Ph.D.

119

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EDUCATION

Doctor of Education, North Carolina State University, Health Occupations Administration, (1982)

Master of Education, Univ. of Tennessee, Rehabilitation Counseling, (1978)

Bachelor of Science, Univ. of Tennessee, Special Education and Social Studies, (1976)

PROFESSIONAL EXPERIENCE

- March 2003- Present Owner/President- Pearsall Vocational Services, Little River, South Carolina
- Provide rehabilitation consultant services to healthcare, insurance, legal, and government entities. Services include counseling, case management, placement, intellectual and academic testing, functional capacity assessment, forensic services, and rehabilitation and disability expert testimony. Serve as a disability expert with Social Security Administration Office of Disability Adjudication and Review. Accepted as rehabilitation, disability, and vocational expert regarding workers' compensation, long and short term disability, personal injury, divorce, and third party liability. Provided case management and rehabilitation services throughout North and South Carolina. Served on boards and committees of professional and lay organizations. Presented, taught, conducted research and published in areas of rehabilitation and disability management.
- Oct. 2000- Feb. 2003 President/Owner- Southeastern Rehabilitation and Training Associates, Lexington, Kentucky
- Provided rehabilitation consultant services to business, insurance, legal, and government entities. Services included counseling, case management, vocational placement, intellectual and academic testing, functional capacity assessments, forensic services, and expert testimony. Provided administrative oversight and operational direction as Administrative Director of Northern New York Rehabilitation Center, Samaritan Medical Center, Watertown, NY. Successfully prepared and directed rehabilitation facilities through JCAHO and CARF accreditation review.
- Sept. 1997- Aug. 2000 Director of Rehabilitation Services, University of Kentucky Medical Center, Lexington, Kentucky
- Administrator of Rehabilitation Services business line comprised of physical therapy, occupational therapy, sports medicine, University of Kentucky Home

120

Health Services, and UK Offsite Rehabilitation Services. Responsible for administrative, personnel, financial, and business development aspects of Rehabilitation Services business line. Served on numerous University of Kentucky and UK Medical Center committees and programs. Direct supervisory responsibility for 150+ FTE's. Chairman of Rehabilitation Services and Rehabilitation Counseling Advisory Boards. Served as adjunct professor in Rehabilitation Counseling. Taught undergraduate and graduate level rehabilitation and social work courses. Counseled and served on graduate student committees and masters and doctoral level comprehensive exams. Provided in-service and training for UKMC, UK School of Education, and UK Department of Physical Medicine. Conducted research and published in areas of rehabilitation administration and disability management. Successfully prepared and directed rehabilitation facilities for JCAHO and CARF accreditation review.

April 1994-
Sept. 1997

Director of Rehabilitation Services, Lenoir Memorial Hospital, Kinston, North Carolina

Administered, directed and managed Rehabilitation Services business line comprised of Physical Therapy, Occupational Therapy, Speech Therapy, Recreational Therapy, and Wellness Services. Managed 60+ FTE's. Prepared and managed budget. Served on multiple hospital, community, state, and national committees. Prepared and successfully completed JCAHO and CARF accreditation surveys. Honored as employee of year in Lenoir Memorial Hospital Ancillary Services business line. Served as adjunct graduate faculty; East Carolina University and University of North Carolina-Chapel Hill. Successfully prepared and directed rehabilitation facilities for JCAHO and CARF accreditation review.

Jan. 1991-
Jan. 1994

Senior Vocational Advisor, Saudi Arabian Marketing and Refining Corporation (SAMAREC) Jeddah, Saudi Arabia

Developed programs in health and industrial occupations for Saudi employees of world's largest petroleum refining company. Served on numerous committees. Developed assessment instruments and curriculum materials. Administrative responsibility for employee assistance program (EAP).

1989-1991

Senior Consultant, Harvard University, Institute for International Development, Egyptian Ministry of Health, Cairo, Egypt.

Consulted in health related occupations and served as advisor to USAID/Harvard University (HIID) program to expand health care professions and health related services throughout Egypt. Based in Cairo but worked throughout Egypt.

Aug. 1988-
Jan. 1990

Assistant Professor, College of Health Related Professions, Department of Rehabilitation, University of Florida, Gainesville, Florida

Developed and taught undergraduate and graduate courses in the University of Florida College of Health Related Occupations, Department of Rehabilitation Services. Served on University of Florida, College of Medicine, and Department of Rehabilitation Services committees. Served as graduate student research advisor and Health Occupations Honor Society advisor.

121

Feb. 1983- Senior Vocational Analyst, Arabian American Oil Company (ARAMCO),
 Mar. 1988 Dhahran, Saudi Arabia

Developed health related training programs and personal preparation programs for Arabian American Oil Company (ARAMCO). ARAMCO is the world's largest oil company.

Jan. 1979- Rehabilitation Director, Crawford Rehabilitation Associates, Grand Rapids,
 Jan. 1981 Michigan

Mar. 1978- Vocational Rehabilitation Counselor, International Rehabilitation Associates,
 Jan. 1979 Knoxville, Tennessee

PROFESSIONAL AFFILIATIONS

International Association of Rehabilitation Professionals in the Private Sector (IARPPS)
 International Vocational Education and Training Association (IVETA)
 National Head Injury Foundation
 Kentucky Rehabilitation Directors Association
 National Association of Social Security Claims Representatives

COMMITTEE AND STANDARDS WORK

CARF- Commission on Accreditation of Rehabilitation Facilities
 CORE- Council on Rehabilitation Education
 NABEC- National Association of Industrial Education Cooperation, standards panel member
 Dept. of Public Instruction, State of North Carolina, Mental Health Review Panel
 JCAHO- prepared facilities for commission review. Served as CARF survey reviewer.

LICENSES, CERTIFICATIONS, AND REGISTRATIONS

- National Certified Counselor (NCC)
- Certified Rehabilitation Counselor (CRC) #C040285
- Certified Ergonomic Evaluator (CEE)
- Certified Rehabilitation Provider- North Carolina, Ohio
- Vocational Expert: United States Social Security Administration

FACULTY APPOINTMENTS

Assistant Professor- University of Maryland Eastern Shore
 Assistant Professor- University of Florida
 Adjunct Professor- Harvard University- (HID) - Cairo, Egypt
 Adjunct Professor- University of Kentucky

1200

PEARSALL VOCATIONAL SERVICES

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Date: 04/05/16

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Regarding: Billy Wayne Herndon

Vocational Assessment Update and Review and Opinion of Page Rehabilitation Services Report

John Hetrick, attorney of record for Billy Wayne Herndon requested Dixon Pearsall, Ph.D. of Pearsall Vocational Services to provide an update of my residual vocational/employability opinion and provide a review and opinion of a "Vocational Assessment and Employability Opinion" conducted by Page Rehabilitation Services.

My opinion regarding Mr. Herndon's residual vocational capacity and access to employment (employability) remains as stated in my report of 08-31-15. My opinion is stated on pages 8-9 of the Pearsall Vocational Services report.

As defined and described by the USDOL, full-time substantial gainful employment (work) requires the capacity to work and 8 hour work day and 40 hour work week and to have the capacity to do so on an ongoing, consistent, and continuous basis. (Please see Expectations of Work section cited prior in this report). Per the USDOL, if an individual, regardless of reason or cause, is unable to meet the standards and expectations of competitive employment, they are unable to work. Most disability determinations, vocational assessments, and residual vocational capacity evaluations utilize and employ these USDOL standards and classifications. If an individual does not have the residual functional and/or physical capacity to work, they are not "competitively employable" and may be categorized as "non-employable" or "unemployable".

If an individual cannot withstand or meet the residual functional and physical requirements of work, the attainment, acquisition, or retention of vocational/occupational

123

skills or potentially transferable skills are not of issue in that if the individual cannot meet the basic expectations of competitive employment (work) at any exertion or skill. This is precisely the state, conditions, and circumstances concerning the vocational access (employability) of Mr. Herndon. Mr. Herndon would like to work. He did acquire and does possess viable vocation/occupational skills. However, he can not and does not possess the residual and functional capacity to meet the basic expectations and minimal requirements of competitive employment (work). This is true of all positions existing in significant numbers in the national economy at any exertion or skill level. This would include but not be exclusive to SEDENTARY positions.

In consideration of Mr. Herndon's age (65), any potentially transferable skills to other significantly related positions would have to be highly and specifically related and requiring very few to no changes or adaptations to the work place environment. This includes but is not exclusive to changes in machinery, tools, equipment, technology, work conditions, processes, and procedures. It is very established and documented by case law and vocational/occupational practice that older workers (55+) have increased difficulty obtaining and/or maintaining employment and adapting, adjusting, and accommodating work place changes.

Mr. Herndon's current access to competitive employment (employability) is negligible. Essentially and practically there are no positions represented in significant numbers in the regional or national economies consistent with the residual functional/vocational capacities and physician restrictions of Mr. Herndon. Additionally, it is "highly likely" and "very probable" that Mr. Herndon will not return to gainful employment in any capacity. This would include all full and part-time competitive positions represented in significant numbers in the national economy at any and all exertion or skill levels. As such, Mr. Herndon is not deemed competitively employable in the national economy.

Review of Page Rehabilitation Services "Vocational Assessment" of 02-02-16

George Page of Page Rehabilitation Services interviewed Mr. Herndon on 01/14/16 at the office of Mr. Herndon's attorney, John R. Hetrick, in Walterboro, SC.

Mr. Page states under "Summary and Opinions", page 5:

"The most specific objective medical physician findings for his physical limitations are from Drs. Gee and Johnson II. Dr. Gee identifies on the 14B June 11, 2015 that he should 'limit heavy work and strain.'"

Mr. Page in the same 02/02/16 report continues, page 5:

"It is my opinion that these are jobs Mr. Herndon can perform as they would be considered light or sedentary duty. Jobs such as security guard, night auditor, and pay-day cashier would all fit within Mr. Herndon's academic and physical

abilities. With Mr. Herndon's hunting and fishing knowledge he might also be well suited for retail sales in an outdoor sporting-goods center. Once options could also include parking lot attendant and escort vehicle driver."

The Page Rehabilitation Services report, pages 5 and 6, identifies jobs deemed appropriate that "would all fit within Mr. Herndon's academic and physical abilities"

Job	Mean Wage
Security guard	\$11.53
Cashier	\$9.20
Retail Sales	\$12.12
Night Auditor	\$11.35

A primary, significant and substantive vocational factor not addressed by Mr. Page are the work restrictions imposed by Dr. Johnson as quoted on page 5 of the Page Rehabilitation Services report: "work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level or above greater than 15 to 20 pounds". These restrictions cited by Dr. Johnson, individually and without any additional restrictions, conditions, or limitations restricts Mr. Herndon to maximum residual physical, functional and vocational capacity of 'sedentary' work per USDOL classification. Mr. Page then cites specific jobs at the 'light' exertion level which exceed physician imposed return to work limitations. Of the positions cited by Mr. Page, the following positions are at the 'light' exertion level:

Security guard- DOT Code: 372.667-034-L-3
 Cashier- DOT Code: 211.462-010-L-2
 Retail sales- DOT Code: 277.357-058-L-5
 Parking attendant- DOT Code: 915.473-010-L-2

Each of these positions is at the 'light' exertion level as defined and classified by the United States Department of Labor (USDOL). None of these positions are consistent or appropriate with the referenced restrictions of Dr. Johnson which are at the "sedentary" exertion level. Mr. Page is incorrect that these positions are appropriate or reflective, consistent, appropriate, or representative of Mr. Herndon's residual, physical, functional, or vocational capacities.

There are additional issues with the positions referenced by Mr. Page as appropriate for Mr. Herndon from a transferability skills perspective. The position of security guard is at the 'skill' or specific vocational preparation (SVP) level of 3. The position of retail sales - sports goods position is at (SVP) level 5. Both of these positions require skills, experience, and/or training of 6 months to 4+ years to successfully meet the minimal (entry level) competencies of each position. Mr. Herndon's work experience as a truck driver and construction trades worker do not provide, do not require, nor did Mr. Herndon acquire or obtain potentially transferable skills based upon prior education, training, or work experience. These positions are not appropriate. Mr. Herndon does not have the education, training, or work experiences necessary to perform the referenced

positions at the minimum competency (entry-level) as defined and determined by the USDOL/DOT and as identified by transferable skills analyses (TSA). Additionally, to minimally qualify for these positions Mr. Herndon would require additional formal education or training. In consideration of Mr. Herndon's age, 65, and consistent with and mandated by USDOL guidelines; additional education or training is inappropriate. Mr. Page is incorrect and in error that Mr. Herndon possesses the transferable skills he references, or that Mr. Herndon would qualify for the positions he referenced based upon transferable skills analyses (TSA). Mr. Herndon simply does not possess nor did he acquire or obtain the necessary skills, attributes, or work specialization to function in the positions identified by Mr. Page.

Mr. Page is also incorrect and is factually in error regarding his statements concerning the vocational impact of age on employability. The 02-02-16 Page Rehabilitation Services, page 6, "Summary and Opinion" states:

"It has been my experience that age is not an issue with regard to employment, as employers are more interested in the individual's work ethic, appearance and positive motivation for returning to work. It is my opinion Mr. Herndon is currently employable for a wage between \$9 and \$10 per hour."

The effects and impact of age regarding employability, access to employment, and minimal vocational/occupational performance/competency is well-established, well-documented, and is evidentiary, substantive, and is significant in the determination of employability, vocational access, and in the process of disability determination. Per the USDOL, "older workers", defined as individuals 55 and older, have exceptional and profound difficulties in obtaining, maintaining, and transitioning to employment and the competitive labor market. Older workers have well-researched and documented difficulties in adapting to workplace change including work processes, work environment, tools, and technology. The vocational and occupational impact of age is well documented in case law, and vocational processes, procedures, and protocols of practice such as transferable skills analysis (TSA). Age is often a determining factor and is frequently a contributing factor regarding disability and vocational capacity (employability) determination. Most disability and work capacity determination programs have reduced standards based upon age. That is that the standards regarding access to work decline specifically based upon age. This is specifically and precisely the case with the Social Security Disability Determination (SSDI).

Minimum Wage and Earning Capacity

Minimum wage in South Carolina is consistent with the national minimum wage of \$7.25 per hour. There are some exceptions that allow for pay below the vocational minimum i.e. farm work and supportive employment.

Mr. Herndon has no transferable skills to 'semi-skilled' or 'skilled' sedentary work (SVP levels 4-8). He is limited by physician return to work (r-t-w) conditions to

'unskilled' sedentary positions. Mr. Herndon is limited and restricted to 'unskilled' sedentary positions.

Unskilled sedentary work is exceptionally and extraordinarily limited in the United States economy. Unskilled sedentary positions encompass less than 1% of national economic base. This may also be stated that greater than 99% of all positions (part-time or full-time) represented in the United States economy base are not available or accessible to Mr. Herndon based upon physician return-to-work conditions, limitations, and restrictions.

The Page Rehabilitation report is incorrect that Mr. Herndon is currently employable for a wage between \$9 and \$10 per hour. Most "unskilled" positions in the South Carolina economy are remunerated at or near the minimum wage of \$7.25. Most unskilled positions have very little potential for advancement or promotion. This is particularly true with part-time positions and with sedentary 'unskilled' positions. All of the positions referenced by Mr. Page as having an hourly rate of \$9 to \$11 per hour are either at an exertion or skill level greater than the maximum residual vocational capacity of Mr. Herndon.

Opinion

My opinion regarding Mr. Herndon's vocational access (employability) remains as reported in the 08-31-15 Pearsall Vocational Services "Vocational Assessment".

I have reviewed the 02-02-16 Page Rehabilitation Services "Vocational Assessment". There is nothing in the Page Rehabilitation Services report that would cause me to change, adjust, or modify my opinion regarding Mr. Herndon's residual vocational and functional capacity or his employability.

My objections and variances of opinion regarding the Page Rehabilitation Services report are stated prior in this report. In my opinion, Mr. Page factually reports the vocational interview he held with Mr. Herndon. Mr. Page provides essentially anecdotal and personal opinion regarding Mr. Herndon's access to employment and access to the local and regional labor market. There is little factual, referenced, documented, or refereed information provided. Mr. Page references transferable skills analyses and provides potential earnings expectations based upon results of transferable skills analyses but provides no information regarding the format or process of these analyses; including no mention of referral sources or citations supporting these opinions.

To be specific Mr. Page is factually incorrect and an error regarding a number of factors and issues in assessing Mr. Herndon's residual vocational capacity and employability.

1. Mr. Page is in error regarding transferable skills analysis (TSA). Mr. Page states that Mr. Herndon has transferable skills to work in 'semi-skilled' and 'skilled'

positions of security did not present or state any transferable skills analyses (TSA) processes or any activity he conducted that identifies the presence of the skills he cites.

2. Of the positions referenced, the positions of security guard, cashier, retail sales, parking attendant, and escort driver exceed the return to work restrictions or limitations of Dr. Johnson (page 5 Page Rehabilitation Services Report). Consistent with USDOL/DOT standards and classifications the return-to-work restrictions, limitations, and conditions of Dr. Johnson utilized by Mr. Page are at the 'sedentary' level. All of the positions cited by the Page Rehabilitation Services Report with the exception of the escort driver are at the 'light' level.

The escort driver position while correctly identified at the sedentary level would be eliminated based upon the provision of "no work above shoulder line and limited extension of the neck". Although Mr. Page utilizes Dr. Johnson's statement of "*work restrictions would involve no work from shoulder level above with limited extension of his neck and no lifting from shoulder level or above greater than 15 to 20 pounds*" there are multiple return to work restrictions, conditions, limitations, and opinions cited by Doctors Gee and Johnson that eliminate the capacity to engage in competitive employment.

3. Mr. Page did not provide nor did he reference the basic and minimal expectations of work. The basic USDOL expectations of work as stated in the Pearsall Vocational Services report of 08-31-15 are:

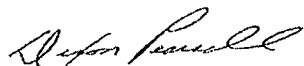
"Expectations of Competitive Work

Full-time competitive employment at any exertion or skill level including unskilled work requires the capacity to focus, concentrate, remain on task, follow basic instructions, complete assignments, attend to work duties, maintain reasonable pace, and persist throughout the work day. Full-time competitive employment requires the capacity to work and attend to work duties 8 hours daily and 40 hours weekly. Normal or acceptable breaks are two breaks of 10-20 minutes each during an 8 hour work day. The accepted break periods are generally approximately 4 hours apart. Workers are expected to attend work regularly and consistently on a continual and ongoing basis. Workers are expected not to exceed accepted employer absences.

In any full-time competitive employment setting, a worker must have the capacity to work and 8 hour day and 40 hour week. The worker must have the capacity to meet basic vocational expectations as detailed above. These expectations exist for all full-time competitive positions in the United States economy including unskilled work. Semi-skilled and skilled work requires the basic vocational expectations of unskilled work but also have higher level expectations."

Regardless of cause or consideration if an individual does not fully meet normal and expected standards of competitive employment, they are unable to work. This is precisely the standard utilized in most vocational assessment, disability determination, and work capacity assessments. Mr. Herndon does not meet the minimum standards of competitive employment. The Page Rehabilitation Services does not address this basic and often determinant issue.

My opinions are my own. I provide these opinions consistent with my education, training and experience; and consistent with the established standards of vocational rehabilitation and counseling practice.



Dixon Pearsall, Ph.D.

1 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1406130

2 BILLY WAYNE HERNDON,)

3 Employee,)

4 Claimant,)

5 vs.)

6 G & G LOGGING, INC.,)

7 Employer,)

8 and)

9 PALMETTO TIMBER S.I. FUND c/o)

10 WALKER, HUNTER & ASSOCIATES, INC.,)

11 Carrier,)

12 Defendants.)

13 DEPOSITION OF: BILLY WAYNE HERNDON, SR

14 DATE TAKEN: Thursday, August 21, 2014

15 TIME: 11:19 A.M.

16 PLACE: Hetrick, Harvin & Bonds
125 South Walter Street
Walterboro, South Carolina

18 REPORTED BY: REBECCA L. CADOFF
Court Reporter and Notary Public

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A P P E A R A N C E S

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ALSO PRESENT:

Anna Herndon Givens

INDEX

Testimony of BILLY WAYNE HERNDON

Direct Examination By Mr. Cruse.....	4
Cross-Examination By Mr. Hetrick.....	48
CERTIFICATE.....	54

STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

1 (The deposition commenced at 11:19 A.M.)

2 BILLY WAYNE HERNDON, SWORN.

3 DIRECT EXAMINATION BY MR CRUSE:

4 Q. Could you please state your full name
5 for the record.

6 A. Billy Wayne Herndon, Sr.

7 Q. Mr. Herndon, my name is Ben Cruse. I
8 have been retained by G&G Logging and their
9 workers' compensation insurance carrier to
10 represent their interest in your workers'
11 compensation claim.

12 Have you ever had your deposition taken
13 before?

14 A. Years ago. Probably 20 years ago.

15 Q. And what was that for?

16 A. An accident.

17 Q. Was it a work related accident?

18 A. I was in a log truck and bumped a car.

19 Q. I'm sorry. Say that again, please?

20 A. I was driving a log truck and bumped
21 the rear end of a car.

22 Q. Did you file a claim?

23 A. They filed a claim against Bootle
24 Logging. Yes, sir.

25 Q. Okay. So you were the defendant in

1 that?

2 A. No. I was the plaintiff.

3 Q. Was it a workers' compensation matter?

4 A. No, sir.

5 Q. Okay. It was more a general liability?

6 A. Just general liability.

7 Q. Okay. And what was the outcome of that
8 case?

9 A. I think they gave them a settlement on
10 it.

11 Q. Did you receive any compensation at
12 all?

13 A. No, sir.

14 Q. Okay. Let me go over some ground rules
15 since it's been a while to remind you of what we're
16 doing here today. This is just a question and
17 answer session. An opportunity for me to talk to
18 you to get to know a little more about yourself and
19 the claim that brings us here today.

20 I'm not here to trick you or to confuse
21 you or to get you to say something that you don't
22 mean. Most important thing going forward is that
23 we both understand each other.

24 So if I ask a question that you don't
25 understand or didn't hear, just ask me to repeat it

1 or rephrase it and I will be happy to do so.

2 If you do answer a question today, I'm
3 going to assume that you understood the question
4 and are answering it truthfully and to the best of
5 your ability; is that fair?

6 A. Yes, sir.

7 Q. And we have a court reporter who is
8 going to be taking down everything we say today.
9 So please try to give verbal answers instead of
10 head nods or uh-huhs and huh-uhs. It's difficult
11 to take that down and determine what we mean later.
12 And I may ask you, is that a yes or no? I'm not
13 trying to be rude, I just want to make sure we get
14 clear answers; is that fair?

15 A. Yes, sir.

16 Q. In order to have a clean record at the
17 end of this, if you would let me finish my question
18 completely before answering. Sometimes it's easy
19 to assume where I'm going to go with a question.
20 But if you let me ask it completely before
21 answering it and I will let you answer completely
22 and try not to interrupt and move on. That way
23 we're not talking over each other; is that fair?

24 A. That's fair.

25 Q. And lastly, we shouldn't be here too

1 long but if you do need to get up and take a break
2 you can do that. We can go off the record or you
3 can keep testifying. Whatever you're more
4 comfortable with. And you understand today what it
5 means to be under oath?

6 A. Yes, sir.

7 Q. Are you on any medication that would
8 affect any of your answers?

9 A. No, sir.

10 Q. Are you taking any prescription
11 medication at all?

12 A. Yes, sir.

13 Q. What are you taking?

14 A. Ibuprofen 800.

15 Q. Okay. And who prescribed that?

16 A. Dr. Tompkins.

17 Q. And where does Dr. Tompkins practice?

18 A. Walterboro Family Practice here in
19 Walterboro.

20 Q. Okay. And how long have you been
21 taking the Ibuprofen?

22 A. Since May.

23 Q. And what is that being prescribed for?

24 A. The pain I'm having in my neck and
25 shoulders.

1 Q. And when you say May, is that May 2014?

2 A. Yes, sir.

3 Q. And I'm sorry. It's prescribed for the
4 pain?

5 A. Yes, sir.

6 Q. And where is the pain?

7 A. Neck, shoulder, left arm.

8 Q. Okay. Is there anything about that
9 specific medication that would give you any trouble
10 today or difficulty understanding or answering
11 truthfully?

12 A. No, sir.

13 Q. What is your date of birth?

14 A. XX/XX/XX.

15 Q. And how old does that make you today?

16 A. 64.

17 Q. And how tall are you, please?

18 A. 5'11.

19 Q. And how much do you weigh?

20 A. 221.

21 Q. And what is your Social Security
22 Number?

23 A. XXX-XX-XXXX.

24 Q. Okay. What is your current address,
25 please?

1 A. ~~183 E. Main - 300~~ Walterboro.

2 Q. And how long have you lived at that
3 address?

4 A. 30 years.

5 Q. Okay. And do you own or rent?

6 A. I own it.

7 Q. And who lives with you at that address?

8 A. My wife, Deborah, D-E-B-O-R-A-H.

9 Q. And what does your wife do?

10 A. She is a secretary at the high school,
11 Colleton County School District.

12 Q. Okay. And do you all have any
13 children?

14 A. Have three.

15 Q. How old are they?

16 A. My son is 41, oldest daughter is 39,
17 and the youngest daughter is 34.

18 Q. Are any of your children financially
19 dependent upon you?

20 A. No, sir.

21 Q. Okay. And do you smoke?

22 A. I quit in '86.

23 Q. Do you drink?

24 A. No, sir.

25 Q. And do you use any illicit or street

- 1 type drugs?
- 2 A. No, sir.
- 3 Q. Do you have a driver's license?
- 4 A. Yes, sir. I do.
- 5 Q. Is it South Carolina License?
- 6 A. South Carolina CDL.
- 7 Q. Is it valid?
- 8 A. Yes, sir.
- 9 Q. Has that ever been suspended?
- 10 A. No, sir.
- 11 Q. And do you own a vehicle?
- 12 A. Yes, sir.
- 13 Q. What type of vehicle do you have?
- 14 A. 2002 Ford F-150, all-wheel drive.
- 15 Q. And what color is the Ford?
- 16 A. White.
- 17 Q. Do you have any other vehicles?
- 18 A. A 1999 F-150 Ford.
- 19 Q. And what color is that?
- 20 A. That's red.
- 21 Q. Okay. Did you drive here today?
- 22 A. I rode with my daughter.
- 23 Q. Okay. Do you have any trouble driving?
- 24 A. No, sir.
- 25 Q. Are you able to drive and get yourself

1 around on a daily basis?

2 A. Yes, sir.

3 Q. Any military service?

4 A. National Guard from '69 to '75.

5 Q. Have you ever filed a lawsuit before?

6 A. No, sir.

7 Q. Have you ever been sued before?

8 A. No, sir.

9 Q. And the accident that we discussed
10 earlier, that was a workers' compensation matter?

11 A. No, sir. It wasn't. It was just a
12 liability claim. They wanted their car and stuff
13 fixed.

14 Q. So no prior workers' compensation
15 claims?

16 A. No.

17 Q. Okay. Have you ever been arrested or
18 convicted of a crime?

19 A. No.

20 Q. Have you ever treated for any type of
21 mental illness?

22 A. No, sir.

23 Q. Any ADD or ADHD --

24 A. No, sir.

25 Q. -- attention deficit stuff? Have you

1 ever treated for any depression?

2 A. No, sir.

3 Q. Any anxiety?

4 A. No, sir.

5 Q. Okay. How far did you go in school?

6 A. 11th Grade.

7 Q. Did you complete the 11th Grade?

8 A. No, sir.

9 Q. And where did you attend?

10 A. Walterboro.

11 Q. Walterboro High School?

12 A. Yes, sir.

13 Q. And what was your reason for leaving
14 school in the 11th Grade?

15 A. Got married.

16 Q. Do you have any trouble reading or
17 writing?

18 A. No, sir.

19 Q. And aside from your schooling at
20 Walterboro High School, do you have any vocational
21 courses or technical training or any type of
22 continued education, anything along those lines?

23 A. No, sir.

24 Q. I'm sorry?

25 A. No.

1 Q. No? Okay. Do you have any
2 certificates or special licenses?

3 A. No, sir.

4 Q. And your CDL, what did you have to do
5 to go through to get your CDL?

6 A. Had to take the written test.

7 Q. And do you have to reapply for that?

8 A. You just have to -- if you want to keep
9 HAZMAT on it you have to take a test every time you
10 renew your license.

11 Q. And do you have that on your license?

12 A. No, sir. I don't anymore. I dropped
13 it.

14 Q. When was the last time you took the
15 test?

16 A. Three years ago.

17 Q. Do you have to take it again coming up
18 anytime soon?

19 A. Yes, sir. In 2015.

20 Q. I would like to get an idea of some of
21 the jobs you've had in the past. I don't really
22 need specific dates or real solid time frames, but
23 I'm just trying to set up the timeline of your work
24 history.

25 A. Right.

1 Q. So what types of jobs have you had
2 since you left high school?

3 A. Carpentry work, construction, and
4 driving the truck.

5 Q. And when did you do carpentry work?

6 A. Back in the late 70s and early 80s.

7 Q. Okay. And what did you do? What were
8 some of your job responsibilities as a carpenter?

9 A. House framing, inside work, trim work.
10 Basically from the foundation up.

11 Q. So you did everything from foundation
12 to finishes?

13 A. Yes.

14 Q. And why did you leave carpentry?

15 A. At the time the company I was working
16 for went out of business.

17 Q. Okay. And were you terminated from any
18 of you carpentry positions?

19 A. No, sir.

20 Q. And then you also said some
21 construction work. What did you do in the
22 construction field?

23 A. Basically the same thing. Carpentry
24 work and construction all tied together.

25 Q. Okay. And how many companies have you

1 worked for doing carpentry and construction type
2 work?

3 A. Three.

4 Q. Okay. What are the names of those
5 companies?

6 A. Quality Builders, S&H Construction, and
7 I was self-employed for about seven months.

8 Q. Do you have your contractor's license?

9 A. No, sir. I didn't. I was
10 subcontracting.

11 Q. Okay. And then aside from those types
12 of positions, you said you drove truck as well?

13 A. Truck driving. Yes, sir.

14 Q. And when did you start driving truck?

15 A. Back in the 80s.

16 Q. Okay. And who have you driven a truck
17 for?

18 A. Bootle Logging most of the time.
19 Probably 20 years I was with Bootle Logging.

20 Q. Bootle?

21 A. Bootle, B-O-O-T-L-E.

22 Q. Okay. And driving for Bootle, what
23 kind of truck were you driving?

24 A. Kenworth and Peterbilt.

25 Q. And are those 18-wheelers?

1 A. Yes, sir.

2 Q. What were you hauling?

3 A. Logs.

4 Q. Is that short-haul or long-haul type of
5 work?

6 A. Within 100 miles. Considered
7 short-haul.

8 Q. Okay. And what are some of the job
9 responsibilities for Bootle Logging driving truck?
10 What did you do on a daily basis?

11 A. You had to inspect the truck every
12 morning. Just basically driving the truck, getting
13 it loaded in the woods, going to the mill, unload
14 it, back to the woods.

15 Q. Did you do any of the loading at all or
16 was that --

17 A. No. They had someone unloading the
18 truck for you.

19 Q. Okay. And when did you begin working
20 for G&G Logging?

21 A. In January 2014.

22 Q. And what was your reason for leaving
23 Bootle?

24 A. I retired back in January of 2012.

25 Q. Okay. Did you take some years off

1 there?

2 A. Yeah. I was just more or less driving.
3 Making what they would let me make.

4 Q. Did you do any type of work between
5 January 2012 when you retired before G&G Logging?

6 A. Just helping them when they needed.
7 You know, short-term, part-time.

8 Q. And that is helping Bootle whenever
9 they kind of needed some extra help?

10 A. Yeah. Bootle or G&G Logging. Just
11 whoever.

12 Q. Okay. So in January of 2014 you were
13 hired then. Is that a full-time job?

14 A. No, sir. It was part-time.

15 Q. Okay. And what was your job title?

16 A. Truck driver.

17 Q. And did you always hold that same
18 position, that same sort of job the whole time?

19 A. Yes, sir.

20 Q. And if you could describe for me what
21 you did exactly for G&G. What's some of your --

22 A. Same thing. Just backup, get the truck
23 loaded, go to the mill, and unload it.

24 Q. Okay. And same type of haul, same
25 distances?

1 A. Yes, sir. Same mills and everything as
2 Bootle.

3 Q. Okay. And were you paid a salary or by
4 the hour?

5 A. Paid by the load.

6 Q. By the load?

7 A. Yes.

8 Q. How much did you make per load?

9 A. 30 percent of what the truck made and
10 it would vary as to where you went, what's the
11 load.

12 Q. How many loads in a day would you do?

13 A. Four to five.

14 Q. I'm going to show you -- I have -- it's
15 called a Form 20 which I believe your employer
16 filled out using the wages that they paid you since
17 January.

18 A. Right.

19 MR. CRUSE: Beau, have you had an
20 opportunity to see that?

21 MR. HETRICK: I don't know that we
22 have.

23 MR. CRUSE: It may have just been filed
24 recently.

25 MR. HETRICK: I'd like to get a copy of

1 that.

2 MR. CRUSE: Sure.

3 BY MR. CRUSE:

4 Q. I'm going to show this to you and kind
5 of go over some of what it says and get your
6 opinion on it here. So it's showing wages here
7 from January 18, 2014 to May 9, 2014 totaling
8 \$9,036.

9 A. Yes, sir.

10 Q. And that sounds accurate?

11 A. Yes, sir. That's close.

12 Q. And then it breaks down for the 13
13 weeks that you worked for them. On average you
14 brought home about \$695 per week.

15 A. Right.

16 Q. Does that sound accurate?

17 A. Yes, sir. That's probably right
18 because some weeks I wouldn't work a full week.
19 Some I would make a lot more than that.

20 Q. Sure. So that's about an average.

21 A. An average.

22 Q. That's fair?

23 A. I got a question there. The 13 weeks,
24 is that the whole time from the 18th to then?

25 Q. That's right.

PCL XL error

Subsystem: KERNEL

Error: IllegalAttribute

Operator: EchoComment

Position: 4354

149

1 that.

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3 BY MR. CRUSE:

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20 Q. Sure. So that's about an average.

21 A. An average.

22 Q. That's fair?

23 A. I got a question there. The 13 weeks,
24 is that the whole time from the 18th to then?

25 Q. That's right.

1 A. Because I took two weeks off in there
2 that he does know about.

3 Q. That's from the time that you were
4 hired until --

5 A. Yeah. Well, that's why I say, sir. It
6 wouldn't actually be that I worked the full 13
7 weeks on that.

8 Q. Because you -- did you take some
9 vacation?

10 A. I took two weeks off. Yes, sir. My
11 wife was off from work so I took the two weeks off.

12 Q. Okay. So what --

13 A. So it was actually 11 weeks instead of
14 13.

15 Q. When did you take that time off?

16 A. In June.

17 Q. Okay.

18 A. No. It wasn't. It was Easter Break.

19 MS. GIVENS: April.

20 THE WITNESS: April. April.

21 BY MR. CRUSE:

22 Q. Okay. And who was your direct
23 supervisor for G&G?

24 A. Greg Gruber.

25 Q. Greg? I'm sorry?

1 A. Gruber.

2 Q. Gruber?

3 A. The owner of G&G.

4 Q. Okay. And did you ever have any
5 disciplinary type actions or any type of write
6 ups --

7 A. No, sir.

8 Q. -- with your employer?

9 A. No, sir.

10 Q. Okay. And in the jobs we have
11 discussed, have you ever been fired or terminated
12 from any of those prior jobs?

13 A. No, sir.

14 Q. And were you working for anyone else at
15 the time of your accident?

16 A. No, sir.

17 Q. And I would like to move to the
18 accident itself. When did that occur?

19 A. The 12th of May.

20 Q. May 12, 2014?

21 A. Yes, sir.

22 Q. And tell me what happened, please.

23 A. I just unloaded a load from Dempsy
24 Mill, which is located next to Orangeburg. Come
25 out of the mill yard, turn south on Highway 21.

1 About a quarter of a mile down the road I noticed a
2 car come across the centerline, which happens quite
3 often with people, they just drift over and go
4 back. I figured it was going back, but it didn't.
5 It kept coming. I got on the brakes, got off the
6 side of the road all I could go without going in
7 the ditch. She kept coming and we collided.

8 Q. And I'm sorry, what road were you
9 traveling on?

10 A. Highway 21, south.

11 Q. And she was in the northbound lane?

12 A. Yes, sir.

13 Q. Okay. And where did she hit you?

14 A. In the front of the truck.

15 Q. Was it like a head-on type of
16 collision?

17 A. Well, she was coming at an angle and
18 she started to hit the front left of the 18-wheeler
19 and then went all the way down the side and
20 continued to the back rear axle, which when she hit
21 that it spun her out and across the road.

22 Q. So she made contact with you
23 basically --

24 A. All the way down. She tore the front
25 end out from under the truck, the step off the

1 truck. Knocked a hole in the fuel tank and knocked
2 the tire off the rim. Broke the axle. And then it
3 spun her out when she hit that tire.

4 Q. What type of car was she driving?

5 A. A Saturn. A new 2014 Saturn.

6 Q. Okay. What type of truck were you in?

7 A. It was a freight liner.

8 Q. And what --

9 A. I think it was a 2001, something like
10 that.

11 Q. That's an 18-wheeler?

12 A. 18-wheeler. Yes, sir.

13 Q. And did you have a load with you?

14 A. No, sir. I was empty.

15 Q. Okay. And how fast was she coming at
16 you? It's going to be a guess, but --

17 A. Just a rough estimate, over 70 miles an
18 hour.

19 Q. So she was going pretty much full
20 speed?

21 A. Yes, sir.

22 Q. And how fast were you going at the
23 time?

24 A. Probably 45 to 50 because I just come
25 out of the mill. Whenever I see her -- impact -- I

1 don't know because I done put on the brakes.

2 Q. And were you wearing your seatbelt?

3 A. Yes, sir.

4 Q. Okay. And did the -- was your truck
5 able to run after the accident?

6 A. No, sir.

7 Q. It was not able to run?

8 A. No, sir.

9 Q. Was it operational at all or was it
10 totalled?

11 A. No, sir. Totalled.

12 Q. And how was her car?

13 A. Demolished.

14 Q. Also total loss?

15 A. Yes, sir.

16 Q. And what time of day was this?

17 A. Around 8 o'clock.

18 Q. In the morning?

19 A. In the morning.

20 Q. And was anyone with you during the
21 accident?

22 A. No, sir.

23 Q. Okay. So take me through what happened
24 next. You all get in an accident, collision, and
25 what happened? Were you able to stop the truck --

1 A. Stop the truck about, I don't know, 40,
2 50 yards down the road in the ditch after the
3 impact. The truck was smoking. The mud flap was
4 on fire behind the fuel tank so I got out of the
5 truck and went to see about the occupant that was
6 in the car.

7 Q. And then what happened?

8 A. Called EMS, called Mr. Gruber, called
9 the paramedics and everybody to come, and they took
10 her to the hospital.

11 Q. So she went off to the hospital?

12 A. Yeah.

13 Q. Did Mr. Gruber come to the scene?

14 A. Yes, sir. He did.

15 Q. Okay. And obviously you reported the
16 accident to him.

17 A. Yes, sir.

18 Q. What did you all talk about?

19 A. Just talked about what happened.
20 Wanted to know whose fault it was, if I was okay,
21 and everything else.

22 Q. And what did you tell him?

23 A. I told him I was sore. I felt, you
24 know, like I was okay. I was hurting across my
25 shoulders and my left arm was hurting. But I

1 thought that I would be okay.

2 Q. Okay. So that day when you were
3 talking to Mr. Gruber, where were you feeling the
4 pain?

5 A. Across my shoulders, down this arm, you
6 know, especially in this arm.

7 Q. And when you say, across your
8 shoulders, is that both of them?

9 A. Yes, sir. All the way across. And my
10 neck.

11 Q. Okay. So I'm going to make a list.

12 A. Right.

13 Q. So you had it across both shoulders and
14 in your neck?

15 A. Yes.

16 Q. And was it down your left arm?

17 A. Left shoulder and arm, hand.

18 Q. All the way down to the hand?

19 A. Yes, sir.

20 Q. Okay. So anything else bothering you?
21 Pain across both shoulders, your neck, your left
22 arm, down to the left hand.

23 A. Yes, sir.

24 Q. Is that everything that was bothering
25 you?

1 A. Yes, sir.

2 Q. Okay. Did you fill out any paperwork
3 at all about the accident?

4 A. Just a report from the Highway Patrol.

5 Q. The accident report?

6 A. Yes, sir.

7 Q. Did you -- at that time, did you ask
8 for medical treatment?

9 A. I told him I would get checked by my
10 doctor in Walterboro. My daughter come to the
11 wreck and she transported me to Walterboro. And
12 then I see Dr. Tompkins here in Walterboro when I
13 got here.

14 Q. And was that the day of the accident?

15 A. Yes, sir.

16 Q. So you went to Dr. Tompkins the day of
17 the accident?

18 A. Yes, sir.

19 Q. Okay. And describe for me on that date
20 what were you feeling like? What was the pain
21 like? If you can describe it in any more detail.

22 A. It was just real sore and stiff from
23 the impact. My arm was tingling a little, but, you
24 know, I'm not one to complain about stuff a lot.
25 So I said, well, let it go away.

1 Q. On a pain scale of 0 to 10, where 0 is
2 no pain and 10 is the most pain you can imagine,
3 where would you rate what you were feeling across
4 your shoulders?

5 A. The day of the accident? Probably a
6 five.

7 Q. Okay. And how about your neck?

8 A. About the same.

9 Q. And how about the left arm?

10 A. Same in all of it.

11 Q. So it's about a 5 out of 10 all the way
12 down --

13 A. Yes, sir.

14 Q. -- right around a 5? Okay. This
15 happened at 8 o'clock.

16 A. Yeah.

17 Q. Was that the end of your day or was
18 that the beginning of your day, or where --

19 A. That was the beginning. That was the
20 first load I carried that morning.

21 Q. Okay.

22 A. I was in the woods at 6 o'clock and got
23 loaded.

24 Q. And were you able to continue the day?

25 A. No, sir.

1 Q. So you were down after eight?

2 A. Yes, sir.

3 Q. And you went to your family doctor
4 right away?

5 A. Yes, sir.

6 Q. And I have a copy of some of your
7 medical records that came with the file when I got
8 it. They indicate you treated only at Walterboro
9 Family Practice.

10 A. Yes.

11 Q. And that's with Dr. Tompkins?

12 A. Right.

13 Q. Have you seen anyone else or been to
14 any other physician or facility for the injuries
15 from this accident?

16 A. Yes, sir. I was in the hospital back
17 in June. Thought I was having a heart attack.

18 Q. Okay. What hospital did you go to?

19 A. Colleton Regional.

20 Q. And this was in June?

21 A. Yes, sir.

22 Q. And you said you felt like you were
23 having --

24 A. Well, I was having pains in my chest
25 and shortness of breath. I thought, you know, it

1 was my heart. So I went to the emergency room.

2 Q. Do you feel like the shortness of
3 breath and pain in your chest was a result of the
4 car accident?

5 A. Yes sir. I do.

6 Q. Okay. And what did they do for you at
7 Colleton Hospital?

8 A. Well, they checked all my vitals and
9 heart, gave me a stress test. Couldn't find
10 nothing wrong so they ended up running an MRI on my
11 neck.

12 Q. And do you know if you were diagnosed
13 with anything specific at the hospital?

14 A. Yes. They said I had a compressed disk
15 and stuff in my neck.

16 Q. What kind of treatment did they provide
17 for you?

18 A. Nothing as far as treatment for my
19 neck.

20 Q. How about for your heart or the
21 shortness of breath?

22 A. They couldn't find nothing wrong after
23 -- well, after probably two or three hours in the
24 emergency room the pain and all went away, so, in
25 my chest. But they still run the test to make sure

1 there was nothing wrong because I had a heart
2 attack back in 2003.

3 Q. Okay. Were you discharged?

4 A. Yes, sir. The next day. They kept me
5 overnight and the next day.

6 Q. And did they recommend any additional
7 medical treatment for you?

8 A. Yes, sir. Go back to see my physician,
9 which was Dr. Tompkins, and he recommended I see a
10 neurosurgeon.

11 Q. Has your attorney sent you to any
12 doctors?

13 A. No, sir.

14 Q. And your family doctor is Dr. Tompkins
15 at Walterboro?

16 A. Yes, sir.

17 Q. And do you see him for other ailments
18 or illnesses?

19 A. I have seen him before. Yes.

20 Q. And prior to your accident, what type
21 of stuff have you treated with Dr. Tompkins for?

22 A. Mainly shingles.

23 Q. Okay. And when was that?

24 A. Back in February.

25 Q. Of 2014?

1 A. Yes, sir.

2 Q. Okay. Any other type of illnesses or
3 ailments that you see him for?

4 A. No, sir.

5 Q. And how often would you say, again,
6 before your accident, did you see Dr. Tompkins?

7 A. I didn't see Dr. Tompkins that often.
8 I have another doctor, Dr. Brownfield at MUSC that
9 I have been seeing for 10 years.

10 Q. And his name was Dr. Brown?

11 A. Elisha Brownfield.

12 Q. Elisha Brownfield?

13 A. Yes, sir. MUSC, right there.

14 Q. And tell me about some of the treatment
15 Dr. Tompkins did for you. What did he provide for
16 you?

17 A. He just examined my neck and all.
18 Strength in my arm. How I could move it. Give me
19 medication for the pain, muscle relaxers.

20 Q. And did that help, the medication?

21 A. It helps when I take it. Yes, sir.

22 Q. Do you know if he diagnosed you with
23 anything specific? Any specific type of injury?

24 A. Just that I had the pain in all my neck
25 and down left arm.

1 Q. Is the pain that we're talking about
2 since the accident, has it been constant or do you
3 have good days and bad days?

4 A. No, sir. It's constant. It's hurting
5 right now.

6 Q. And is it -- since the accident, has it
7 gotten better, worse, or stayed the same?

8 A. It's gotten worse.

9 Q. And where -- well, let me ask you this:
10 According to the file materials that I have, the
11 last time you saw Dr. Tompkins was June 23 --

12 A. Yes, sir.

13 Q. -- of this year. Is that the last time
14 you saw him or have you been back since?

15 THE WITNESS: Didn't I see him the
16 first of August?

17 MS. GIVENS: Uh-huh. 14th.

18 THE WITNESS: 14th of August.

19 BY MR. CRUSE:

20 Q. So you went back August 14?

21 A. Yes.

22 Q. Okay. And tell me about that visit.
23 What happened in August?

24 A. Just basically examined and asked how I
25 was doing, how I felt.

1 Q. And how were you feeling on August 14?

2 A. Still hurting in my neck and shoulder.

3 Tingling down my left arm.

4 Q. On that same pain scale that we
5 mentioned earlier, where was your pain level?

6 A. It was up around an 8.

7 Q. An 8 out of 10?

8 A. Yes, sir.

9 Q. Was that the same 8 out of 10 in your
10 shoulders, neck, and down your left arm?

11 A. Yes, sir.

12 Q. So everything had gotten worse by that
13 point?

14 A. Everything has gotten worse.

15 Q. And August 14, what was recommended, if
16 anything, for you to do? What is the plan at this
17 point?

18 A. To try to see a neurosurgeon to see
19 what he can do or what he thinks is going on.

20 Q. Have you seen the neurosurgeon?

21 A. No, sir. I haven't seen him yet.

22 Q. What specifically -- what part of your
23 body is the referral for, do you know?

24 A. My neck.

25 Q. Just specifically for the neck?

1 A. Yes, sir.

2 Q. Okay. And I know you didn't go back
3 the day of your accident to keep working --

4 A. No, sir.

5 Q. Have you returned since the accident?

6 A. No, sir.

7 Q. So you have been out of work since --

8 A. The 12th of May.

9 Q. May 12, 2014.

10 A. Yes, sir.

11 Q. Okay. Were you written out of work by
12 any of your physicians or doctors?

13 A. Yes, sir. Dr. Tompkins.

14 Q. When did Dr. Tompkins write you out of
15 work?

16 A. The day I'd seen him, the 12th.

17 Q. So on that first -- that May 12th visit
18 he wrote you out of work?

19 A. Yes.

20 Q. Did he say completely out of work or
21 did he give you work restrictions?

22 A. No. Completely out of work. On the
23 first visit I think he put two weeks, which I was
24 supposed to see him again. The next time I see him
25 he write it for two more weeks, I'd seen him, and

1 then he wrote it until I see a neurosurgeon.

2 Q. Okay. So according to Dr. Tompkins
3 you're to remain out of work until you see the
4 neurosurgeon?

5 A. Remain out of work until I see a
6 neurosurgeon.

7 Q. Have you been provided any checks from
8 the insurance company?

9 A. No, sir.

10 Q. And what is your current work status
11 for G&G? Are you aware? Have you been terminated
12 or fired?

13 A. The last time I talked to Mr. Gruber he
14 seemed sort of angry that I needed workman's comp
15 to pay for this. I haven't talked with him since
16 sometime in May.

17 Q. And so you had a conversation with him
18 after your accident?

19 A. Yes, sir. I did.

20 Q. And tell me about that.

21 A. Well, I talked to him I think it was a
22 couple days after the accident and I told him I was
23 still sore and hurting. Like I said, I figured it
24 would go away, you know, and, you know, big deal,
25 so.

1 About a week later I called him back
2 and told him it hadn't went away. I was still
3 hurting. I needed to have some tests and stuff
4 run. At that point he got sort of angry that I
5 wanted to use workman's comp. That I was going to
6 ruin him. I said, well, I got to do what I got to
7 do, Mr. Gruber, you know. So that's where it's
8 been. And he hung up the phone on me and I hadn't
9 talked with him since.

10 Q. Okay. So you all didn't talk about
11 coming back to work at all for him or he didn't --

12 A. No, sir.

13 Q. -- mention anything about that? He
14 just basically talked about how you were feeling?

15 A. How I was feeling.

16 Q. Okay. And have you returned to work
17 anywhere since your accident?

18 A. No, sir.

19 Q. Have you looked for any other work
20 since your accident?

21 A. No, sir.

22 Q. Okay. Have you applied or received any
23 unemployment?

24 A. No, sir. I'm just on my Social
25 Security when I retired.

1 Q. So you continue to draw Social Security
2 retirement?

3 A. Yes, sir.

4 Q. When you went back to work in January
5 of 2014 for G&G Logging, did you continue to
6 receive Social Security benefits?

7 A. Yes. I did.

8 Q. And how much -- when did those start?

9 A. My Social Security?

10 Q. Correct.

11 A. In February of 2012.

12 Q. Okay. And those have been
13 continuous --

14 A. Yes, sir.

15 Q. -- every month? And how much per month
16 are you making?

17 A. \$1,016..

18 Q. 1,016 per month?

19 A. Yes, sir.

20 Q. Okay. Would you like to go back to
21 work if you were released?

22 A. If I'm able to go back and make what I
23 make, yes, sir.

24 Q. Okay. Are you receiving any Social
25 Security Disability?

1 A. No, sir.

2 Q. Are you a Medicare recipient?

3 A. No, sir.

4 Q. Are you on any short-term disability?

5 A. No, sir.

6 Q. Okay. And prior to the accident, the
7 May 12, 2014 accident, did you have any other
8 injuries or any other accidents that required
9 medical treatment?

10 A. I had an accident back in 2009, I think
11 it was. 2008. I fell off of a lowboy and bruised
12 my right side, ribs, liver, and stuff.

13 Q. You fell off -- what did you fall off
14 of?

15 A. Off of a lowboy working in the logging
16 woods.

17 Q. And what's a lowboy?

18 A. It's a trailer designed to haul
19 equipment.

20 Q. Okay. And how far did you fall?

21 A. Probably up about four feet. Landed on
22 my right side.

23 Q. Okay. And did you have any injuries?

24 A. Yes, sir. Fractured two ribs, bruised
25 my liver, and I was out of work for 10 weeks.

1 Q. And did you file a workers'
2 compensation claim for that?

3 A. Yes, I did.

4 Q. Okay. So that was a workers'
5 compensation claim?

6 A. Yes, sir.

7 Q. And were you represented at that time?
8 Did you have an attorney?

9 A. No, sir. I didn't need one.

10 Q. And tell me about what happened as a
11 result of that claim.

12 A. I was just out of work having physical
13 therapy for 10 weeks and that was with Bootle
14 Logging.

15 Q. And did you get weekly checks --

16 A. Yes, sir. I did.

17 Q. -- during those 10 weeks?

18 A. Yes, sir.

19 Q. And what happened at the end?

20 A. Just went back to work. The doctor
21 released me and I went back to work.

22 Q. Okay. Any other type of accidents --

23 A. No.

24 Q. -- prior to this injury?

25 A. No, sir.

1 Q. And how are your ribs feeling today?

2 A. They fine.

3 Q. And how about the bruised liver, how's
4 that? Has that healed up?

5 A. It cleared up. Everything is fine.

6 Q. So that's all resolved?

7 A. Yes. No problems from it.

8 Q. And anything else on your right side
9 that was hurt from that accident?

10 A. No, sir.

11 Q. Okay.

12 A. Just across my shoulders.

13 Q. Did you hurt your shoulders in 2008?

14 A. Just my right shoulder I did. Yes,
15 sir.

16 Q. Okay. And where -- did you get medical
17 treatment?

18 A. Yes, sir.

19 Q. And where did you get medical
20 treatment?

21 A. Colleton Regional.

22 Q. Okay. And what did they do for you?

23 A. Physical therapy. It was nothing they
24 could do for the ribs or the liver. Just let it
25 heal.

1 Q. And the physical therapy helped?

2 A. Yes, sir.

3 Q. So aside from the ribs, I'm assuming
4 they are on your right side?

5 A. Yes, sir.

6 Q. And your bruised liver and your right
7 shoulder, did you have any other injuries or hurt
8 anything in that 2008 accident?

9 A. No, sir. That was it.

10 Q. Okay. Do you know if you had any
11 permanent restrictions or anything as a result?

12 A. No, sir. None.

13 Q. And did you go back to work full duty?

14 A. Yes, sir.

15 Q. Okay. What about car accidents? Any
16 other prior car accidents before May 2014?

17 A. No, sir.

18 Q. Okay. And before your accident in May
19 of 2014, did you have any prior neck problems?

20 A. No, sir.

21 Q. How about any prior left shoulder
22 problems ---

23 A. No, sir.

24 Q. -- left arm problems?

25 A. No, sir.

1 Q. How about, I know you said you had an
2 issue with your right shoulder before, but the pain
3 you're feeling across the upper part of your
4 shoulders, has that ever happened to you before?

5 A. No, sir.

6 Q. How about your left hand? Any problems
7 with your left hand before?

8 A. None before this wreck.

9 Q. Okay. And how about after your
10 accident in May of 2014? Have you been involved in
11 any subsequent car accidents?

12 A. No, sir.

13 Q. Any slip and falls or trips at home or
14 anything like that?

15 A. No, sir.

16 Q. Okay. And I would just like to get an
17 idea sort of how you're doing today. How you're
18 feeling today and I don't mean right at this very
19 second, but just in general. Your current
20 condition. So tell me how you're doing today.

21 A. It's just a constant pain in my neck
22 and tingling down my left arm, numbness.

23 Q. Okay.

24 A. If I don't take the Ibuprofen then it's
25 a lot worse. It eases it off some to where I can

1 tolerate it. If I don't, the pain level goes up.

2 Q. And where is that pain level on that
3 same 0 to 10 scale we have been using currently?

4 A. Right now probably at about a 7.

5 Q. And is this constant or do you have
6 good days and bad days with it?

7 A. No, sir. It's constant.

8 Q. Does anything make it feel worse?

9 A. No. Not any worse than what it usually
10 does.

11 Q. So any type of activity that you feel
12 like maybe aggravates it or makes it flare up to a
13 bad day?

14 A. Well, if I try to go out there and mow
15 the grass it hurts more. If I get on my tractor to
16 bush hog it hurts more. Yes, sir.

17 Q. And are you able to mow the grass at
18 all?

19 A. No. Not really. Not without it
20 hurting more. So I try to avoid anything that's
21 going to, you know, make it aggravate it.

22 Q. You said you also have a tractor?

23 A. Yes, sir. I do.

24 Q. And what do you use that tractor for?

25 A. Plant crops, bush hog around the farm

1 on 78 acres. But I can't do it. I've tried it and
2 it just don't work.

3 Q. So who takes care of the land now since
4 May of 2014?

5 A. That one sitting right there.

6 Q. Got to pass off some of the work?

7 A. Exactly.

8 Q. Are you able to do any of that? Are
9 you able to get out at all and do any other work?

10 A. I get out and go in the yard and try to
11 do things. But then it starts hurting more so I
12 quit.

13 Q. Okay.

14 A. I love to fish but I can't even do
15 that.

16 Q. You haven't been fishing since your
17 accident?

18 A. Well, I can go sit in the river for
19 about an hour and it gets to hurting so I go home.

20 Q. What else were you able to do before
21 that you feel like you can't do now?

22 A. Anything and everything. I wasn't
23 really restricted to not doing anything that I
24 wanted to do.

25 Q. How about just, you know, sort of daily

1 living activities; getting dressed, cooking,
2 cleaning, things like that? Are you able to take
3 care of yourself on a daily basis?

4 A. I can do that. Yes, sir.

5 Q. Okay. And do you help out around the
6 house with some of the inside activities maybe?

7 A. Well, I pick up clothes and put clothes
8 in the washer and stuff like that. But nothing
9 that's any kind of heavy lifting or anything.

10 Q. And is there anything else bothering
11 you today? I know you mentioned your neck and then
12 your left arm.

13 A. Right.

14 Q. Is there anything else today that's
15 bothering you as a result of your accident?

16 A. That's all.

17 Q. That's everything? Okay. And would
18 you like additional medical treatment?

19 A. Yes, sir. I would.

20 Q. Have you been pleased with Dr. Tompkins
21 and what he's been able to do for you?

22 A. Yes, sir. I have.

23 Q. And I'm just, forgive me, I'm going
24 back a little bit. You mentioned another
25 physician?

1 A. Dr. Brownfield.

2 Q. That's right. At MUSC.

3 A. Yeah. I've been seeing her for yours
4 because I have diabetes.

5 Q. Is your diabetes in control?

6 A. Yes, sir. It is.

7 Q. And does she have you on medication for
8 it?

9 A. Yes, sir. She does. I have high blood
10 pressure. She has me on medication for that. And
11 it's controlled with the medicine.

12 Q. Okay. What else does she treat you for
13 if anything?

14 A. That's basically it.

15 Q. Diabetes?

16 A. Diabetes and the high blood pressure.

17 Q. And when did you start going to
18 Dr. Brownfield?

19 A. Probably 10 years ago.

20 Q. When was the last time you saw her?

21 A. Monday.

22 Q. What was that for?

23 A. A general checkup.

24 Q. Any future appointments scheduled with
25 Dr. Brownfield?

1 A. Yes, sir. In three months.

2 Q. And what is that for?

3 A. Just general. I see her every three to
4 four months.

5 Q. Just to --

6 A. Just to check my diabetes.

7 Q. Standing followups?

8 A. Blood pressure. Yeah. Right.

9 Followups.

10 Q. And do you see any other physician or
11 go to any other facility that we haven't talked
12 about yet today?

13 A. No, sir.

14 MR. CRUSE: Okay. I believe those are
15 all the questions I have. Answer any your attorney
16 may have.

17 CROSS-EXAMINATION BY MR. HETRICK:

18 Q. Wayne, I've just got a few questions I
19 want to followup on. I believe Mr. Cruse asked you
20 about what problems you were having and you stated
21 your neck and your left arm.

22 A. Yes, sir.

23 Q. But in the earlier questioning it was
24 my understanding that your left shoulder and left
25 hand also bothered you.

1 A. Yes, sir. Well, all the way down the
2 whole left side.

3 Q. All right. Do you have problems with
4 your left shoulder?

5 A. Yes, sir. It hurts -- about there is
6 all I can lift it without it hurting.

7 MR. HETRICK: Ben, I would like the
8 record to reflect he's lifting his left shoulder
9 about the level of his --

10 THE WITNESS: The pain starts -- I can
11 make it go higher, but it really hurt.

12 MR. HETRICK: About the level of his
13 chest.

14 MR. CRUSE: That's fair. Parallel to
15 the ground.

16 MR. HETRICK: All right. That would be
17 fine.

18 BY MR. HETRICK:

19 Q. And as far as your left hand, tell the
20 -- tell us, if you will, about what kind of
21 problems you're having with your left hand.

22 A. I'm just having a tingling feeling like
23 it's numb.

24 Q. All right. Is it numb on your whole
25 hand or certain fingers worse than others?

1 A. Just the first couple of fingers.

2 Q. Okay. So that would be --

3 A. And I can feel it in my forearm.

4 Q. All right. So forearm on your left arm

5 and your left hand, but particularly in the first
6 couple of fingers?

7 A. First couple of fingers.

8 Q. How about your thumb?

9 A. No, sir. The thumb feels fine.

10 Q. Okay. But in the first -- so that
11 would be index finger and your middle finger
12 problem area?

13 A. Yes, sir.

14 Q. Okay. And I believe your neck hurts
15 also?

16 A. Yes, sir. My neck is a constant hurt.

17 Q. Okay. We talked a little about your --
18 tried to compute your average weekly wage and I
19 think you said that during that period of time you
20 didn't work 13 weeks, but you only worked 11 weeks.

21 A. Because I took two weeks out of that
22 that I didn't work any.

23 Q. Okay. So the money reflected during
24 that time period would be only for 11 weeks; is
25 that correct?

1 A. Yes, sir.

2 Q. You like Dr. Tompkins, he's your family
3 doctor.

4 A. Yes, sir.

5 Q. And I think he referred you to go see a
6 neurosurgeon; is that correct?

7 A. Yes, sir.

8 Q. Have you seen a neurosurgeon this time?

9 A. No, sir. Not yet.

10 Q. Why not?

11 A. Just hadn't made the appointment. I've
12 got one now.

13 Q. All right. And MRIs, have any MRIs
14 been done?

15 A. Yes, sir. I did the MRI when I was in
16 the medical facility with my chest.

17 Q. Okay. They did an MRI of what body
18 part?

19 A. Of my spine, my neck.

20 Q. Of your neck?

21 A. Yes, sir.

22 Q. Have you had an MRI of your left
23 shoulder?

24 A. No, sir.

25 Q. Have you had an MRI of your left arm?

1 A. No, sir.

2 Q. Have you had an MRI of your left hand?

3 A. No, sir.

4 Q. And have you had any nerve conduction
5 studies of your left shoulder or arm or hand?

6 A. No, sir.

7 Q. Okay. Would you like to have some
8 additional medical treatment?

9 A. Yes, sir. I would.

10 Q. Do you feel like you're entitled to
11 have some weekly workers' compensation checks paid?

12 A. Yes, sir. I do.

13 Q. Was this accident your fault?

14 A. No, sir.

15 Q. If you were able to go back to work and
16 Mr. Gruber gave you your job back would you try to
17 go back to work?

18 A. Yes, sir. I would.

19 Q. How many hours typically did you work
20 during the week?

21 A. Anywhere where from 50 to 60.

22 Q. So this was a full-time job?

23 A. Yes, sir. When I worked I worked. It
24 wasn't every day, every week. It was just when
25 they really needed the truck. But it was pretty

1 steady.

2 Q. Okay. And let me ask this, I don't
3 think this is a problem or an issue, how many
4 people did Mr. Gruber have working for him?

5 A. Probably 10 or 11, something like that.

6 Q. And you were an employee; is that
7 correct?

8 A. Yes, sir.

9 Q. He paid you a weekly check?

10 A. Yes, sir.

11 MR. HETRICK: I don't have anything
12 further.

13 MR. CRUSE: I have nothing in followup.

14 Thank you.

15 (The deposition was concluded at 11:59
16 PM.)

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CERTIFICATE OF REPORTER

I, Rebecca L. Cadoff, Notary Public for
the State of South Carolina at Large, do hereby
certify that the foregoing transcript is a true,
accurate, and complete record.

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 3rd day of September,
2014, at Bluffton, Beaufort County, South Carolina.

Rebecca L. Cadoff
Notary Public
Notary Expires February 12, 2023

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1406130

BILLY WAYNE HERNDON,

Employee,

Claimant,

vs.

G & G LOGGING, INC.,

Employer,

AND

PALMETTO TIMBER S.I. FUND C/O
WALKER, HUNTER & ASSOCIATES,
INC.,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN R.
HETRICK, ESQUIRE:

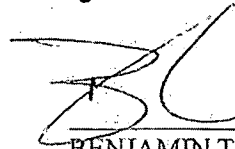
YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGES
11		Medical University of South Carolina	03/01/11 to 07/28/12	186-197
12		Subpoenas	02/24/16	198-203
13		Wage records from the SC Department of Employment and Workforce	03/08/16	204-206
14		Supplemental report from George Page	04/22/16	207-211

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Greg Gruber, George Page* (expert), and/or other representatives of the Employer and/or Carrier may be called to testify; Defendants reserve the right to call any and all witnesses identified by the Claimant, including Claimant.



BENJAMIN T. CRUSE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
April 25, 2016



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM (continued)

MEDICAL UNIVERSITY OF SOUTH CAROLINA
PV: EB

BILLY HERNDON

61 year old male

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

PRIMARY CLINIC: UNIV INTERNAL MED

ACTIVE PROBLEM LIST:

CAD

HYPERTENSION

PERIPHERAL NEUROPA

DIABETES MELLITUS

HYPERCHOLESTEROLEM

CHIEF COMPLAINT: "My shoulder hurts."

HISTORY OF PRESENT ILLNESS: 61 year male with problems as noted here today for scheduled visit. Mr. Herndon returns for a FU today. His left shoulder has been bothering him since his last visit and has been getting worse. It hurts all of the time even at night. If he lifts the arm up in front he does not have as much pain, but if he tries to lift it out to the side it is very painful and radiates even over to the other shoulder. He states he has not had any radiation down into the hand and the tingling he was having at one time is gone. Otherwise, he reports he has lost weight and is eating better. He cut back on fried foods. He feels like his sugar is under better control.

REVIEW OF SYSTEMS as above, otherwise negative.

PAST MEDICAL HISTORY -

T2DM, CAD (MI s/p stent x 1 2005), HTN, depression, hyperlipidemia

SOCIAL HISTORY -

12/15/06

lives in Walterboro with his wife; quit smoking cigarettes in 1987 (former 3ppd x25 yrs), rare EtOH currently (2 beers in 10 years).

FAMILY HISTORY -

The patient's mother is living. Has a history of hypertension. She had CABG at the age of 67. The patient's father is living and has hypertension as well. He had his first MI at the age of 57. Has had skin cancers. His sister is living and healthy. Four of his grandparents have had diabetes mellitus.

CURRENT MEDICATIONS:

Rx: ASPIRIN EC 81MG 1 TAB QD

Rx: ATENOLOL 25 MG 1 TABLET DAILY

Rx: FLUOXETINE HCL 20 MG 1 daily

Rx: GLUCOPHAGE 1000 MG 1 twice daily

Rx: GLUCOSE STRIPS USE UD

Rx: LANCETS USE UD

Rx: OMEPRAZOLE 20MG 1 CAP daily

Rx: PRAVACHOL 20 MG 1 TABLET at night before bed

Rx: UNIRETIC GENERIC 12.5/15 1 TAB QD

Rx: CIALIS 2.5mg 1 qd



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HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM (continued)

ALLERGIES:

NKA, NKDA

PHYSICAL EXAM:

Syst BP 119 : Diast BP 68 : Pulse 76
Weight 236.8 lbs Height: 172 cm on 02/04/2011
BMI:

General: Patient is a WDNW 61 year old male appearing stated age in no acute distress.

Head: Normocephalic, atraumatic

Eyes: conjunctiva clear, sclera non-icteric, extra-ocular movement intact.

Heart: no cardiomegaly or thrills; regular rate and rhythm, no murmur or gallop

Lungs: clear to auscultation with normal excursion bilaterally

Extremities: no amputations or deformities, cyanosis, edema or varicosities. He has a tender ARC of the left arm from 90 degrees to about 160 degrees. He can lift it with passive motion. Internal and external rotation are essentially normal. He has some tenderness in the subacromial area and also at the AC joint on palpation.

Neurologic: non-focal

Procedure: Injection of left subacromial bursa: After informed consent was obtained the area was cleaned with Betadine and 4 cc of 1% Lidocaine with 20 mg Depo-Medrol was injected into the subacromial space. He had no real change in pain at the time of the procedure with no complications.

LABS REVIEWED:

CBC: WBC: 8.050 on 03/24/2006

RBC: 4.71 on 03/24/2006

HEMOGLOBIN: 14.4 on 03/24/2006

HEMATOCRIT: 42.50 on 03/24/2006

PLATELET COUNT: 204 on 03/24/2006

BMP: SODIUM: 139.0 on 11/19/2010

POTASSIUM: 4.50 on 11/19/2010

CHLORIDE-SERUM: 103.0 on 11/19/2010

CO2: 27 on 11/19/2010

BUN: 16.0 on 11/19/2010

CREATININE: 1.0 on 11/19/2010

GLUCOSE-SERUM: 159.0 on 11/19/2010

CALCIUM: 9.4 on 11/19/2010

LFT: AST: 30.0 on 11/19/2010

ALKALINE PHOS: 71.0 on 11/19/2010

ALBUMIN, SERUM: 3.9 on 11/19/2010

BILIRUBIN TOTAL: 0.7 on 11/19/2010

BILIRUBIN DIRECT: 0.1 on 01/26/2007

DIABETIC LABS: POC HGBA1C: 7.9% on 02/04/2011 HGBA1C: 8.7 on 08/20/2010

MICROALBUMIN URINE: <2.0 on 09/09/2003

MICROALB/CREAT RAT: COMMENT on 09/09/2003

THYROID LABS: TSH: 1.41 on 09/18/2009

LIPIDS: CHOLESTEROL: 230.0 on 11/19/2010

TRIGLYCERIDES: 364.0 on 11/19/2010

HDL-CHOLESTEROL: 33 on 11/19/2010

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 13



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MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 02/04/11

PP - Progress Note signed by Elisha L. Brownfield, MD at 3/1/2011 12:33 PM (continued)

LDL-CHOLESTEROL: 124 on 11/19/2010

Is your patient a smoker? no

ASSESSMENT/PLAN: 1) Shoulder pain. I have told him he may have bursitis, partial rotator cuff tear, AC tendonitis plus arthritis or any combination of the above. I would like to do PT after injection today. This is very difficult given his work schedule. He does have some exercises left over from right shoulder injury and will pull these out to try to use them. If he doesn't get any relief then probably Orthopedics and MRI is the next step.

2) Adult onset diabetes. His Hgb A1C is much improved today at 7.9%. I have encouraged him to continue the changes he has made to his diet and to also try to get regular exercise.

3) Dyslipidemia. His D. LDL is down to 119. Again we will continue dietary changes.

4) HTN. His BP is under excellent control. I will plan to see him back in 3-4 months. He will call me about his shoulder.

ROUTINE HEALTH MAINTENANCE STATUS:

PNEUMADULT: 11/19/10

INFLUENZA: 11/19/10

Td: 12/08/06

Return to clinic

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Report dictated by: Elisha Brownfield, M.D.
EB/dm

SIGNED BY ELISHA BROWNFIELD, M.D. (ATTENDING) (EB) 03/01/2011 12:33PM

Electronically signed by Elisha L. Brownfield, MD on 3/1/2011 12:33 PM

CSN
30935653

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 3/11/2011 12:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 3/11/2011 12:00 AM
001417354_TYPE_0_20110311000		
000_MUSCORTHOPAEDICSINITI		
ALNOTEMPLEASANT		
Trans Time:	Trans Doc Type: PP - Progress Note	

.D: 03/11/11 : 00:00am

.T: MUSC ORTHOPAEDICS INITIAL NOTE - MT PLEASANT

.PV: 5C7

.CC: EB

REFERRING PHYSICIAN: Dr. Elisha L. Brownfield, 171 Ashley Avenue, 803 CSB MUSC Medical Center, Charleston, SC 29425

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HIM ROI Notes Report

Page 14



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

Practice Partner - Orders signed by James A. Amlicke, MD at 3/14/2011 11:39 AM (continued)

CLINICAL INDICATION (Signs & Symptoms): ROTATOR CUFF TEAR

HISTORY: 61 year old male with

REQUESTING PROVIDER: AMLICKE, JAMES MD
Beeper: 60058

ATTENDING PHYSICIAN: Same

PATIENT INFORMATION:

Isolation Precautions:

Contrasted Study:

CREATININE: 1.0 on 11/19/2010

ALLERGIES:

NKA, NKDA

Contrast Allergy:

Premedication Ordered:

SIGNED BY MEGAN SIEG, CMA (77G) 03/11/2011 02:03PM
SIGNED BY JAMES A AMLICKE, MD (ATTENDING) (5C7) 03/14/2011 11:39AM

Electronically signed by James A. Amlicke, MD on 3/14/2011 11:39 AM

CSN
30935642

PP - Progress Note signed by James A. Amlicke, MD at 4/4/2011 4:15 PM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/26/2012 2:11 AM	Note Time: 4/1/2011 12:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 4/1/2011 12:00 AM
001417354_TYPE_0_20110401000		
000_MUSCORTHOPAEDICSFOLL		
OWUPNOTEMTPLEASANT		
Trans Time:	Trans Doc Type: PP - Progress Note	

D: 04/01/11 : 00:00am

T: MUSC ORTHOPAEDICS FOLLOW-UP NOTE - MT PLEASANT

PV: 5C7

Patient is back today having undergone the MRI of his left shoulder. He is right-handed.

The MRI does show some tearing but incomplete of the supraspinatus. Study was done at Coastal MR Imaging LLC in Savannah, Georgia. This did show a high grade partial versus full thickness tear of the supraspinatus tendon. There was no tendon retraction. No impingement on the supraspinatus tendon was demonstrated. There was no large effusion.

I did review the study myself from the disc.

Examination of the patient today reveals excellent range of motion but certainly signs of some impingement. He does have slight

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HIM ROI Notes Report

Page 18



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM (continued)

Dear Dr. Brownfield:

I saw your patient Billy Herndon in the office today, and I appreciate your referral of this 61-year-old Caucasian male trucker who is in the logging business and comes in with a lot of pain in his left shoulder.

HISTORY OF PRESENT ILLNESS: He has had the problem for six months and does not recall any specific injuries. He does have to throw the ties over the log in the bed of his 18-wheeler, but he does that with his right arm, and so he is really not incapacitated with his work because it is the left shoulder that is the problem area. He has been taking some Advil, and after a while he noted he could barely raise his arm up. This is primarily if he tries to raise his arm up in the lateral point of the coronal plane. Dr. Brownfield did a steroid injection, and that gave him considerable relief then, so that now he is able to raise his arm up at least to 90 degrees slightly above. It is in the, once again, abducted position. He states that the pain actually started in about October of last year. Spontaneous onset. Pain is gradually getting a bit worse. The weakness ensued shortly after the onset of the pain. The pain is over the shoulder cap region as well as just to the anterior aspect of the same.

PAST MEDICAL HISTORY: His past medical history includes a prior heart attack (MI) in October 2005. He is diabetic, has hypertension and hypercholesterolemia.

PAST SURGICAL HISTORY: Previous operative procedure, stent to one of his coronary vessels in October 2005.

SOCIAL HISTORY: Truck driver already commented upon, married, three kids, nonsmoker, and nondrinker.

FAMILY HISTORY: Hypertension, cancer, heart attack, diabetes.

MEDICATIONS: Omeprazole, Lexapro, hydrochlorothiazide, atenolol, pravastatin, metformin, fluoxetine and aspirin.

ALLERGIES: None listed.

REVIEW OF SYSTEMS: Pain down left arm and numbness in hand when his shoulder problem began. He uses glasses for reading. History of hypertension with previous heart attacks and indigestion problems.

PHYSICAL EXAMINATION: Weight 239 pounds, pulse 80, blood pressure 157/85, height 70.5 inches.

Examination of his right shoulder is completely normal. Examination of the left shoulder is normal from the standpoint of passive range of motion. With active range of motion he can only abduct the left arm to about 90 to 100 degrees, but he can elevate it in the sagittal plane up to overhead positioning. He is able to get his hand behind his back, has good lift-off, but on checking for supraspinatus and infraspinatus strength, both diminished of about 3 to 4/5 in each. Biceps functioning seems to be normal. Yergason test negative. Hawkins test negative. Apley's positive.

RADIOGRAPHIC IMAGING: X-rays of his left shoulder some calcification noted at the greater tuberosity with type I acromion. These are fairly normal looking x-rays.

IMPRESSION: Rotator cuff tear, left shoulder. This is associated with some impingement.

RECOMMENDATIONS: Recommendation will be to have the patient undergo an MRI to look at the severity of the rotator cuff tear to see if operative intervention will be necessary. It is important for this man to have good use of his left arm in light of his work. We will see him back here after that study is done and make some determination after that.

James Amlicke, MD
Assistant Professor
Department of Orthopaedic Surgery
Medical University of South Carolina
96 Jonathan Lucas Street, Suite CSB 708
Charleston, SC 29425

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HIM ROI Notes Report

Page 15



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

PP - Progress Note signed by James A. Amlicke, MD at 3/21/2011 5:17 PM (continued)

Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:2410
3614490

cc: Dr. Elisha L. Brownfield, 171 Ashley Avenue, 803 CSB MUSC Medical Center, Charleston, SC 29425

SIGNED BY JAMES A AMLICKE, MD (ATTENDING) (5C7) 03/21/2011 05:17PM

Electronically signed by James A. Amlicke, MD on 3/21/2011 5:17 PM

CSN
30935651

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/26/2012 2:11 AM

Author: (See Notes) Historical	Service: (none)	Author Type: Resource
Filed: 7/26/2012 2:11 AM	Note Time: 3/11/2011 1:40 PM	Note Type: Practice Partner - Nursing/Messages
Status: Signed	Editor: Transcription Conversion Interface	Dictation Time: 3/11/2011 1:40 PM
Trans ID: 001417354_TYPE_8_20110311134	Trans Status: Available	
000_NURSEINTAKEORTHOPAEDI		
CSEC		
Trans Time:	Trans Doc Type: PP - Nursing/Messages	

.D: 03/11/11 : 01:40pm

.T: NURSE INTAKE - ORTHOPAEDICS - EC
MEDICAL UNIVERSITY OF SOUTH CAROLINA

BILLY HERNDON
61 year old male

Patient is up-to-date with 2010/11 Seasonal Influenza immunization.
.CE: 2010/11 FLU Screen Stamp: N/A
Most recent POC HGBA1C: 7.9% on 02/04/2011 HGBA1C: 8.7 on 08/20/2010

CHIEF COMPLAINT/REASON FOR VISIT: SHOULDER PAIN

.V2: T: Height 70.5 in : Weight

.L: WEIGHT IN LBS: 239.8 lbs

.V1: Syst. BP 167 : Diast. BP 85 : P. 80
.L: BP Method: Machine
.L: BP Side: left
.L: BP Location Taken: arm
.L: BP Cuff Size: Adult
.L: BP Position: sitting
.L: BP Activity: Calm

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HIM ROI Notes Report

Page 16



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 04/01/11

PP - Progress Note signed by James A. Amlicke, MD at 4/4/2011 4:15 PM (continued)

weakness in supraspinatus functioning with slight weakness in elevation in the abducted position; that is in the coronal plane. He easily gets his hand behind his back and has good lift off and good salute position.

Impression is that of partial rotator cuff tear, supraspinatus, left shoulder associated with impingement bursitis.

Recommendations: Will be to have the patient undergo subacromial steroid injections to reduce some of the swelling; not only in the bursal tissue, but the tendon to reduce the effective impingement.

Procedure: With the patient sitting, arm dangling free, Betadine prep done over the posterior lateral aspect of the acromion, I then injected 1% Lidocaine after the Betadine is dry. Inject down to the subacromial space and with the second needle, inject 60 mg of Kenalog along with 2 ccs of 1/2% Marcaine into the subacromial space. This goes uneventfully. Patient tolerated well. I moved the shoulder around to get the fluid disseminated throughout the bursal area.

I want to see him back in 6 weeks to see how things are progressing. I want him to go a lot of shoulder ranging to try to maintain his function. I told him that I would reinject it in 6 weeks if he doesn't feel that much better and if he doesn't respond to that, then we will look at having him undergo an acromioplasty.

James Amlicke, MD
Assistant Professor
Department of Orthopaedic Surgery
Medical University of South Carolina
96 Jonathan Lucas Street, Suite CSB 708
Charleston, SC 29425
Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:247 3709990

SIGNED BY JAMES A. AMLICKE, MD (ATTENDING) (5C7) 04/04/2011 04:15PM

Electronically signed by James A. Amlicke, MD on 4/4/2011 4:15 PM

CSN
30935636

PP - Progress Note signed by James A. Amlicke, MD at 5/17/2011 8:44 AM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 5/13/2011 12:00 AM	Note Type: PP - Progress Note
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 5/13/2011 12:00 AM
001417354_TYPE_0_20110513000		
000_MUSCORTHOPAEDICSFOLL		
OWUPNOTEMPLEASANT		
Trans Time:	Trans Doc Type: PP - Progress Note	

.D: 05/13/11 : 00:00am

.T: MUSC ORTHOPAEDICS FOLLOW-UP NOTE - MT PLEASANT

.PV: 5C7

Gentleman back today for left shoulder check. Injured it 10/10/2010 throwing a strap to seal down a load on the back of a truck. That was with his left arm. Now he does it with his right arm and he is getting better.

The injection helped him quite a bit and that was performed on the 04/01/2011 of this year and he says he is 90% improved.

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HIM ROI Notes Report

Page 19





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 05/13/11

PP - Progress Note signed by James A. Amlicke, MD at 5/17/2011 6:44 AM (continued)

Examination of his left shoulder today reveals excellent range of motion actively. He has good lift off. Holds the slough position quite well; even against good force so that his infraspinatus is fine. The subscapularis is good. He has slight weakness in the supraspinatus which was partially torn.

I did a steroid injection to the subacromial space and that is what has given him a lot of comfort and reduced some of the impingement. So, he knows about not doing that same maneuver that caused him to injure the shoulder to begin with back in October.

I told him to come on back and see us if he needs us.

Diagnosis: supraspinatus tear, partial thickness, left shoulder with associated impingement bursitis; the latter much improved following steroid injections subacromial space.

This actually occurred on the job but he didn't report it to his boss and is not being covered under worker's comp.

James Amlicke, MD
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Telephone: 843-573-1550
Facsimile: 843-573-1535

JA/AM:247
3902328

cc:

SIGNED BY JAMES A AMLICKE, MD (ATTENDING) (SC7) 05/17/2011 06:44AM

Electronically signed by James A. Amlicke, MD on 5/17/2011 6:44 AM

CSN
35889107

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM

Author: Elisha L. Brownfield, MD	Service: (none)	Author Type: Physician
Filed: 6/3/2012 6:39 PM	Note Time: 6/3/2012 6:25 PM	Note Type: Progress Notes
Status: Signed	Editor: Elisha L. Brownfield, MD (Physician)	

UNIVERSITY INTERNAL MEDICINE

Billy Herndon, 62 y.o. male
PRIMARY CARE PROVIDER: Elisha L. Brownfield, MD, MD

ACTIVE PROBLEMS:

Patient Active Problem List

Diagnoses:

- Diabetes mellitus type II
- CAD (coronary artery disease)
- HTN (hypertension)

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 20



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON,BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date:06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM (continued)

- Depression
- Hyperlipidemia

CHIEF COMPLAINT:

Chief Complaint

Patient presents with

- Hyperlipidemia
- Hypertension
- Diabetes

HISTORY OF PRESENT ILLNESS: Billy W Herndon is a 62 y.o. male here for follow-up of Bell's Palsy, and new complaint of tremor. Patient has finished course of medication for Bell's Palsy and is significantly better. No new weakness, and no side effects from these medications, although his sugars have been "up and down". He continues to have mouth and tooth pain from severe dental decay. Has found a dentist to have his remaining 7 teeth pulled, but is also seeking a consultation with dentistry here at MUSC. We called in lortab for the pain, and it does help, but causes severe nausea.

Patient states that his hands shake, right more than left, and have done this for years, but worsening over the past several months. He is having difficulty eating and working with tools because of this. Does not have the tremor when at rest, and no tremor noted in the head or feet. No shuffling or stumbling and no change in handwriting. Patient is right-handed. Denies any weakness, slurred speech, visual complaints. No family history of tremor, and no personal history of head injury. No alcohol use in over 20 years.

PAST MEDICAL HISTORY:

has a past medical history of Diabetes mellitus type II; CAD (coronary artery disease) (2005); HTN (hypertension); Depression; Hyperlipidemia; and Bell's palsy (5/2012).

PAST SURGICAL HISTORY:

has no past surgical history on file.

PAST FAMILY HISTORY:

family history includes Cancer in his father; Diabetes in his maternal grandfather, maternal grandmother, paternal grandfather, and paternal grandmother; Heart disease (age of onset:57) in his father; Heart disease (age of onset:67) in his mother; and Hypertension in his father and mother.

PAST SOCIAL HISTORY:

reports that he quit smoking about 25 years ago. His smoking use included Cigarettes. He has a 75 pack-year smoking history. He does not have any smokeless tobacco history on file. He reports that he drinks alcohol. He reports that he does not use illicit drugs.

CURRENT MEDICATIONS:

Current Outpatient Prescriptions on File Prior to Visit

Medication	Sig	Dispense	Refill
• aspirin 81 MG EC tablet	Take 81 mg by mouth daily.		



MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 8:25 PM (continued)

- atenolol (TENORMIN) 50 MG tablet Take 1 tablet (50 mg total) by mouth 30 tablet daily. 11
- hydrocodone-acetaminophen (LORTAB) 10-500 mg per tablet Take 1 tablet by mouth every 4 (four) hours as needed for Pain. NMT 4 g of acetaminophen in 24 hrs. 40 tablet 0
- metformin (GLUCOPHAGE) 1000 MG tablet Take 1,000 mg by mouth 2 (two) times daily with meals.
- moexipril-hydrochlorothiazide (UNIRETIC) 15-25 mg per tablet Take 1 tablet by mouth daily.
- omeprazole (PRILOSEC) 20 MG capsule Take 20 mg by mouth daily.
- pravastatin (PRAVACHOL) 20 MG tablet Take 20 mg by mouth daily.
- tadalafil (CIALIS) 10 MG tablet Take 2.5 mg by mouth daily.

ALLERGIES:

Allergies as of 06/01/2012

- (No Known Allergies)

REVIEW OF SYSTEMS: As documented in the HPI, and the remainder of the ROS is otherwise negative

PHYSICAL EXAM:

Vitals: BP 109/64 | Pulse 65 | Wt 230 lb 11.2 oz (104.645 kg)

Gen: Healthy appearing and in no distress

Head: normocephalic, atraumatic; some loss of the left nasolabial fold; some incomplete closing of the left eye

Eyes: pupils equal and round bilaterally

Nose: no discharge



MEDICAL RECORDS
169 Ashley Ave Suite 269
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HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 06/01/12

Progress Notes by Elisha L. Brownfield, MD at 6/3/2012 6:25 PM (continued)

Lungs: clear to auscultation with normal excursion

Cor: regular rate and rhythm without murmurs, rubs or gallops

Neuro: fine tremor of bilateral outstretched hands - none at rest. No movements of the legs involuntarily; normal gait; upper ext strength 5/5 all muscle groups. Lower ext strength 5/5 all muscle groups. Reflexes 2/2 bilaterally biceps, triceps, brachioradialis, patellar. Mild cogwheeling rigidity of the right arm.

LABS REVIEWED (resulted within past six months):

Lab Release on 06/01/2012

Component	Date	Value
• THYROID STIMULATING HORM*	06/01/2012	1.84

Lab Release on 05/22/2012

Component	Date	Value
• UREA NITROGEN, BLOOD (BU*)	05/22/2012	26.0*
• SODIUM	05/22/2012	137.0
• POTASSIUM, CAP, POC	05/22/2012	5.10*
• CHLORIDE	05/22/2012	102.0
• CO2 CONTENT (BICARBONATE)	05/22/2012	28
• ANION GAP	05/22/2012	7
• GLUCOSE	05/22/2012	292.0*
• CREATININE	05/22/2012	1.0
• CALCIUM	05/22/2012	10.0
• EGFR	05/22/2012	>59
• HEMOLYSIS INDEX	05/22/2012	2.0*

Historical Encounter on 03/16/2012

Component	Date	Value
• HEMOGLOBIN A1C	03/16/2012	8.5*

HEALTH MAINTENANCE:

STATUS: Up to date

PATIENT COUNSELING: Regular exercise - Discussed the importance of staying active and exercising on a regular basis.

ASSESSMENT/PLAN:

1. Bell's Palsy - much improvement over the past week with treatment. Continue to follow.
2. Essential tremor - likely diagnosis is essential tremor. Since patient is already on a beta-blocker, will try increasing the dose. Follow symptoms at the next appt.
3. HTN - good control today
4. AODM - likely some fluctuations with prednisone, but too early to check A1C. Encouraged good lifestyle.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Electronically signed by Elisha L. Brownfield, MD on 6/3/2012 6:39 PM

CSN





MEDICAL RECORDS
169 Ashley Ave Suite 269
MSC 349
Charleston, SC 29425-3490
HIM ROI Notes Report

HERNDON, BILLY W
MRN: 001417354
DOB: 12/11/1949, Sex: M
Enc. Date: 03/11/11

Practice Partner - Nursing/Messages filed by (See Notes) Historical at 7/28/2012 2:11 AM (continued)

KNOWN ALLERGIES: NKA, NKDA

Any NEW allergies to medicines, foods, herbals or latex? NO
ALR: 03/11/11

ABUSE/NEGLECT: No suspicion of abuse or neglect
SMOKING/TOBACCO SCREEN: Patient does not use tobacco products
L: USES TOBACCO NOW: NO
L: SMOKING SCREEN: 03/11/11

Patient reported PAIN NOT MANAGEABLE on 02/04/2011 and was instructed to discuss with provider.
IS PATIENT HAVING PAIN? YES
IS PAIN MANAGEABLE? NO - Patient instructed to discuss pain with provider.
CE: PAIN MANAGEABLE : PAIN NOT MANAGEABLE

EDUCATION DOCUMENTATION

PRIMARY PROVIDER: BROWNFIELD MD, ELIS

PRIMARY CLINIC: UNIV INTERNAL MED

SIGNED BY MEGAN SIEG, CMA (77G) 03/11/2011 01:41PM

CSN
30935649

Practice Partner - Orders signed by James A. Amlicke, MD at 3/14/2011 11:39 AM

Author: James A. Amlicke, MD	Service: (none)	Author Type: Physician
Filed: 7/28/2012 2:11 AM	Note Time: 3/11/2011 2:02 PM	Note Type: Practice Partner - Orders
Status: Signed	Editor: James A. Amlicke, MD (Physician)	
Trans ID:	Trans Status: Available	Dictation Time: 3/11/2011 2:02 PM
001417354_TYPE_39_2011031114		
0200_ORDERMRIREQUEST		
Trans Time:	Trans Doc Type: PP - Orders	

D: 03/11/11 : 02:02pm

T: ORDER - MRI REQUEST

PV: 5C7

BILLY HERNDON

Modality of choice: MRI
Phone: 2-9729
Output Fax: 2-9364

Desired Schedule: 1st Available

EXAM ORDERED: MRI LEFT SHOULDER

Sedation Needed: no

Printed on 12/22/2014 11:08 AM

HIM ROI Notes Report

Page 17

Reply To
LEA MASON
Direct Dial: (843) 576-2945
lea.mason@mgclaw.com

February 24, 2016

John R. Hetrick, Esquire
Hetrick, Harvin & Bonds
Post Office Box 139
Walterboro, South Carolina 29488

RE: Billy Wayne Herndon v. G & G Logging, Inc. and Palmetto Timber S.I.
Fund c/o Walker, Hunter & Associates, Inc.
Date of Accident: May 12, 2014
WCC File No.: 1406130
Our File No.: 2069.14023
Claim No.: ~~247-975-7477~~

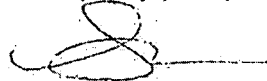
Dear Mr. Hetrick:

Our firm has been retained to represent G & G Logging, Inc. and its workers' compensation carrier in the above referenced claim for benefits.

We are requesting Income/Tax documentation on the above-named Claimant and have enclosed a Subpoena Duces Tecum for production of these records. Be advised that the Subpoena lists the extent of the documents that we are requesting at this time.

We certainly appreciate your cooperation and prompt assistance in this matter. Please contact our office if you have any questions or concerns.

Very truly yours,



Lea Mason
Paralegal to Benjamin T. Cruse

/lem
Enclosures

cc: Claudia Weed, Walker, Hunter & Associates, Inc. (w/encl., via e-mail)

McANGUS GOUBELOCK & COURIE LLC

735 JOHNNIE DODDS BLVD, SUITE
200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5700



WCC File # 1406130

Carrier File # 027-257471

Carrier Code #

Employer FEIN

Billy Wayne Herndon

Claimant's Name

SSN

~~WOS: REMOVED~~

Walterboro, South Carolina 29488

Address City State Zip

G & G Logging, Inc.

Employer's Name

269 Rigby Road

Bowman, South Carolina 29018

Address City State Zip

Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc.

Insurance Carrier

(843) 576-2937

Phone Number

Home Phone #

Work Phone #

Benjamin T. Cruse

Preparer's Name

SUBPOENA

To: Billy Wayne Herndon c/o John R. Hetrick, Esquire/Hetrick, Harvin & Bonds

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

PLACE OF TESTIMONY:

ROOM:

DATE AND TIME:

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

PLACE OF DEPOSITION:

DATE AND TIME:

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

LIST OF DOCUMENTS:

Copies of any and all records, documents, and/or other information, in written form or however compiled, that in any way reflects Billy Wayne Herndon's (SSN: 247-92-7471, DOB: 12/11/49) income and/or earnings in any manner or from any source during the years 2012, 2013, and 2014, including, but not limited to, Federal and State income tax returns (IRS Forms 1040, 1099, Schedules C, W-2, etc.), banking statements, receipts, payroll records, check stubs, invoices, etc.

PLACE: McAngus Goudelock & Courle, PO Box 650007 Mt. Pleasant, SC

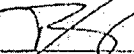
DATE AND TIME: 03/07/16 at 5:00 pm

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

PREMISES

DATE AND TIME:

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


ISSUING OFFICER'S SIGNATURE AND TITLE

Attorney for Defendants

(843) 576-2937

PHONE #

February 24, 2016

DATE

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

WCC FORM # 27
REV. DATE 3/2014

27

SUBPOENA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1406130

BILLY WAYNE HERNDON,

Employee,

Claimant,

vs.

G & G LOGGING, INC.,

Employer,

AND

PALMETTO TIMBER S.I. FUND C/O
WALKER, HUNTER & ASSOCIATES, INC.,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDEBLOCK & 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 Rule 67-211 of the South Carolina Workers' Compensation Commission, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: John R. Hetrick, Esquire.
Hetrick, Harvin & Bonds
Post Office Box 139
Walterboro, South Carolina 29488

DOCUMENT: Subpoena

DATE OF Mailing: February 24, 2016



Lea Mason
Paralegal to Benjamin T. Cruse

Reply To
LEA MASON
Direct Dial: (843) 576-2945
lea.mason@mgclaw.com

February 24, 2016

Bootle Logging, LLC
881 Bottle Lane
Yemassee, South Carolina 29945
ATTN: HR Manager

RE: Billy Wayne Herndon v. G & G Logging, Inc. and Palmetto Timber S.I.
Fund c/o Walker, Hunter & Associates, Inc.
Date of Accident: May 12, 2014
WCC File No.: 1406130
Our File No.: 2069.14023
Claim No.: ~~2069.14023~~ 2069.14023

Dear Sir or Madam:

Our firm has been retained to represent G & G Logging, Inc. and its workers' compensation carrier in the above referenced claim for benefits.

We are requesting a complete copy of your employment and wage records for Billy Wayne Herndon. Should you have any questions or concerns, please contact me at (843) 576-2945.

Very truly yours,



Lea Mason
Paralegal to Benjamin T. Cruse

/lem
Enclosure

cc: Claudia Weed, Walker, Hunter & Associates, Inc. (w/encl., via e-mail)
John R. Hetrick, Hetrick, Harvin & Bonds (w/encl.)

MCANGUS GOUDELOCK & COURIE LLC

735 JOHNNIE DODDS BLVD, SUITE
200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5700



WCC File # 1406130
Carrier File # ~~2016020001~~
Carrier Code #
Employer FEIN

Billy Wayne Herndon
Claimant's Name
SSN ~~247-92-7471~~
Wallerboro, South Carolina 29488
Address City State Zip

Home Phone #
Work Phone #
Benjamin T. Cruse
Preparer's Name

G & G Logging, Inc.
Employer's Name
269 Rigby Road
Bowman, South Carolina 29018
Address City State Zip
Palmetto Timber S.I. Fund c/o Walker, Hunter &
Associates, Inc.
Insurance Carrier
(843) 576-2937
Phone Number

SUBPOENA

To: Boottle Logging, LLC

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

PLACE OF TESTIMONY: _____ ROOM: _____

DATE AND TIME: _____

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

PLACE OF DEPOSITION: _____ DATE AND TIME: _____

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

LIST OF DOCUMENTS:

Any and all personnel and wage records regarding Billy Wayne Herndon (SSN: 247-92-7471, DOB: 12/11/49), including but not limited to applications for employment, pre- and post-employment health questionnaires and/or screenings, disciplinary actions, medical records, termination records, correspondence, wage information, payroll records, performance evaluations, date of employment, workers' compensation records, etc.

PLACE: McAngus Goudelock & Courie, PO Box 650007 Mt. Pleasant, SC DATE AND TIME: 03/07/16 at 5:00 pm

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

PREMISES: _____ DATE AND TIME: _____

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

[Signature] Attorney for Defendants (843) 576-2937 February 24, 2016
ISSUING OFFICER'S SIGNATURE AND TITLE PHONE # DATE

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

WCC FORM # 27
REV. DATE 3/2014

27

SUBPOENA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1406130

BILLY WAYNE HERNDON,

Employee,

Claimant,

vs.

G & G LOGGING, INC.,

Employer,

AND

PALMETTO TIMBER S.I. FUND C/O
WALKER, HUNTER & ASSOCIATES, INC.,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

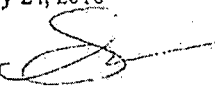
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Rule 67-211 of the South Carolina Workers' Compensation Commission, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Bottle Logging, LLC
881 Bottle Lane
Yemassee, South Carolina 29945

TO: John R. Hetrick, Esquire
Hetrick, Harvin & Bonds
Post Office Box 139
Walterboro, South Carolina 29488

DOCUMENT: Subpoena

DATE OF
MAILING: February 24, 2016



Lea Mason
Paralegal to Benjamin T. Cruse

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

March 8, 2016

Ms. Lea Mason
McAngus Goudelock & Courie
PO Box 650007
Mt. Pleasant, SC 29465

Re: Billy Wayne Herndon v. G & G Logging, Inc.
WCC File No.: 1406130

Dear Ms. Mason:

This is in response to your letter received in this office on February 29, 2016, transmitting to us a subpoena and check #28621 in the amount of \$25.00 for any and all records pertaining to the above referenced individual.

We were unable to locate any unemployment information for this individual however, enclosed is a certified copy of the wage record. *Please be advised that 20 C.F. R. § 603.9 requires the recipient to safeguard the information disclosed against unauthorized access or re-disclosure.*

Please do not hesitate to contact us if we can be of any further assistance.

Sincerely,

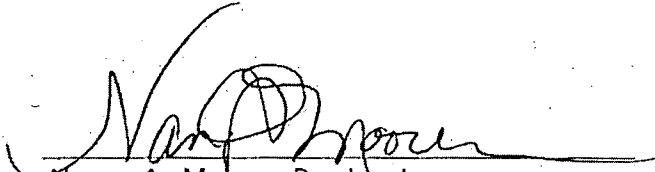
A handwritten signature in black ink, appearing to read "Nancy Andrews Moorers", is written over a horizontal line.

Nancy Andrews Moorers, Paralegal
UI Records
SC Department of Employment and Workforce
nmoorer@dew.sc.gov



**SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**
Post Office Box 995
Columbia, South Carolina 29202

To the best of my knowledge & belief, I certify that the attached is a true copy of the responsive records pertaining to Billy Wayne Herndon.


Nancy A. Mober, Paralegal
SC Department of Employment & Workforce

**Columbia, South Carolina
March 8, 2016**

SSN Wage Record Inquiry

SSN [REDACTED] 7471

Name	Acct #	Employer Name	Report Type	Year	Qtr - 1	Qtr - 2	Qtr - 3	Qtr - 4
BILLY WAYNE HERNDON	258783	G&G LOGGING INC	Original	2014	\$6,145.00	\$3,140.00		
W HERN	[REDACTED]	[REDACTED]	[REDACTED]	2013		\$5,457.00	\$771.00	\$1,491.00
W HERN				2012				
W HERN				2011				
W HERN				2010				
W HERN				2009				
W HERN				2008				
BILLY WAYNE HERNDON				2007				
W HERN				2007				
W HERN				2007				

Next >

PAGE REHABILITATION SERVICES, INC.
Vocational Rehabilitation Experts

DATE: 4-22-16

WCC#: 1406130

CLIENT: Billy "Wayne" Herndon

DATE OF INJURY: 5-12-14

CUSTOMER: MGC Law

EMPLOYER: G&G Logging

Supplemental Report

This case was originally referred by Mr. Ben Cruse of MGC Law for an assessment of Mr. Herndon's employability and wage earning capacity. My initial report was completed on February 2, 2016. Mr. Cruse requested I review a report by Pearsall Vocational Services dated April 5, 2016 regarding Mr. Herndon and my original report.

First of all, I'd like to state that I stand by my **Vocational Assessment Report** dated February 2, 2016. It is still my opinion that Mr. Herndon is employable in competitive employment in a full-time position making wages between \$9 and \$10 an hour.

The Pearsall vocational report dated April 5, 2016 requires my response. Dr. Pearsall indicates in paragraph 2 page 4 that I am factually in error with my statement "It has been my experience that age is not an issue with regard to employment, as employers are more interested in the individual's work ethic, appearance and positive motivation for returning to work. It is my opinion Mr. Herndon is currently employable for a wage between \$9 and \$10 per hour." I stand by this comment, and can factually say that Dr. Pearsall has never accompanied me when I am visiting employers or contacting them telephonically, and therefore cannot challenge this statement about my experience. When I do direct job search and development, I reveal as much information as I can about my clients, in the interest of fully informing potential new employers. Individuals I work with are often in excess of 65 years old, and I can state emphatically that I have never had an employer tell me they would not hire someone due to age. When I am job searching for an individual who is older, I generally am looking at employment that is particularly easy to learn with minimal on-the-job training. The jobs identified in my report of February 2, 2016 are those types of jobs.

On pages 5-6 of my 2/2/16 report, I listed six positions which I feel are appropriate. On page 3 of the Pearsall report, he refers to specific vocational preparation or SVP as identified by the US Department of Labor. He correctly identifies the Dictionary of Occupational Titles (1991 revised) codes for four of

P.O. Box 894 Isle of Palms, SC 29451 (843) 885-9464 Fax (843) 885-9465

Client Billy "Wayne" Herndon

Date 4-22-16

Page 2

those positions, but did not provide codes for night auditor or escort vehicle driver, both of which are sedentary. The DOT code for night auditor is 210.382-054. It is considered sedentary and the SVP level is 5. The DOT code for escort driver is 919.663-022 with an SVP level of 2.

The Pearsall report indicates that I erred regarding Mr. Herndon's SVP level, and contends that his work history contains skills too low to meet his employability level.

It should be noted that Mr. Herndon was a finish carpenter for 6 to 7 years and learned these skills on the job. A carpenter's DOT code is 360.381-022 and is an SVP of 7. I specifically asked Mr. Herndon about his work and he revealed he did framework, form work, trim and finish carpentry. This would be considered skilled labor. According to the Dictionary of Occupational Titles (1991 Revised), the types of skills Mr. Herndon learned on the job as a finish carpenter are as follows:

- Read and understand blueprints
- Use math and shop geometry to figure amounts of materials needed, dimensions to follow and determine cost of items necessary
- Accept responsibility for accuracy of work

It appears that Dr. Pearsall considers my report inaccurate due to the medical restrictions I utilized. On page 3 of the Pearsall report, he refers to Dr. Johnson's restrictions stating, **"Work restrictions would involve no work from shoulder level above with limited exertion of his neck and no lifting from shoulder level or above greater than 15 to 20 pounds."** Dr. Johnson's statement within itself appears contradictory. However the second half of the statement which indicates no lifting from shoulder level or above greater than 15 to 20 pounds is the identification of specific restrictions. It appears Dr. Pearsall believes that these restrictions are considered sedentary. I disagree. Below is the US Department of Labor's definition of light duty work:

L-Light Work - Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job

Client Billy "Wayne" Herndon

Date 4-22-16

Page 3

requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

Even using the strictest standards (lifting 15-20 pounds), as given by the independent medical examination of Dr. Johnson, Mr. Herndon meets the light-duty level as identified by the US Department of Labor. Another medical opinion was given on June 30, 2015 by Dr. Artur Pacult on a checklist sent by Mr. Hetrick. Dr. Pacult reveals his answer to question number 6 on page 2 as: **"Pt unable to return to work as result of subjective complaints of pain. Otherwise he would be able."** Dr. James Gee noted in his report of June 11, 2015 that it was his opinion: **"the patient has a 9% permanent impairment to the whole person. I cannot differentiate whole person from spine."** On the 14B completed by Dr. Gee on June 11, 2015 he states the following work restrictions; **"limit heavy work and strain."**

Of the six jobs that I identified, night auditor and escort vehicle driver are considered sedentary by the Department of Labor. The other four are technically considered light-duty by the Department of Labor. In my opinion these jobs are considered light-duty rather than sedentary due to the need for long-term standing and walking, not due to a need for lifting. No restrictions on Mr. Herndon's ability to stand or walk were identified by any of the physicians. All of the jobs that I identified with the exception of retail sales can easily be modified to sedentary duty by simply providing a chair.

I would point out that the Dictionary of Occupational Titles, Revised 1991 (DOT) provides broad definitions of positions and often includes more activities than are required in specific jobs. For example, parking lot cashiers and security gate guards are sedentary in nature, although they are classified by the DOT as light-duty. Observation of these positions reveals that these employees are allowed to sit with regularity and never lift more than a few ounces.

Therefore in my opinion, all of the positions I identified are appropriate from both the physical and skills standpoint.

On page 2 paragraph 3 of the Pearsall report he makes a broad statement as follows:

Client Billy "Wayne" Herndon

Date 4-22-16

Page 4

"Essentially and practically there are no positions represented in significant numbers in the regional or national economies consistent with the residual functional/vocational capacities and physician restrictions of Mr. Herndon. Additionally it is highly likely and very probable that Mr. Herndon will not return to gainful employment in any capacity. This would include all full and part-time competitive positions represented in significant numbers in the national economy at any and all exertion or skill levels. As such, Mr. Herndon is not been comparatively employed in the national economy."

It is my opinion that the majority of this statement is inaccurate, and that there are abundant work options available to Mr. Herndon within his physical restrictions in the regional and national economies. It is also my opinion that Mr. Herndon's likelihood to return to gainful employment in any capacity depends largely on his motivation. In my opinion, he has the physical, academic and transferable skills to be employed. Jobs such as parking lot cashier and night auditor are available with regularity and have little to no significant physical requirements and can be learned easily on the job in a short timeframe. If Mr. Herndon does not want to return to work, nothing said or done by any vocational expert can put Mr. Herndon on a job. In my interview with Mr. Herndon I asked him if he would return to work if a job could be found within his physical restrictions, and he stated "I would try". (pg. 4, 2-2-16) I take Mr. Herndon at his word and opine there is work he can perform and with wages between \$9 and \$10 per hour.

On page 7 paragraph 1 of Dr. Pearsall's report, he makes a statement which is completely incongruent with the reason the vocational rehabilitation profession exists:

"Regardless of cause or consideration if an individual does not fully meet normal and expected standards of competitive employment, they are unable to work. This is precisely the standard utilized in most vocational assessment, disability determination, and work capacity assessments. Mr. Herndon does not meet the minimum standards of competitive employment. The Page Rehabilitation Services does not address this basic and often determinate issue."

I wholeheartedly disagree with this statement and do not feel that this is the standard for most vocational or work capacity assessments.

I would challenge Dr. Pearsall to explain how it is that we all regularly see individuals who are working and who, for example, are in their late 60s and 70s, have Downs' syndrome, have low mental capacity, have depression or anxiety,

Client Billy "Wayne" Herndon

Date 4-22-16

Page 5

have chronic medical conditions, are missing a limb/limbs, are burn victims, or are in a wheelchair. It is my goal and understanding that the mission of vocational rehabilitation is to work with individuals with less ability than the general population and provide them the opportunity to succeed. In cases where we are hired as vocational experts, we make decisions on the objective evidence. It is not our role to do job placement but to identify options. It is up to the worker to make the decision as to whether or not he will actually attempt to return to work.

There is apparently a difference between how we at Page Rehabilitation looks at individuals with disabilities and the methods used by Dr. Pearsall. We identify the challenges of impaired individuals, and assist in defining a plan of action for those willing to take the step toward employment.

Labor Market Research

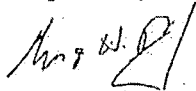
On 4-22-16 I performed labor research to determine if there may be appropriate work options for Mr. Herndon. Utilizing *indeed.com* in a time limited survey, I was able to locate the following:

- A night auditor position at the Days Inn in Ladson
- Three customer service reps for payday lending including: Always Money at \$11 per hour, Check Into Cash and Ace Cash
- A cashier at the Walterboro Cracker Barrel
- A vehicle operator in Yemassee
- A security guard position at Colleton Medical Center

I would note that the vehicle operator position did require computer experience, and that Always Money and Check Into Cash preferred a high school diploma or equivalent. Mr. Herndon has little computer knowledge and no diploma or GED, however he is an honorably discharged veteran which is often allowed to substitute for a high school diploma or GED. This was a time limited survey and it is my opinion that direct employer contacts would develop more job options.

Please let me know if you need any additional information. I hope this report is beneficial to all parties.

Respectfully,



George H. Page MS, CVE, CDMS, CCM, PVE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1406130

BILLY WAYNE HERNDON,

Employee,

Claimant,

vs.

G & G LOGGING, INC.,

Employer,

AND

PALMETTO TIMBER S.I. FUND C/O
WALKER, HUNTER & ASSOCIATES,
INC.,

Carrier,

Defendants.

**AMENDED NOTICE OF
WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN R.
HETRICK, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGES
11		Medical University of South Carolina	03/01/11 to 07/28/12	186-197
12		Subpoenas	02/24/16	198-203
13		Wage records from the SC Department of Employment and Workforce	03/08/16	204-206
14		Supplemental report from George Page	04/22/16	207-211

15		Excerpts from Claimant's tax records		212-220

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Greg Gruber, George Page* (expert), and/or other representatives of the Employer and/or Carrier may be called to testify; Defendants reserve the right to call any and all witnesses identified by the Claimant, including Claimant.



BENJAMIN T. CRUSE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
April 28, 2016

*****KEEP FOR YOUR RECORDS*****

TWO WAGE EARNER CREDIT WHEN BOTH SPOUSES WORK**Your filing status must be married filing jointly to claim this credit.****Line 12 TWO WAGE EARNER CREDIT (MARRIED COUPLE)**

This credit can only be claimed by a married couple filing jointly when both spouses have earned income taxed to South Carolina. This credit is not allowed on returns with a filing status of single, married filing separately or head of household. Do not include gambling or bingo winnings reported on federal form W-2G.

Example - You earned a salary taxed to South Carolina of \$20,000. Your spouse earned \$17,000 taxed to South Carolina and had an IRA deduction taxed to South Carolina of \$1,000. Your SC qualified earned income is \$20,000 and your spouse's is \$16,000 (\$17,000 minus \$1,000). Because your spouse's qualified earned income is less than yours, the credit is based on your spouse's income. Therefore, the credit is \$112 (\$16,000 x .007).

Compute your earned income separately for yourself and your spouse. South Carolina earned income is generally income you receive for services you provide. It includes wages, salaries, tips, commissions and sub-pay. It also includes income earned from self-employment, business income or loss, partnership income or loss, farm income or loss and any other earned income taxed to South Carolina. Earned income does not include gambling or bingo winnings, interest, dividends, Social Security benefits, IRA distribution, unemployment compensation, deferred compensation or non-taxable income. It also does not include any amount your spouse paid you.

	(a) You	(b) Your Spouse
1. Wages, salaries, tips, etc., taxed to South Carolina from South Carolina Schedule NR, Column-B, line 1; federal Form 1040, line 7; 1040A, line 7 or 1040EZ, line 1. (Do not include pensions or annuities.)	7,780	16,945
2. Net profit or (loss) from self-employment (from Schedule C and on Schedule K-1 of Form 1065) and any other earned income taxed to South Carolina.	0	0
3. Add lines 1 and 2. This is your total earned income taxed to SC.	7,780	16,945

South Carolina qualified earned income. This is the amount on which the credit is based. Compute it by subtracting certain adjustments from South Carolina earned income. The adjustments are:

- One half of self-employment tax (Form 1040, line 27)
 - Self-employed SEP, simple, and qualified plans (Form 1040, line 28)
 - Self-employed health insurance deduction (Form 1040, line 29)
 - IRA deduction (Form 1040, line 32 or 1040A, line 30)
 - Repayment of sub-pay
4. Add amounts entered on federal Form 1040 lines 27 through 29 and 32. If filing South Carolina Schedule NR, enter amounts from lines 21, 22, 23, 26 and any repayment of supplemental unemployment benefits (sub-pay) allocable to South Carolina income.

5. Subtract line 4 from line 3. This is your qualified earned income taxed to South Carolina. If the amount in column (a) or (b) is zero (-0-) or less, stop here. You may not take this credit.

Compute the credit:

6. Enter the smaller of 5(a) or 5(b). Do not enter more than \$30,000.	7,780
7. Multiply the amount on line 6 by .007. Do not enter more than \$210. Enter the amount here and on SC1040, line 12.	54

W-2 Detail Listing

2012

Name(s) as shown on return

Social Security No.

BILLY W & DEBORAH K HERNDON

247-92-1471

T/S	Employer Name	FEDERAL			STATE	
		Gross	W/H	State Code	Gross	W/H
T	BOOTLE LOGGING COMPANY LLC	7,780	706	SC	7,780	471
S	COLLETON COUNTY SCHOOL DISTR	16,945	2,085	SC	16,945	1,126
Taxpayer Totals		7,780	706		7,780	471
Spouse Totals		16,945	2,085		16,945	1,126
Totals		24,725	2,791		24,725	1,597

Preparer Copy

1 Wages, tips, other comp. 7780.00		2 Federal income tax withheld 705.69	
3 Social security wages 7780.00		4 Social security tax withheld 326.76	
5 Medicare wages and tips 7780.00		6 Medicare tax withheld 112.81	
d Control Number 000021	Dept. RE/FFQ	Corp.	Employer use only 14
e Employer's name, address, and ZIP code BOOLE LOGGING COMPANY LLC 881 BOOLE LANE YEMASSEE, SC 29945			
b Employer's FED ID number 57-0754032		c Employer's SSA number 740-62-0000	
7 Social security tips 0.00		8 Allocated tips	
9 Nonqualified plans		10 Dependent care benefits	
11 Nonqualified plans		12a See instructions for box 12	
14 Other		12b	
		12c	
		12d	
		13 Stat emp. Ret. plan and party sick pay	
e/f Employee's name, address and ZIP code WAYNE HERNDON 881 BOOLE LANE WALTERBORO, SC 29488			
15 State Employer's state ID no. SC 25179782.7		16 State wages, tips, etc. 7780.00	
17 State income tax 471.42		18 Local wages, tips, etc.	
19 Local income tax		20 Locality name	
Federal Filing Copy W-2 Wage and Tax Statement 2012 Copy B to be filed with employee's Federal income tax return			

d Control Number 877-67	1 Wages, tips, other compensation 16945.07	2 Federal income tax withheld 2086.40
OMB NO. 1545-0046	3 Social security wages 10773.42	4 Social security tax withheld 788.52
This information is being furnished to the Internal Revenue Service	5 Medicare wages and tips 10773.42	6 Medicare tax withheld 272.30
e Employer's name, address and ZIP code COLLETON COUNTY SCHOOL DISTRICT 243 NORTH JEFFERIES BLVD. WALTERBORO, SC 29488		
7 Social security tips	8 Allocated tips	9
10 Dependent care benefits 0.00	11 Nonqualified plans	12a See instructions for box 12 DD 13517.30
13a Stat. emp. Ret. plan and party sick pay	13b	13c
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13cg	13ch	13ci
13cj	13ck	13cl
13cm	13cn	13co
13cp	13cq	13cr
13cs	13ct	13cu
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FORM SSA-1099 – SOCIAL SECURITY BENEFIT STATEMENT

2013

• PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME.
• SEE THE REVERSE FOR MORE INFORMATION.

Box 1. Name BILLY W HERNDON SR		Box 2. Beneficiary's Social Security Number [REDACTED]
Box 3. Benefits Paid in 2013 \$12,012.00	Box 4. Benefits Repaid to SSA in 2013 NONE	Box 5. Net Benefits for 2013 (Box 3 minus Box 4) \$12,012.00
DESCRIPTION OF AMOUNT IN BOX 3 Paid by check or direct deposit \$12,012.00 Benefits for 2013 \$12,012.00		DESCRIPTION OF AMOUNT IN BOX 4 NONE
		Box 6. Voluntary Federal Income Tax Withheld NONE
		Box 7. Address BILLY W HERNDON SR [REDACTED] WALTERBORO SC 29488-9514
		Box 8. Claim Number (Use this number if you need to contact SSA.) [REDACTED]

Form SSA-1099-SM (1-2014)

DO NOT RETURN THIS FORM TO SSA OR IRS

Safe, accurate, **efile** Visit the IRS Web Site
ASTI Use at www.irs.gov/efile

Employee Reference Copy W-2 Wage and Tax Statement 2013

OMB No. 1545-0048
Control number Dept. Corp. Employer use only
000021 RE/FFQ A 9

Employer's name, address, and ZIP code

BOOTLE LOGGING COMPANY
LLC
881 BOOTLE LANE
YEMASSEE, SC 29945

Batch #95004

Employee's name, address, and ZIP code

WAYNE HERNDON
15311 E. HIGHWAY 101
WALTERBORO, SC 29488

Employer's FED ID number 57-0754032	Employee's SSA number 222-22-2222
Wages, tips, other comp. 8806.50	2 Federal income tax withheld 722.77
Social security wages 8806.50	4 Social security tax withheld 546.00
Medicare wages and tips 8806.50	6 Medicare tax withheld 127.69
Social security tips	8 Allocated tips
	10 Dependent care benefits
1 Nonqualified plans	12a See instructions for box 12
4 Other	12b 12c 12d
	13 Stat emp/Ret plan/3rd party sick pay
15 State Employer's state ID no. SC 25179782 7	16 State wages, tips, etc. 8806.50
17 State income tax 524.14	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

2013 W-2 and EARNINGS SUMMARY

This blue Earnings Summary section is included with your W-2 to help describe portions in more detail. The reverse side includes general information that you may also find helpful.

1. The following information reflects your final 2013 pay stub plus any adjustments submitted by your employer.

Gross Pay	8806.50	Social Security Tax Withheld Box 4 of W-2	546.00	SC State Income Tax Box 17 of W-2 SUI/SDI Box 14 of W-2	524.14
Fed. Income Tax Withheld Box 2 of W-2	722.77	Medicare Tax Withheld Box 6 of W-2	127.69		

2. Your Gross Pay was adjusted as follows to produce your W-2 Statement.

	Wages, Tips, other Compensation Box 1 of W-2	Social Security Wages Box 3 of W-2	Medicare Wages Box 5 of W-2	SC State Wages, Tips, Etc. Box 16 of W-2
Gross Pay	8,806.50	8,806.50	8,806.50	8,806.50
Reported W-2 Wages	8,806.50	8,806.50	8,806.50	8,806.50

3. Employee W-4 Profile. To change your Employee W-4 Profile information, file a new W-4 with your payroll dep.

WAYNE HERNDON
15311 E. HIGHWAY 101
WALTERBORO, SC 29488

Social Security Number:
Taxable Marital Status: MARRIED
Exemptions/Allowances:
FEDERAL: 0
STATE: 0

© 2013 ADP, INC.

Fold and Detach Here

1 Wages, tips, other comp. 8806.50	2 Federal income tax withheld 722.77
3 Social security wages 8806.50	4 Social security tax withheld 546.00
5 Medicare wages and tips 8806.50	6 Medicare tax withheld 127.69
d Control number 000021	Dept. RE/FFQ
Corp. A	Employer use only 9

Employer's name, address, and ZIP code

BOOTLE LOGGING COMPANY
LLC
881 BOOTLE LANE
YEMASSEE, SC 29945

b Employer's FED ID number 57-0754032	a Employee's SSA number 222-22-2222
7 Social security tips	8 Allocated tips
	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12
14 Other	12b 12c 12d
	13 Stat emp/Ret plan/3rd party sick pay

Employee's name, address, and ZIP code

WAYNE HERNDON
15311 E. HIGHWAY 101
WALTERBORO, SC 29488

15 State Employer's state ID no. SC 25179782 7	16 State wages, tips, etc. 8806.50
17 State income tax 524.14	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

Federal Filing Copy
W-2 Wage and Tax Statement 2013
OMB No. 1545-0048

1 Wages, tips, other comp. 8806.50	2 Federal income tax withheld 722.77
3 Social security wages 8806.50	4 Social security tax withheld 546.00
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17 State income tax 524.14	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

SC State Filing Copy
W-2 Wage and Tax Statement 2013
OMB No. 1545-0048

Two Wage Earner Credit (Married Couple) Worksheet

2014

Keep for your records

Name as Shown on Return

Social Security Number

Your filing status must be married filing jointly to claim this credit.

Step 1 Compute Your Earned Income

	(a) You	(b) Your Spouse
1 Wages, salaries, tips, etc, taxed to South Carolina from South Carolina Schedule NR, column B; line 1 or federal form . (Do not include pensions or annuities)	9,285	20,457
2 Net profit or (loss) from self-employment (from Schedules C and on Schedule K-1 of Form 1065) and any other earned income taxed to South Carolina		
3 Add lines 1 and 2. This is your total earned income taxed to South Carolina	9,285	20,457

Step 2 Compute Your Qualified Earned Income

	You	Your Spouse
A Federal Form 1040, adjustments: -Deductible part of self-employment tax, -Self-employed, SEP, simple and qualified plans, -Self-employed health insurance deduction and -IRA deduction; or If filing South Carolina Schedule NR, lines 21, 22, 23 and 26		
B Repayment of sub-pay allocable to South Carolina income	0	
4 Add the adjustment amounts entered on federal Form 1040, lines 27 through 29 and 32. If filing South Carolina Schedule NR, enter amounts from lines 21, 22, 23, 26 and any repayment of supplemental unemployment benefits (sub-pay) allocable to South Carolina income	0	
5 Subtract line 4 from line 3. This is your qualified earned income taxed to South Carolina. If the amount in column (a) or (b) is zero (-0-) or less, stop here. You may not take this credit	9,285	20,457

Step 3 Compute Your Credit

6 Enter the smaller of 5(a) or 5(b). Do not enter more than \$30,000.	6	9,285
7 Multiply the amount on line 6 by .007. Do not enter more than \$210. Enter the amount here and on Form SC1040, line 12	7	65

SCIW6701.SCR 09/22/14

REV 10/14/14 TFO

Copy B-To Be Filed With Employee's Federal Tax Return.		41-0852411 OMB No. 1545-0008	
a Employee's soc. sec. no.	1 Wages, tips, other comp. 9285.00	2 Federal income tax withheld 710.00	
	3 Social security wages 9285.00	4 Social security tax withheld 575.67	
b Employer ID number (EIN) 57-0936799	5 Medicare wages and tips 9285.00	6 Medicare tax withheld 134.63	
c Employer's name, address, and ZIP code G & G LOGGING INC. 269 RIGBY RD BOWMAN SC 29018			
d Control number 6			
e Employee's name, address, and ZIP code BILLY W. HERNDON WALTERBORO SC 29488			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
13 Statutory employee	14 Other	12b Code	
Retirement plan		12c Code	
Third-party sick pay		12d Code	
SC 25282655 3	9285.00	482.99	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept. of the Treasury - IRS
This information is being furnished to the Internal Revenue Service.
DAA

Copy 2-To Be Filed With Employee's State, City, or Local Income Tax Return.		41-0852411 OMB No. 1545-0008	
a Employee's soc. sec. no.	1 Wages, tips, other comp. 9285.00	2 Federal income tax withheld 710.00	
	3 Social security wages 9285.00	4 Social security tax withheld 575.67	
b Employer ID number (EIN) 57-0936799	5 Medicare wages and tips 9285.00	6 Medicare tax withheld 134.63	
c Employer's name, address, and ZIP code G & G LOGGING INC. 269 RIGBY RD BOWMAN SC 29018			
d Control number 6			
e Employee's name, address, and ZIP code BILLY W. HERNDON WALTERBORO SC 29488			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
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Third-party sick pay		12d Code	
SC 25282655 3	9285.00	482.99	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept. of the Treasury - IRS
DAA

FORM SSA-1099 – SOCIAL SECURITY BENEFIT STATEMENT

2014 • PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME. • SEE THE REVERSE FOR MORE INFORMATION.		
Box 1. Name BILLY W HERNDON SR		Box 2. Beneficiary's Social Security Number 247-492-7474
Box 3. Benefits Paid in 2014 \$12,191.90	Box 4. Benefits Repaid to SSA in 2014 NONE	Box 5. Net Benefits for 2014 (Box 3 minus Box 4) \$12,191.90
DESCRIPTION OF AMOUNT IN BOX 3 Paid by check or direct deposit \$12,087.00 Medicare Part B premiums deducted from your benefits \$104.90 Total Additions \$12,191.90 Benefits for 2014 \$12,191.90		DESCRIPTION OF AMOUNT IN BOX 4 NONE
		Box 6. Voluntary Federal Income Tax Withheld NONE
		Box 7. Address BILLY W HERNDON SR 735 LEMMON RD WALTERBORO SC 29488-9514

017163200-1108163452

FORM SSA-1099 – SOCIAL SECURITY BENEFIT STATEMENT

2015

• PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME.
• SEE THE REVERSE FOR MORE INFORMATION.

Box 1. Name BILLY W HERNDON SR		Box 2. Beneficiary's Social Security Number [REDACTED]
Box 3. Benefits Paid in 2015 \$12,394.80	Box 4. Benefits Repaid to SSA in 2015 NONE	Box 5. Net Benefits for 2015 (Box 3 minus Box 4) \$12,394.80
DESCRIPTION OF AMOUNT IN BOX 3 Paid by check or direct deposit \$11,136.00 Medicare Part B premiums deducted from your benefits \$1,258.80 Total Additions \$12,394.80 Benefits for 2015 \$12,394.80		DESCRIPTION OF AMOUNT IN BOX 4 NONE
		Box 6. Voluntary Federal Income Tax Withheld NONE
		Box 7. Address BILLY W HERNDON SR [REDACTED] WALTERBORO SC 29488-9514
		Box 8. Claim Number (Use this number if you need to contact SSA.) [REDACTED]

Form SSA-1099-SM (1-2016)

DO NOT RETURN THIS FORM TO SSA OR IRS

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 material.

s/ Andrea C. Roche
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SC Bar No. 7563

Attorney for Appellant-Respondent

RECEIVED

DEC 06 2017

SC Court of Appeals